

## Appendix H CEQA Baseline Discussion

The California Environmental Quality Act (CEQA) baseline employed in this document is governed not only by CEQA, but also by the specific terms of the Amended Stipulated Judgment (ASJ) described in Section 1.4.3 of the Environmental Impact Report (EIR). Per the ASJ, the baseline for Berths 97-109 is defined as conditions "...prior to the approval of the Lease in 2001" or zero (see Appendix B of this EIR). Therefore, the CEQA baseline in this EIR does not consist of conditions existing at the time of the issuance of the Notice of Preparation (NOP) as would typically occur under CEQA.

The Board of Harbor Commissioners approved the Berth 97-109 Container Terminal Project (China Shipping Project) and lease on March 28, 2001 (shown in *Attachment 1* of this appendix). The NOP for this document was filed on July 2, 2003. However, because the ASJ does not allow this document to describe baseline conditions as of that date, the baseline includes those conditions existing prior to March 2001. It was determined that the use of a zero baseline would not be appropriate because activities related to container terminal operations were actually occurring at the Project site prior to March 2001. Prior to March 28, 2001, the primary use of the Project site was for temporary storage of containers by Yang Ming Marine Transport Corporation (Yang Ming). Accordingly, the baseline used for this EIR is founded on evidence of throughput of containers and associated activities that occurred in the year prior to March 2001.

The Port of Los Angeles (Port) routinely uses a year of throughput data to define the baseline conditions on Port terminal projects. Throughput on a daily basis is almost impossible to measure because throughput, quite literally, is a function of volume over time. Throughput is a mix of containers coming into the terminal by rail, train, and ships and going out the same way. Counts will change on a daily basis. Throughput tends to spike and slow at certain times of the year (e.g., during the Chinese New Year, throughput slows and during the fall pre-Christmas season, throughput expands). Because throughput changes over days, months, and quarters, the Port routinely uses throughput numbers averaged over time when establishing a baseline throughput value. The Port uses a year of throughput data to calculate the average to capture the normal range of economic peaks and valleys over the year (e.g., throughput numbers are generally higher in the fall as more goods are shipped for the Christmas season, and lower in the New Year as consumer spending decreases). The same averages are used both to determine baseline throughput numbers and to project throughput numbers so the baseline and project can be compared directly in an "apples-to-apples" type comparison. The evidence used to determine the baseline for this EIR consisted of data from **April 2000 to March 2001**.

Prior to March 28, 2001, Yang Ming was allowed to use varying amounts of backlands at Berths 97-109 for container storage. In a space assignment running from April 21 through May 20, 2000, Yang Ming was allowed to use 0.5 acre; on April 25, 2000, Yang Ming was allowed to use an additional 7.7 acres through May 24, 2000; from May 25 to July 18, 2000, Yang Ming was allowed to use 20 acres; from July 19, 2000, through August 6, 2001, Yang Ming was allowed to use 11.8 acres (see *Attachment 2* to this appendix).

The baseline conditions are defined as **the average throughput volume Yang Ming was achieving at Berth 97-109**. To estimate the numbers of twenty-foot equivalent units (TEUs) at Berths 97-109, the Yang Ming TEUs were scaled to the area and level of use at Berths 97-109.

Terminal operators normally keep records of the container throughput volume that passes through the terminal gates they operate. However, because Yang Ming was using the Berth 97-109 terminals as contiguous backlands, it did not distinguish in its records between containers that were stored on the Berth 121-131 backlands versus containers that were stored at Berth 97-109. In the absence of such records, another acceptable approach is to identify throughput based on actual physical evidence of backlands usage in conjunction with standard assumptions regarding how backlands are typically utilized.

However, for purposes of developing a description of baseline conditions for the China Shipping Project, the Environmental Impact Statement (EIS)/EIR took the conservative approach of including only activities that took place on the Project site. The baseline does not include ship calls or rail trips attributable to container throughput at the Berth 97-109 backlands in the description of CEQA baseline conditions. This approach results in a conservative estimation of Project impacts, which will be compared to baseline activity levels that are lower than they would be if those ship calls or rail trips were included.

Throughput volume accommodated at the Berth 97-109 backlands in the year prior to March 28, 2001 was derived from expert interpretation of physical evidence. The first step in determining the average volume at Berths 97-109 was to determine how large an area Yang Ming was using. The EIS/EIR relies on a series of seven aerial photos of the Berth 97-109 backlands taken during the year prior to March 28, 2001. The aerial photographs were taken by the Port Graphics Department as part of regular port operations for April, June, July, September, and November of 2000, and for February and March of 2001. No throughput was assumed for the months without photographs. The aerial photos show that, although Yang Ming was permitted to use 8 to 11 acres, it was actually occupying much more than the authorized area.<sup>1</sup>

The second step was to determine how many containers were being stored onsite by physically counting the containers in each photograph. The aerial photographs were then interpreted to identify container throughput volume at the Berth 97-109 backlands in the following manner. First, the containers shown in the photographs were counted and differentiated into containers determined likely to be empty and containers determined likely to be loaded with imports/exports. Then, certain assumptions regarding average “dwell time” (that is, the expected length of time a container is stored at a terminal backland) were applied to the numbers resulting from the physical count to derive conclusions about the rate at which containers moved in and out of storage on the Berth 97-109 backlands during the CEQA baseline year.

The final step in determining throughput was to estimate how fast the containers were moving through the terminal. The photographs show the containers being stored in two different manners – stacked on or below other containers, or loaded on wheeled chassis. For this analysis, stacked containers were assumed to be empty, while wheeled containers were assumed to be loaded. It is common practice at POLA to stack empty containers because they tend to be stored for longer periods than are loaded containers, and empty containers typically are shipped out in large batches that do not require sorting. Loaded containers may also be stacked; however, in the

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<sup>1</sup> CEQA Guidelines provide for the environmental baseline to include all uses that actually existed during the baseline period, regardless of whether those activities are alleged to have exceeded approvals. See, e.g., *Fat v. County of Sacramento*, 97 Cal. App. 4<sup>th</sup> 1270, 1277-1281 (2002); *Riverwatch v. County of San Diego*, 76 Cal. App. 4<sup>th</sup> 1428, 1451-1453 (1999).

experience of the Port, stacking would require rubber-tired or other mobile gantry cranes because loaded stacked containers must be constantly sorted within the stacks. When a truck arrives to carry its assigned container, that container must be made accessible, often on short notice, even if other containers must be moved to make the container accessible.

Because none of the aerial photographs shows the presence anywhere on the Berth 97-109 backlands of gantry cranes, the experts at the Port have concluded that the practice of stacking loaded containers generally was not followed during the baseline period. In addition, because the site was not paved, gantry cranes could not be used on the site. Port experts also concluded that all stacked containers shown in the photographs should be assumed to be empty. This assumption leads to a more conservative estimate of baseline activity levels because, as discussed below, this document also assumes that empty containers were moved and replaced with other containers less frequently than were loaded containers. By using an assumption that results in a greater ratio of empty to loaded containers, this document therefore identifies less frequent movement of the containers stored at Berths 97-109 than it would if it assumed more loaded containers.

To determine how often the containers shown in the photographs were moved, this document applied assumptions regarding dwell time for stored containers, empty or loaded, which were derived from a comprehensive Port-wide study of terminal operational capacity (JWD, 2006). According to that study, which examined container operations throughout the Port, the average dwell time for an empty container at the Port is 6 to 10 days; whereas, the average dwell time for a loaded container is 1 to 4 days for a container holding imports and 4 to 6 days for a container holding exports.

Based on that study, this document conservatively assumes that empty containers stored on the Berth 97-109 backlands remained for 10 days before being moved and that loaded containers remained for 6 days before being moved. This document further conservatively assumes that when empty containers were moved, they were replaced with new empty containers at a rate of 1:1, and similarly that, when loaded containers were moved, they were replaced with new loaded containers at a rate of 1:1. This assumption is conservative because the aerial photographs demonstrate that numbers of both empty and loaded containers stored on Berth 97-109 backlands trended upward over time, albeit not in straight-line fashion, during the course of the baseline year prior to March 28, 2001.

The average dwell times identified in the JWD report were used to form the dwell-time assumptions used in this document. This document concludes that, in the 7 months for which container storage data exist, a total of 14,627 containers were moved on and off the Berth 97-109 backlands. This document further concludes that, in those same 7 months, an average of 2,090 containers moved on and off the Berth 97-109 backlands, per month, during the 12 months immediately preceding March 28, 2001.

On the basis of those conclusions, this document determines that during the 12 months prior to March 28, 2001, a total of 25,075 containers were moved on and off the Berth 97-109 backlands (2,090 containers times 12 months). Since each container represents approximately 1.8 TEUs, it was calculated that total container throughput volume at the Berth 97-109 backlands during the 12 months prior to March 28, 2001, was 45,135 TEUs.

Based on the analytical approach described above, the throughput was calculated as follows:

Average dwell time:

Empties 10 days  
Wheeled 6 days

Average Month:

30 days

Average turnover per month:

Empties 30/10 days= 3  
Wheeled 30/6 days= 5

Containers counts onsite<sup>2</sup> (Attachments 3 through 9):

April:	Loaded: 99	Empty: 0	(Attachment 3)
June:	Loaded: 198	Empty: 31	(Attachment 4)
July:	Loaded: 379	Empty: 25	(Attachment 5)
September:	Loaded: 143	Empty: 10	(Attachment 6)
November:	Loaded: 226	Empty: 1061	(Attachment 7)
February:	Loaded: 344	Empty: 727	(Attachment 8)
March:	Loaded: 88	Empty: 560	(Attachment 9)

Monthly Container Turnover

April:	Loaded: 495 (99*5)	Empty: 0	Monthly Total: 495
June:	Loaded: 990 (198*5)	Empty: 93 (31*3)	Monthly Total: 1,083
July:	Loaded: 1,895 (379*5)	Empty: 75 (25*3)	Monthly Total: 1,970
September:	Loaded: 715 (143*5)	Empty: 30 (10*3)	Monthly Total: 745
November:	Loaded: 1,130 (226*5)	Empty: 3,183 (1,061*3)	Monthly Total: 4,313
February:	Loaded: 1,720 (344*5)	Empty: 2,181 (727*3)	Monthly Total: 3,901
March:	Loaded: 440 (88*5)	Empty: 1,680 (560*3)	Monthly Total: 2,120

Sum of Monthly Container Turnover

14,627

Average monthly Containers:

$14,627 / 7$  (number months of data) = 2,090

April through March = 12 months of consistent operation:

$2,090 * 12 = 25,075$  Containers

Number of TEUs

There is an average of 1.8 TEUs per containers. To estimate the number of baseline TEUs, the container estimate is multiplied by 1.8, as follows:

$25,075 \text{ Containers} * 1.8 \text{ TEUs/container} = \mathbf{45,135}$  TEUs for the Baseline.

<sup>2</sup> No throughput was assumed for months without photographs.

LEGEND	
Input Cells =	
Calculated Cells =	

ASSUMPTIONS		
April 2000 - March 2001		
Stacked = Empty		
Grounded or Wheeled = Loaded		
Average Dwell Time (days)	Empty =	10
	Loaded =	6
Average Month (days)=		30
Average Turnover per Month	Empty =	3.0
	Loaded =	5.0

Counted Containers	Apr-00	May-00	Jun-00	Jul-00	Aug-00	Sep-00	Oct-00	Nov-00	Dec-00	Jan-01	Feb-01	Mar-01
Empty Containers =	0	0	31	25	0	10	0	1,061	0	0	727	560
Loaded Containers =	99	0	198	379	0	143	0	226	0	0	344	88

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Attachment		Attachment	Attachment	Attachment	Attachment	Attachment	Attachment
PDF Filename w/counts=	3_CS_aerial0	4_CS_aerial	5_CS_aerial	6_CS_aerial	7_CS_aerial	8_CS_aerial	9_CS_aerial
	6.pdf	16.pdf	33.pdf	11.pdf	10.pdf	15.pdf	13.pdf

Average Container Turnover	Apr-00	May-00	Jun-00	Jul-00	Aug-00	Sep-00	Oct-00	Nov-00	Dec-00	Jan-01	Feb-01	Mar-01
Empty Containers =	0	0	93	75	0	30	0	3,183	0	0	2,181	1,680
Loaded Containers =	495	0	990	1,895	0	715	0	1,130	0	0	1,720	440
Monthly Container Turnover =	495	0	1,083	1,970	0	745	0	4,313	0	0	3,901	2,120
<b>Sum of Container Turnover =</b>	<b>14,627</b>											
<b>No. of Months of Count Data =</b>	<b>7</b>											
Average Monthly Containers =	2,090											
<b>Months of Consistent Operations =</b>	<b>12</b>											
Baseline Containers =	25,075											
<b>TEUs per Container =</b>	<b>1.8</b>											
<b>Baseline TEUs =</b>	<b>45,135</b>											

## **Attachments**

# Attachment 1

PERMIT NO. 999

GRANTED BY THE CITY OF LOS ANGELES  
TO  
CHINA SHIPPING HOLDING COMPANY, LTD.

THIS PERMIT (hereinafter called "Agreement") is entered into this 8<sup>th</sup> day of May, 2001, by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board"), and CHINA SHIPPING HOLDING COMPANY, LTD., a Delaware corporation, whose address is 100 Plaza Drive, Secaucus, New Jersey, 07096 ("Tenant").

Section 1. Premises.

City hereby nonexclusively assigns and Tenant accepts the premises described below, subject to the terms and conditions provided herein and to the rates, terms and conditions of Port of Los Angeles Tariff No. 4, as it now exists or may be amended or superseded ("Tariff"). Tenant acknowledges it has received, read and understands the rates, terms and conditions of the Tariff. Except as modified by this Agreement, Tenant agrees to be contractually bound by the Tariff rates, terms, and conditions as if these terms were set forth in full herein. In the event of any conflict between the provisions of this Agreement and the provisions of the Tariff as it presently exists or as it may subsequently be changed, this Agreement shall at all times prevail. Tenant is responsible for maintaining a complete and current Tariff and assumes responsibility for doing so.

(a) Description of the Premises. The premises subject to this Agreement comprise Areas Nos. 1 and 2, including Berths 100 and 102 (approximately 2,800 to 3,200 lineal feet  $\pm$  50 feet) and approximately 110 acres of wharf and backlands ( $\pm$  4 acres). Those areas are delineated and more particularly described on Drawing No. 1-2339. This drawing is on file in the office of the Chief Harbor Engineer of the Harbor Department of City ("Harbor Engineer"). A copy of said drawing is attached as Exhibit "A" and incorporated by reference into this Agreement. Upon completion of the City Improvements in accordance with the provisions of Section 6 of this Agreement, a revised drawing shall be prepared by the Harbor Engineer and marked Exhibit "A-1." Exhibit "A-1" shall be attached to this Agreement and incorporated herein by reference and shall thereupon be substituted for Exhibit "A." Tenant shall have the "preferential" right to use Berths 100 and 102.

Effective on the "Occupancy Date" as defined in Section 6(c) of this Agreement, Tenant shall have the "secondary" right to use Berths 121 through 131 at premises subject to Permit No. 787. Unless otherwise agreed in writing between Tenant and the preferential assignee of Berths 121 through 131 under Permit No. 787, with a copy of such agreement filed with the Executive Director of City's Harbor Department



("Executive Director"), cargo containers discharged from or loaded onto Tenant's vessels at Berths 121 through 131 shall be permitted only to pass through the premises subject to Permit No. 787. Such cargo containers shall not remain upon the premises subject to Permit No. 787 longer than reasonably necessary to conduct loading or unloading operations and shall thereupon promptly be removed by Tenant from the premises subject to Permit No. 787.

In the event that Tenant is unable to reach agreement with the preferential assignee of Berths 121 through 131 regarding use of the premises subject to Permit No. 787, including common areas thereof, City agrees to provide assistance to the parties in resolving any issues with respect to negotiations regarding such agreement.

The term "premises" as used in this Agreement, shall include all structures owned by or under the control of Board within said parcels which are made available for Tenant's use whether on or below the surface and such structures as City may construct for Tenant. No other structure shall be considered to be a part of the premises except to the extent that Tenant's maintenance, restoration, and indemnity and insurance obligations shall extend in addition to all buildings or improvements it owns or subject to its control on the premises.

(b) Tenant's Rights Nonexclusive. By approving this Agreement, City does not grant to Tenant the sole or exclusive right to use the premises. Tenant's right to use the premises shall only be preferential to other users thereof as set forth in this Section.

The "preferential" right to use a berth means that if two ships arrive at berth simultaneously, one invited by a preferential user and one invited by a secondary user, the holder of the preferential right may bring its vessel to berth first and load or unload it so long as such loading or unloading is carried out continuously in accordance with the practice in the trade in Southern California. A right to use a berth "secondarily" means that the secondary user has priority over tertiary and temporary users. If a vessel invited by a preferential user arrives at berth while a vessel invited by the secondary user is being loaded or unloaded, the secondary user must immediately vacate the berth; provided, however, that the preferential and secondary users shall cooperate to permit conclusion of the cargo operations in progress if such operations can be concluded shortly.

City has and reserves the right, subject to the consent of Tenant, to grant to other users upon twenty-four (24) hours' telephonic notice the right to use the premises, including the improvements on the premises and any cranes, as long as such use by others will not unreasonably interfere with Tenant's use of the premises. Tenant shall not unreasonably withhold its consent, but it shall not be deemed unreasonable for Tenant to refuse a request for a secondary, tertiary or temporary use which would require Tenant to change its mode of operation. Tenant may charge such users for the use of non-Port of Los Angeles cranes, facilities and equipment, provided such charges may not, without prior consent of the City, exceed the rates provided in Tariff for use of City cranes, facilities and equipment. For the use of non-Port of Los Angeles cranes, Tenant may require such user

to use its crane operators. Tenant may also require such user to agree in writing to indemnify and provide insurance to Tenant for any liability arising from use of the premises and the non-Port of Los Angeles cranes, facilities or equipment, or for any damage to the cranes, facilities or equipment caused by such user's negligence. Tenant shall permit other stevedores to serve other users of the premises if the other users designated by City so requests. All Tariff charges which accrue from such other user's use of the premises shall accrue solely for City's benefit and shall not count toward the compensation provisions of this Agreement. To assist City in determining the availability of the premises for use by other users, Tenant shall upon request from City immediately provide City a written summary showing vessels scheduled to call at the premises in the next thirty (30) day period, anticipated tonnages and such other information as City needs to determine the availability of the premises.

(c) Tenant to Supply Necessary Labor and Equipment. Tenant shall, at its own cost and expense, provide all tackle, gear and labor for the berthing and mooring of vessels of its invitees at the berths and shall provide, at its own expense, such appliances and employ such persons as it may require for the handling of goods, wares and merchandise; provided, however, that nothing contained herein shall prevent Tenant from using such appliances as may be installed by City at the berths upon the payment to City of all applicable charges. Secondary, tertiary or temporary users of the premises shall be responsible for their own costs and expenses.

(d) Operations to Maximize Use. Tenant understands that City has limited terminal space for cargo, chassis, and equipment and that the demand for such space may exceed the supply. Tenant understands that unless the use of space devoted to the handling of cargo, chassis and equipment is maximized, City may not be able to accommodate new or incremental business and that it will lose the wharfage and dockage revenue associated with such business. Therefore, Tenant agrees to conduct its operations at the premises in a fashion which will allow the City to maximize the use of the premises for other users of the facility. Where, in the opinion of City, Tenant is not maximizing use of certain parcels within its premises, City shall have the right to require Tenant, at Tenant's expense, to consolidate its operations into a smaller area.

(e) Reservations. This Agreement and the premises delivered are and shall be at all times subject to the following reservations; provided, however, that if City exercises such reservation in a way that will interfere with Tenant's use of the premises so as to effectively deny Tenant's use of greater than five percent (5%) of the total acreage granted hereunder for a period exceeding thirty (30) days, then Tenant shall be provided a mutually agreed upon replacement area similar in size to the area Tenant is unable to use. If City is unable to provide a mutually agreed upon replacement area, compensation shall be reduced in accordance with Section 3 based on the number of acres the use of which Tenant is denied.

(1) Utility Rights-of-Way. Rights-of-way for sewers, pipelines, conduits and for telephone, telegraph, light, heat and power lines as may from time to time

be determined necessary by Board, including the right to enter upon, above, below or through the surface to construct, maintain, replace, repair, enlarge or otherwise utilize the premises for such purpose, without compensation or abatement of rent, provided the surface shall be restored as much as possible to the condition previously existing. Tenant is aware the City Department of Water and Power or other utilities providing service to the terminal both periodically and in an emergency need to service or repair facilities on the premises. Tenant agrees to relocate, at its expense, its cargo, chassis and equipment to provide Department of Water and Power or any other utility adequate access for periodic and emergency maintenance. In an emergency, Tenant agrees to complete such relocation within six (6) hours of receiving notice from City.

(2) Streets and Highways. Rights-of-way for streets and other highways and for railroads and other means of transportation which are apparent from a visual inspection of the premises or which shall have been duly established or which are reserved herein.

(3) Prior Exceptions. All prior exceptions, reservations, grants, easements, leases or licenses of any kind whatsoever as the same appear of record in the Office of the Recorder of Los Angeles County, California, or in the official records of City or any of its various departments.

(4) Oil Drilling. The right of City to occupy portions of the premises as may be necessary for drilling purposes and to use and grant others the right to use the same to drill for and produce oil or other hydrocarbon substances therefrom; provided, that such uses do not materially interfere with the operation of Tenant hereunder and, provided further, that the rental herein designated shall be adjusted proportionately to compensate for the surface areas to be used.

(f) Inspection. Tenant will inspect the premises on or before the Occupancy Date as defined in Section 6(c), below, in contemplation of occupying them for the uses permitted and will, before the Occupancy Date, agree that:

(1) Suitability. The premises, including any improvements covered by this Agreement, are suitable for Tenant's intended uses. No officer or employee of City has made any representation or warranty with respect to the premises, including improvements and Tenant has not relied on any such warranty or representation unless the nature and extent of such representation or warranty is described in writing and included in or attached to this Agreement.

(2) Additions and Improvements at Tenant's Expense. Any modification, improvement, or addition to the premises and any equipment installation required by the Fire Department, Department of Building and Safety, Air Quality Management District, Regional Water Quality Control Board, Coast Guard, Environmental Protection Agency, or any other local, regional, state or federal

agency in connection with Tenant's operations shall be constructed or installed at Tenant's sole expense, except that where such agency requires correction of any deficiency which may exist prior to the Occupancy Date in any modification, improvement or equipment installation undertaken by City pursuant to this Agreement, such deficiency shall be corrected by City at its sole expense.

(g) Amendment of Provisions. This Agreement requires the approval of the Los Angeles City Council to become effective. However, by mutual agreement of Board and Tenant, land and water not exceeding ten percent (10%) of the area granted or 20,000 square feet, whichever is greater, may be permanently added to or deleted from the premises granted herein without further approval of the Council subject to the following conditions: (1) so long as such change in area is not temporary within the meaning of Tariff Item 1035 (or its successor), the minimum annual guarantee set forth in Section 3 shall be increased or decreased pro rata to reflect any such addition or deletion; (2) if permanent changes in area are made on more than one occasion, the cumulative net change in area may not exceed ten percent (10%) or 20,000 square feet, whichever is greater, of the originally designated area. The Board is authorized to execute amendments to this Agreement to effect the foregoing adjustments to area and compensation without further action of the Council. The provisions above shall not limit the Board's right to adjust the size of the premises or compensation in other ways so long as Council approval is obtained.

(h) Future Expansion of the Premises. In addition to the premises described above in Section 1(a) of this Agreement, Tenant has requested City to make available an additional area approximating a minimum of twenty-four (24) acres of backland contiguous to the premises for expansion of Tenant's "Terminal Area," as defined in Section 6(a). City shall give written notice to Tenant when any acreage of such approximate size [including incremental areas up to a total of approximately 64 acres], contiguous to the premises or contiguous to marine terminal properties of the Port of Los Angeles that are adjacent to the premises, and suitable for Tenant's use for purposes consistent with the uses permitted herein, may become available for assignment at any time during the term of this Agreement. Tenant shall have the first right of refusal to be assigned such acreage on a preferential basis, and shall have ninety (90) days from the City's notice that the area may be available to file its written request and application for the addition of such acreage to the premises, together with a statement of Tenant's planned uses and operations on such "expansion acreage" and any proposed improvements to be constructed thereon by City or Tenant. Subject to the requirements of the California Environmental Quality Act ("CEQA," Public Resources Code Section 21000, et seq.) and all guidelines promulgated thereunder by the State of California and City, and all other applicable environmental laws [including, but not limited to, the California Coastal Act (Public Resources Code Section 30700, et seq.), the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.), the Clean Water Act (33 U.S.C. Section 1251 et seq.), and the Endangered Species Act (16 U.S.C. Section 153 et seq.)] and all applicable State and local zoning and land use laws, regulations and restrictions, City agrees to exercise all reasonable efforts to assign such acreage to Tenant. Upon such written request by Tenant, City shall determine

whether Tenant's proposed uses of the expansion acreage have been addressed pursuant to CEQA. If such acreage has been previously addressed in a certified environmental assessment prepared pursuant to CEQA for Tenant's expansion uses as described in its application, City shall assign such acreage to Tenant. If, based upon Tenant's application and intended development and uses of such expansion acreage, City determines that Tenant's proposed uses have not been previously assessed or that further environmental assessment is required, City shall conduct such assessment at City's expense, including, if necessary, the preparation of an environmental impact report ("EIR") in compliance with CEQA requirements. If all necessary environmental approvals, clearances and permits can be obtained by City for use of such expansion acreage for terminal purposes as specified by Tenant, City will exercise all reasonable efforts to provide such expansion acreage for Tenant's occupancy and use.

The addition of the expansion acreage to the premises pursuant to the provisions of this subsection (h) shall be effected by written amendment to this Agreement, subject to the approval of City Council. Compensation for the use of such expansion acreage shall be payable on the terms and conditions of Section 3 of this Agreement in effect as of the date the amendment adding such acreage to the premises shall become effective.

In the event that City cannot deliver at least 24 additional acres for Tenant's preferential use within 48 months of the date this Agreement is signed by Tenant, Tenant shall be entitled to a credit in the amount of \$25,000 per year per acre, up to the total of 24 acres City may fail to provide for Tenant's use by such date, for every year thereafter until the total 24 acres are delivered for Tenant's use. Such credit shall be determined at the end of each year following the elapse of the 48-month period, and shall be decreased proportionately to reflect any fraction of an acre delivered to Tenant and any portion of the year any of such acreage is available for Tenant's use. Tenant's credit may be applied to any monies payable to City by Tenant.

(i) Terminal Operator. To ensure maximum efficiency and to accommodate anticipated cooperative use of terminal facilities between itself and City's tenant of the premises subject to Permit No. 787 [or any successor thereto], Tenant represents that it will utilize the same terminal operator as shall provide terminal operation services at the Permit No. 787 premises. This requirement shall become effective only when and if Permit No. 787 [or any successor thereto] is amended to require City's tenant of the premises subject to Permit No. 787 to utilize the same terminal operator as shall provide terminal operation services at the premises assigned to Tenant by this Agreement.

## Section 2. Term and Effective Date.

(a) Term. The term of this Agreement shall commence on the effective date defined in Section 2(b), below, and continue until twenty-five (25) years from the

Occupancy Date as defined below in Section 6(c), unless sooner terminated in accordance with Section 5 hereof, or extended pursuant to Section 2(c).

(b) Effective Date. Subject to the provisions of City Charter Section 607(a) relating to Mayoral veto, this Agreement shall become effective on the date appearing in the first paragraph hereof, which shall be the date on which the City Council shall approve the Order of the Board of Harbor Commissioners granting this Agreement, in accordance with City Charter Sections 606, 607(a) and 654(a).

(c) Option to Extend Term. City hereby grants to Tenant three (3) successive options to extend the initial term of this Agreement. Each option is for a five (5) year period and must be exercised, if at all, by written notice delivered to City by Tenant not later than the first day of the period beginning thirty (30) months prior to the expiration of the then current term of the Agreement. Failure to exercise any option right in the manner herein provided shall terminate any and all remaining option rights, if any. Tenant's exercise of the option shall be irrevocable unless Tenant and Board otherwise agree in writing. During any extension term of this Agreement, all terms, covenants and conditions hereof shall remain unmodified and in full force and effect.

(d) Holdover. Tenant shall not hold over any part of the premises after termination or expiration of this Agreement without first obtaining the Executive Director's written approval. Any such holdover shall be deemed an extension of this Agreement on a month-to-month basis upon the same terms and conditions as set forth in this Agreement, except that the minimum annual guarantee and the TEU rates [defined hereinafter at Section 3] during the holdover period shall be one hundred twenty-five percent (125%) of the minimum annual guarantee and one hundred twenty-five percent (125%) of the TEU rates for the immediately preceding compensation period, unless the Board, at its sole discretion, with written notice to Tenant, increases the compensation by some lesser percentage; provided, however, that if a new agreement is reached, then the monies paid during the holdover period shall count against the new compensation which shall accrue from the date the holdover commenced. If the new compensation is more than the compensation paid during the holdover, Tenant shall immediately pay City the difference due for the holdover period. If the new compensation is less than the amount due and paid for the holdover period, Tenant shall be entitled to a credit against future sums owed to City under the Agreement. No interest shall accrue on the amount due to City or Tenant pursuant to this provision except to the extent Tenant fails to pay any deficiency within thirty (30) days of a billing from City. If interest is due, it shall accrue at the rate provided in Item 270 of Tariff, currently consisting of simple interest of 1/30th of two percent (2%) of the invoice amount remaining unpaid each day. If no new Agreement is entered into and the holdover is for a period less than twelve (12) months, the minimum annual guarantee shall be prorated by multiplying it by the fraction  $X/360$  where X is the number of days in the holdover period; provided, however, Tenant shall not be entitled to any refund if the TEU charges counting toward the minimum annual guarantee which have accrued exceed the prorated minimum.

Section 3. Compensation.

From and after the Occupancy Date, as defined in Section 6(c) of this Agreement, Tenant shall pay to City compensation and all other charges for the use of the premises as provided in this Section. Except as provided in this Agreement, Tenant's obligation to pay all compensation and other charges, rent, and fees required hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, any set-off, counterclaim, recoupment, defense or other right which Tenant may have against City. Compensation shall be payable as provided in this Section based on City accounting records of verified billed amounts.

(a) Compensation Defined. "Compensation" is defined as the total aggregate amount Tenant is required to pay City during each compensation year. Compensation includes the following: (i) all Twenty-Foot Equivalent Unit Container Charges [referred to subsequently in this Agreement as "TEU charge(s)," including the "minimum annual guarantee (referred to subsequently as the "MAG")," as defined below in subsections (d) and (e) of this Section 3]; and (ii) applicable wharfage and dockage charges prescribed by Tariff and all Tariff charges payable by Tenant other than wharfage and dockage pursuant to subsection (f) of this Section 3; and (iii) any other charges whatsoever as provided elsewhere in this Agreement other than charges specified herein above.

(b) Compensation Year. As used in this Agreement, the term "compensation year" means "calendar year." The first compensation year commences on January 1 of the calendar year in which the Occupancy Date occurs; provided, that unless the Occupancy Date falls on January 1, the compensation payable for the first partial year of occupancy shall be adjusted in proportion to the expired part of the calendar year.

(c) Applicability of Tariff No. 4. Except as otherwise provided in this Agreement, all rates, terms and conditions of Tariff No. 4, as it exists on the Occupancy Date and as it subsequently may be amended or superseded, shall at all times be applicable to this Agreement, as set forth above in Section 1. It is the intent of the parties hereto, however, that Tenant's obligation to pay compensation to City for the use of the premises shall be as prescribed in this Agreement. When there is any conflict between the provisions of this Section 3 and the provisions of the Tariff, this Agreement shall at all times prevail.

(1) Tariff Adjustments Adopted by City. Applicable Tariff rates payable by Tenant according to the provisions of this Agreement are at all times subject to amendment, revision, modification, increase or reduction at the discretion of the Board of Harbor Commissioners with the approval of the City Council, given by adoption of an Ordinance. Any such Tariff change adopted by City shall become effective immediately when such Tariff change becomes final according to the provisions of the City Charter. Such Tariff adjustment(s) shall likewise become applicable immediately as to all Tariff rates and charges payable by Tenant according to the provisions of subsection (f) of this Section 3, and shall apply thereafter unless and until superseded by subsequent Tariff change(s).

(2) Tariff Adjustment Applicable to TEU Rates and MAG. From and after the Occupancy Date, any increase in the Tariff rate for Merchandise Not Otherwise Specified [referred to herein as the "N.O.S. rate"], set forth in Tariff Item 550-[A]001, shall, upon the effective date thereof, be immediately and automatically applicable to readjust the TEU rates and the MAG. Any increase in the N.O.S. rate over the previous N.O.S. rate shall be expressed as a percentage; all TEU rates and the MAG shall each be increased by the same percentage. City and Tenant shall mutually verify the N.O.S. rate in effect as of the Occupancy Date, to establish the initial N.O.S. rate for purposes of subsequent readjustment of the TEU rates and the MAG.

(d) Twenty-Foot Equivalent Unit Container ["TEU"] Charges. A single charge referred to as the "TEU charge" shall be paid to City by Tenant for each and every cargo container controlled or handled by Tenant and its invitees, loaded or empty, inbound or outbound, for passage onto, over, through or under wharves or wharf premises, or between vessels or overside vessels [to or from barge, lighter or water] when berthed at or adjacent to wharves or wharf premises preferentially or secondarily assigned to Tenant under this Agreement, or moving by rail or motor carriage into or out of the premises preferentially or secondarily assigned to Tenant under this Agreement. Such containers shall be converted by measurement of length into "twenty-foot equivalent units ["TEUs"]," or any fraction thereof. On transshipped containers and transshipment merchandise, as defined in Item 515 of the Tariff, and on merchandise moving by rail or motor carriage into and out of the premises, the TEU charge shall be assessed once only, on the inbound movement.

Notwithstanding the foregoing, no TEU charge shall be paid by Tenant to City for any cargo container loaded on or discharged from any vessel berthed at Berths 121 through 131 as an invitee of the preferential assignee of such berths under Permit No. 787, unless and until Permit No. 787 is amended or revised to provide for compensation to be paid to City on the basis of the number of TEUs handled on or through the premises assigned pursuant to Permit No. 787 or its successor agreement. In the event that Permit No. 787 is amended or revised to provide for the payment of compensation to City based on the number of TEUs handled on or through the premises subject to Permit No. 787 or its successor, Tenant shall pay a TEU charge to the City for each and every cargo container controlled or handled by Tenant and its invitees which is loaded on or discharged from vessels berthed at Berths 121 through 131, provided that such container is, before loading or after discharge, stored or deposited at the premises preferentially assigned to Tenant under this Agreement. Tenant shall pay a TEU charge to City for each and every cargo container controlled or handled by Tenant and its invitees that is loaded on or discharged from vessels berthed at Berths 121 through 131 pursuant to the secondary assignment provided to Tenant under this Agreement. All TEU charges paid by Tenant to City for cargo containers loaded on or discharged at Berths 121 through 131 shall be inclusive and in lieu of all wharfage, dockage, storage and demurrage charges otherwise chargeable upon containerized cargo by Tariff or pursuant to Permit No. 787.



The rate to be charged per TEU shall be established according to the total number of TEUs chargeable to Tenant per acre, per annum, based upon a sliding efficiency scale, as set forth in a document entitled "TEU/Acre Rate Schedule," which is attached to this Agreement as Exhibit "B," and which is incorporated herein by reference. TEUs which are handled on the premises and which are controlled by any other assignee of City shall also be counted in determining Tenant's efficiency bracket, but only if such TEUs are not included in the cargo volume credited to any other tenant of City at other premises within the Port of Los Angeles. For purposes of determining Tenant's "efficiency bracket" in accordance with Exhibit "B," the total acreage of the "Terminal Area," as defined below in Section 6(a), paragraphs (1) and (2), inclusive, and shown on Exhibit "A," shall be included. If any acreage within the Port of Los Angeles but outside the premises granted by this Agreement is provided for Tenant's preferential use, such acreage shall be added to the total acreage comprising Tenant's Terminal Area to determine Tenant's efficiency bracket. If any acreage subject to Permit No. 787 is, with City's written approval [in accordance with the terms of that permit], provided for Tenant's use and occupancy, jointly or in common with the tenant under Permit No. 787, such acreage shall be added to the total acreage comprising Tenant's Terminal Area, in accordance with Tenant's allocated proportionate use of such common acreage. All TEUs chargeable to Tenant and its invitees to determine such Terminal Area will be included in the total number of TEUs used to establish Tenant's efficiency bracket pursuant to Section 3(d)(3) of this Agreement.

For purposes of determining Tenant's efficiency bracket: (1) Tenant's proportionate use of acreage used in common within the premises subject to Permit No. 787 [as authorized by City's written approval] shall be measured by the ratio of the TEU throughput chargeable to Tenant under this Agreement to the total TEU throughput chargeable pursuant to both Permit No. 787 and this Agreement; and (2) the incremental addition of acreage to the Terminal Area shall be prorated to reflect any period of less than one (1) year during which such added acreage is available for Tenant's use.

The TEU rates set forth in Exhibit "B" shall be and remain in effect during the first five (5) compensation years of the term of this Agreement [referred to herein as "5-Year Period"], provided that such TEU rates shall at all times be subject to increase in accordance with any increase in the N.O.S. rate, pursuant to subsection (c)(2) of this Section 3. TEU charges shall be deemed to be inclusive and in lieu of all wharfage, dockage, storage and demurrage charges otherwise chargeable upon containerized cargo by Tariff. The efficiency brackets set forth in Exhibit "B" shall remain in effect and unchanged during the entire term of this Agreement.

(1) Readjustment of TEU Charges. Following the expiration of the first 5-Year Period, the TEU rates shall be readjusted for each successive 5-Year Period of the term of this Agreement, as provided below in subsection (g) of this Section 3. Immediately upon completion of such periodic readjustment of the TEU rates, and upon the effective date of any increase in the TEU rates pursuant to subsection (c)(2) of this Section 3, the TEU/Acre Rate Schedule shall be revised to reflect such adjustment, and shall be marked in sequence as Exhibit "B-1," "B-2," etc., and shall

be appended to this Agreement immediately upon the effective date of such TEU rate adjustment(s). The TEU/Acre Rate Schedule, as revised, shall be incorporated herein by reference and shall supersede the previous exhibit.

(2) Initial Efficiency Bracket. Not later than sixty (60) days before the scheduled Occupancy Date, City and Tenant shall mutually agree upon Tenant's initial efficiency bracket and corresponding TEU rate according to the TEU/Acre Rate Schedule [Exhibit "B"] and City shall confirm the same by written notice to Tenant. Tenant's initial efficiency bracket shall be subject to annual adjustment pursuant to paragraph (3) below.

(3) Annual Review of Applicable Efficiency Bracket. The efficiency bracket applicable to Tenant's TEU volume shall be subject to review annually during the term of this Agreement. Within sixty (60) days following the end of each compensation year, City and Tenant shall verify the total number of TEUs per acre actually handled by Tenant and its invitees and any users assigned by City [but only if such users are not tenants of City, or invitees of such tenants, at other premises within the Port of Los Angeles] through or upon the premises during such expired year to determine whether the efficiency bracket in effect during such year requires adjustment to reflect the actual TEU throughput at the premises. If the actual TEU throughput at the premises was greater or less than the volume defining the efficiency bracket [as shown on Exhibit "B"] in effect during such expired year, the correct bracket shall be identified and City shall prepare an adjusted billing for all TEU charges accrued during the compensation year at the rate corresponding to the correct efficiency bracket. Tenant shall pay any additional amounts due within thirty (30) calendar days of City's issuance of the adjusted billing; Tenant shall be issued a credit for TEU charges paid to City in excess of the adjusted billing, which may be applied to any monies owed to City under this Agreement.

The efficiency bracket as adjusted for the expired compensation year shall remain in effect during the ensuing compensation year.

(4) Increase in TEU Rates During Compensation Year. In the event of an increase in the TEU rates due to an increase in the N.O.S. rate [as provided in subsection (c)(2) of this Section 3] during any compensation year, such increase shall apply only to TEUs handled by Tenant on and after the effective date of the increase. In connection with the annual readjustment of Tenant's efficiency bracket [pursuant to the above paragraph (3) of this subsection (d)], City shall also verify the total number of TEUs handled on the terminal area during the portion of the compensation year prior to the TEU rate increase and the number of TEUs handled on and after the effective date of the rate increase, as illustrated in Exhibit "C," which is attached hereto and incorporated herein by reference.

(5) Temporary Discount on Empty Containers. For the initial 5-Year Period only, the TEU charge applicable to empty cargo containers, inbound or

outbound, shall be discounted as illustrated in Exhibit "D," entitled "Discount on Empties Exceeding 20% of Total Volume," which is attached hereto and incorporated herein by reference. Within sixty (60) days of the end of each compensation year during the first 5-Year Period, City shall verify the percentage of empty containers included in Tenant's total TEU throughput for such year. The number of empty containers in excess of twenty percent (20%) of Tenant's total throughput ["discounted empties"] shall then be excluded from the efficiency bracket applicable during such year. The efficiency bracket applicable to the balance of Tenant's throughput [total TEUs minus the number of discounted empties] shall be determined, and the billing for such balance shall be recalculated at the corresponding TEU rate. The number of discounted empties shall be charged at the rate for empty containers [not exceeding seven (7) meters overall length] set forth in Item 550-[A]031 of the Tariff. City shall prepare an adjusted billing for total TEU charges paid by Tenant during such year, reflecting the combined total of TEU charges plus Tariff charges for the discounted empties. Tenant shall be issued a credit for the difference between the original billing and adjusted billing, which may be applied against any monies payable to City. Upon the expiration of the first 5-Year Period, City and Tenant shall mutually review Tenant's empty container volume during the period, as well as the average empty container volume throughout the container shipping industry during the same period, in connection with the parties' renegotiation of compensation for the ensuing 5-Year Period as provided under subsection 3(g), below.

(e) Minimum Annual Guarantee. Commencing on the Occupancy Date, and thereafter at the beginning of each and every compensation year during the term of this Agreement, Tenant guarantees to City a minimum annual payment per acre, which is referred to in this Agreement as the "minimum annual guarantee" or "MAG." The MAG is the aggregate minimum annual payment of TEU charges per acre, as defined above in subsection (d), which Tenant must make to City each year for the use of the premises. In addition to TEU charges, wharfage and dockage charges paid by Tenant pursuant to subsection (f)(1) of this Section 3 (below), shall be counted toward the MAG. Charges accruing upon cargo which is controlled by Tenant and Tenant's invitees but which is not handled upon the premises subject to this Agreement shall be counted toward the MAG. TEU charges accrued on these premises on cargo controlled by any assignee of City shall be counted toward Tenant's MAG, but only if such assignee is not a tenant of City at other premises within the Port of Los Angeles or an invitee of such tenant. No other charges or other monies payable to City pursuant to this Agreement shall be counted toward the MAG.

(1) Calculation of the MAG. The MAG shall be calculated on a per acre basis upon the actual available acreage of the Terminal Area, as defined in Section 6(a) and shown on Exhibit "A." It is assumed that the actual Terminal Area for purposes of calculating the MAG at the commencement of this Agreement shall be 75 acres [ $\pm$  4 acres], as described in Section 6(a)(1). Upon the delivery date of Area 2 in accordance with the provisions of Section 6(a)(2), an additional 35 acres [ $\pm$  4 acres] shall be added to the Terminal Area. Upon the delivery date of each

additional area, the MAG shall be recalculated based upon the actual acreage of the Terminal Area. If the actual Terminal Area on the Occupancy Date is greater or less than 75 acres, or if the actual Terminal Area upon delivery of Area 2 is greater or less than 110 acres, or whenever during the term of this Agreement area is added to or deleted from the premises, the amount of the MAG shall be adjusted to reflect the variance in actual terminal acreage by increasing or decreasing the MAG at the per acre rate in effect at the time of such addition or reduction of the Terminal Area [prorated for any fraction of an acre], and such adjustment shall be prorated to reflect any period of less than one (1) year during which such variance in acreage is in effect.

(2) MAG for the First 5-Year Period. For the first 5-Year Period, the MAG shall be One Hundred Forty-two Thousand Dollars (\$142,000) per acre, based upon the actual acreage of the Terminal Area, provided that the per acre amount shall at all times be subject to increase in accordance with any increase in the N.O.S. rate, pursuant to subsection (c)(2) of this Section 3, as illustrated in Exhibit "C."

(3) Discount on MAG and TEU Charges for Construction Impacts. It is recognized by and between the parties to this Agreement that the construction to be undertaken by City pursuant to Section 6 for delivery of Area 2 will result in significant interference with Tenant's operations. In consideration of such anticipated impacts on Tenant's operations, the MAG payable by Tenant pursuant to subsection (e)(2) of this Section 3 during the period between the Occupancy Date through the date of delivery of Area 2 shall be reduced from \$142,000 per acre to \$125,000 per acre, or, if the applicable efficiency bracket for such period averages not less than 3,500 TEUs per annum, Tenant shall be allowed a credit of \$17,000 per acre per year on the total TEU charges paid pursuant to this Section 3. This adjustment in the MAG or the credit on TEU charges shall be prorated to reflect any period of less than one (1) year they shall remain in effect. For purposes of meeting the qualifying minimum average throughput of 3,500 TEUs per acre per year, "discounted empties," as defined above in subsection (d)(5) of this Section 3, shall be disregarded.

(4) Readjustment of the MAG. Following the initial 5-Year Period, the MAG shall be subject to readjustment for each successive 5-Year Period in accordance with the provisions of subsection (g) of this Section 3.

(5) Full Payment of the MAG. If Tenant has not generated sufficient TEU charges to pay City the MAG by the end of each compensation year ("MAG deficiency"), Tenant shall within thirty (30) days of the end of each year pay such additional sums as are necessary to assure that City has been paid the MAG. All monies due and unpaid after the thirty (30) days have elapsed shall be subject to a late payment charge at the rate provided in Item 270 of Tariff No. 4, currently two percent (2%) per month, or at the rate provided in any amendment or successor to Tariff No. 4.

(6) Deficient Payments. If Tenant has been required to make up a deficiency in the MAG as provided above in paragraph (5), or if Tenant has received a notice of delinquency from City for failure to pay amounts due to City within thirty (30) calendar days of invoice, City may require Tenant to pay the MAG in monthly installments at the beginning of each month for the balance of the year and for any succeeding year(s) as City may require; provided, that Tenant's obligation to pay monthly installments of the MAG shall cease if Tenant's payment of TEU charges exceed the MAG in any compensation year and all outstanding delinquency has been cured. Each payment shall be in the amount of one-twelfth (1/12) of the MAG or such adjusted amount as is necessary to assure that City will receive full payment of the MAG by the end of the year.

(7) Increase in MAG During the Year. In the event of an increase in the MAG due to an increase in the N.O.S. rate [as provided in subsection (c)(2) of this Section] during any compensation year, such increase in the MAG shall be calculated as illustrated in Exhibit "C." City shall determine the number of days in the compensation year elapsed prior to the effective date of the increase in the N.O.S. rate and express this number as a fraction of the year [e.g., an increase effective April 30 is expressed as 120/365.] The total terminal acres are multiplied by the original MAG for the year, and the product is multiplied by the elapsed fraction of the year [120/365] to establish the partial amount of the MAG prior to the rate increase. The number of days remaining in the year shall also be expressed as a fraction [e.g., 245/365]; the total terminal acres are multiplied by the increased MAG, and the product is multiplied by the fraction of the remaining portion of the year to establish the partial MAG following the rate increase. The total MAG for the compensation year is the sum of the two partial amounts.

(f) Tariff Charges Payable by Tenant. For the use of the premises, Tenant shall also pay to City Tariff charges as provided herein below.

(1) Applicable Wharfage and Dockage Charges. Non-containerized cargo, whether or not transported on container vessels, and non-container vessels of Tenant and its invitees shall be subject to wharfage and dockage charges at the rates set forth in the Tariff. During each compensation year of the term of this Agreement, Tenant shall pay to City fifty percent (50%) of wharfage charges for all non-containerized cargo and fifty percent (50%) of dockage charges upon non-container vessels accruing at the premises. Such wharfage and dockage charges paid to City shall count toward the MAG, as provided above in subsection (e) of this Section 3.

(2) Other Tariff Charges Payable by Tenant. Tenant shall collect and remit to City one hundred percent (100%) of all Tariff charges accruing upon the Premises other than charges expressly referenced in this Section 3.

(g) Readjustment of MAG and TEU Rates. Following the end of each 5-Year Period during the term of this Agreement, the MAG and the TEU rates shall be readjusted, provided that in no event shall the MAG or the TEU rates in effect at the conclusion of the previous 5-Year Period be reduced. Compensation for the ensuing 5-Year Period, and for any period of less than five (5) years remaining at the end of the term, shall be mutually agreed upon between Tenant and Board at some time not more than twelve (12) months and not less than six (6) months before the beginning of each such period and shall be established by order of Board. In the event that compensation has not been agreed upon by the beginning of the new 5-Year Period, Executive Director shall have the unilateral right, at his discretion, to increase the MAG and the TEU rates for the ensuing 5-Year Period, subject to negotiation of the final compensation for such period by the parties, to amounts up to and including one hundred twenty-five percent (125%) of the amount established for the preceding 5-Year Period. If negotiation for the new compensation has not begun nine (9) months prior to the expiration of each 5-Year Period, Tenant shall immediately schedule a date with City to discuss the readjustment of compensation.

If Tenant and Board cannot agree upon the amount of the compensation for the ensuing 5-Year Period, such compensation shall be determined in the following manner:

Three appraisers shall be appointed. One appraiser shall be appointed by Board, one by Tenant, and the third by the two appraisers so appointed. If such compensation has not been mutually agreed upon within the time above prescribed, Board shall give to Tenant a written notice demanding an appraisal of the fair rental value of the premises and naming the person appointed by Board to act as an appraiser on its behalf. Within fifteen (15) days from the service of such notice, Tenant shall appoint an appraiser and notify Board of such appointment. If either party shall not have notified the other in writing of the appointment of its appraiser, the Presiding Judge of the Superior Court of the State of California for the County of Los Angeles shall, upon the request of either party, appoint the appraiser for the party so in default. If the two appraisers so chosen shall be unable to agree upon the third appraiser within ten (10) days after appointment of the second appraiser, the third appraiser shall be appointed by the said Presiding Judge. Any vacancy shall be filled by the party who made the original appointment to the vacant place.

The appraisers shall file their opinions regarding the fair rental value of the premises in writing with Board within sixty (60) days after the appointment of the third appraiser. Such opinions shall take into consideration the uses permitted under this Agreement and all of its terms, conditions and restrictions, including, but not limited to, the MAG, the throughput of TEUs per acre, the TEU rates or other comparable efficiency scale, the availability of comparable terminal facilities, and the compensation paid by comparable terminal operating tenants of the Port of Los Angeles. Such opinions shall also take into consideration all of the factors and data relating to such value of comparable leaseholds under the laws of eminent domain of the State of California. If any appraiser fails to file an opinion within said sixty (60) days, a new appraiser shall be appointed in the manner prescribed above.

Upon the filing of the three opinions, Board shall promptly set a date for, and on said date hold, a public hearing. At such hearing, said opinions and such other evidence of the fair compensation value of the premises as may be presented by Tenant or others shall be received and considered. Based upon such evidence, Board's adopted policy on rate of return and any other relevant factors, Board shall determine the fair compensation value of the premises and shall establish the same by order as the compensation to be paid by Tenant for the 5-Year Period under consideration.

Each party shall pay the costs and expenses of the appraiser appointed by it or on its behalf, together with fifty percent (50%) of the costs and expenses of the third appraiser.

Any monies in excess of the MAG and TEU rates for the preceding 5-Year Period paid by Tenant, pursuant to any increase in such amounts ordered by Executive Director under the authority of this provision, shall count against the new compensation which shall accrue from the beginning of the new 5-Year Period. If the new compensation is more than the increased amount paid by Tenant as ordered by Executive Director, Tenant shall immediately pay City the difference due. If the new compensation is less than such increased amount ordered by Executive Director and paid by Tenant, Tenant shall be entitled to a credit against future monies owed to City under this Agreement. No interest shall accrue on the amount due to City or to Tenant pursuant to this provision, except to the extent Tenant fails to pay any deficiency within thirty (30) days of a billing from City. If interest is due, it shall accrue at the rate provided in Item 270 of the Tariff.

(h) Included Office Space. Tenant shall be entitled to the occupancy and use of all office space within the premises at no additional charge.

(i) Filing of Statements. Tenant agrees to furnish all statements, manifests, electronic data interchange, reports and other supporting documents necessary to determine the total amount of all charges accruing at the premises as provided in this Agreement. Tenant shall file with the Executive Director, on forms provided by the Los Angeles Harbor Department, a statement verified by the oath of Tenant, its manager or duly authorized representative, as described in this Section of all charges which accrue at the premises for each vessel berthing at the premises. Such statement shall be filed on or before the tenth (10th) day following the departure of each vessel.

(j) Payment Procedure. City shall invoice Tenant for charges due City as provided by this Agreement and Tenant shall remit payment for such charges to City. If this Agreement terminates through no fault of Tenant, Tenant shall, on or before thirty (30) days thereafter, with or without notice from City, pay all monies due City. Any compensation due and unpaid shall incur a delinquent charge as set forth in Item 270 [or its successor] of the Tariff, currently two percent (2%) per month.

(k) Records and Accounts. Upon reasonable notice and request by City, Tenant shall make available at the premises all books, accounts and other records showing the

affairs of Tenant with respect to its business transacted at, upon or over the premises for examination, audit and transcription by Executive Director or any person designated by him to the extent necessary for City to verify the completeness and accuracy of statements filed by Tenant. These records shall be retained during the term of this Agreement so that the records for the four (4) most recent years are available. After this Agreement terminates, Tenant shall maintain the records for the four (4) most recent years for at least two (2) years. Upon request in writing by Executive Director or his designated representative, Tenant shall furnish a statement of the exact location of all records and the name and telephone number of the custodian of these records. The statement shall be submitted within fifteen (15) days of the request and shall contain such detail and cover such period of time as may be specified in any such request. Tenant shall produce at City's written request its annual reports, audited financial statements, including its balance sheet, income statement and statement of changes in financial position, statement of changes in retained earnings and the Section 10K filing statement required by U.S. security laws. The records of Tenant's parent company shall also be produced if requested by City. Records produced for City are subject to the Public Records Act ["PRA," Government Code Sections 6250 et seq.]. If City receives a request for production of such records, City shall advise Tenant of such request. City shall produce such records in response to the requirements of the PRA unless Tenant both notifies City of any objection to production and files a court action to protect such records within the time required by the PRA.

(I) Deposits to Secure Compensation Obligations. Upon the written request of the Executive Director at his sole discretion, Tenant shall provide a cash deposit, certificate of deposit, surety bond, letter of credit, letter of guarantee or other form of security acceptable to the Executive Director in the amount of NONE AT THIS TIME payable to the City of Los Angeles and/or in the name of the City of Los Angeles unless the parties otherwise agree to guarantee its compensation obligations to City. Any security posted shall be in a form satisfactory to the Executive Director and the City Attorney and subject to the approval of the City Attorney. Tenant agrees to execute any and all documents necessary to create a secured interest in City if the form of security provided, in City's opinion, requires such security agreement. City shall have the right to draw upon the security at any time after City has provided Tenant a written notice of delinquency and Tenant has failed to cure the delinquency within thirty (30) calendar days of the date the notice is postmarked or personally delivered to Tenant. If City uses all or any part of the deposit, Tenant shall immediately make another deposit in the form above as directed by City in an amount equal to the amount so used so that at all times during the term of this agreement, said deposit shall be maintained in the sum stated above. If the Executive Director becomes aware of facts which lead him to believe that the financial condition of Tenant suggests to the Executive Director, in his sole discretion, that Tenant may not be able to meet its compensation obligation or any other obligation under this Agreement, the Executive Director may increase the amount of the security deposit, and where no security deposit was initially required, the Executive Director may require such a deposit. Tenant shall provide such security in satisfactory form within thirty (30) calendar days of the date City's notice is postmarked.



(m) Disputed Payments. Tenant and City recognizes that disputes may arise over monies due the City in accordance with this Agreement. If Tenant disputes that it owes any amount invoiced by City, Tenant agrees to notify City in writing within thirty (30) days of the receipt of such invoice of the basis upon which Tenant objects to City's invoice. City agrees to review Tenant's notice and objection within thirty (30) days, and to confer with Tenant telephonically or in person within a reasonable period thereafter to seek to resolve the matter. Tenant and City shall make a good faith effort to resolve any disputes as expeditiously as possible. If City and Tenant are unable to resolve the dispute, City shall give written notice to Tenant demanding payment of the disputed invoice. City shall have a period of four (4) years from the date any payment is due to conduct such audits of Tenant's books, accounts and records as necessary to verify that such amount is owed to City by Tenant and to demand payment of such amount. In the event that Tenant believes that it may be entitled to a refund or credit of monies paid to City, Tenant shall have an equal period of not to exceed four (4) years from the date of payment by Tenant to demand a credit adjustment or refund of any amount which it claims was not owed to City. If Tenant and City are unable to resolve any dispute as to such amount demanded by Tenant, the parties to this Agreement agree that the date upon which City gives written notice to Tenant that such demand is denied by City shall be deemed the date of accrual of any cause of action Tenant may have to recover such monies.

(n) Tenant's Terminal Services Agreements. Copies of Tenant's terminal services agreements with its invitees may, upon request, be viewed by the Executive Director or his designee, which information is to be held in confidence by City so long as and to the extent permitted under California law.

#### Section 4. Uses.

(a) Permitted Uses. Tenant shall use the premises for the docking and mooring of vessels owned, operated, or chartered in whole or in part by Tenant or vessels of Tenant's invitees and for the assembling, distributing, loading and unloading of goods, wares and merchandise on and from such vessels over, through and upon such premises and from and upon other vessels, as well as office, administrative and maintenance activities necessary thereto and for purposes incidental to and related to the operation of a container terminal. Tenant shall not use or permit the premises or any part thereof to be used for any other purpose without the prior written approval of Board, and subject to such restrictions, limitations and conditions as may be imposed by Board.

(b) Solicitation and Service of Customers. Tenant may solicit and serve customers at the premises; provided, insofar as the same restrictions are applicable to other Port of Los Angeles tenants, Tenant agrees not to solicit and serve any customer which is a tenant of the City at other premises in the Port of Los Angeles or which is regularly served by a tenant of the Port of Los Angeles without the prior written approval of Executive Director; and provided further, that Tenant may solicit and serve any space charterer or rationalization partner of Tenant. If Tenant requests such approval, it shall

provide City sufficient information so City may determine whether new business will be generated in the Port or simply relocated within the Port.

(c) Increased Insurance Rates. Tenant agrees not to use the premises in any manner that will result in the cancellation of any insurance that City or other parties may have on the premises, or on adjacent premises. If Tenant's use does cause cancellation of City's coverage, Tenant agrees to immediately cease such use upon seven (7) calendar days' written notice from City calculated from the date of postmark or date of delivery of City's letter. Tenant further agrees not to keep on the premises or permit to be kept, used, or sold thereon, anything prohibited by any policy of fire insurance covering the premises, provided that City provides such information to Tenant in writing.

(d) State Tidelands Grant. This Agreement, and the premises granted hereby, shall at all times be subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled, "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929, (Stats. 1929, Ch. 651), as amended, and Article VI of the Charter of the City of Los Angeles relating to such lands. Tenant agrees not to use the premises in any manner, even in its use for the purposes enumerated herein, which will be inconsistent with such limitations, conditions, restrictions and reservations.

(e) Load Limit. Tenant shall not bring any container cranes, transtainers, or similar cargo handling equipment onto the premises without first: (i) providing to Harbor Engineer a list showing the name, type, weight, and wheel loading of the equipment and the area of the terminal in which it is to be used; and (ii) receiving Harbor Engineer's written permission to use said equipment. Exhibit "F," which is attached to this Agreement and incorporated herein by reference in Section 6(a), sets forth wheel load limits for the premises; equipment which does not exceed the weight and wheel loading characteristics set forth in Exhibit "F" shall be deemed to satisfy the terms of the preceding sentence. No loading in excess of that listed in the Harbor Engineer's permit shall be allowed on any wharf apron, which is that portion of the assigned premises extending inboard from the face of the wharf to the bulkhead wall (the wall separating the land from the water). No railroad loading shall exceed the amount specified in the Engineer's permit. No loading in the remainder of the assigned premises shall be such as to damage paving or underground utilities. If City discovers that overloading by Tenant exists, upon receipt of notice thereof from City, Tenant shall immediately correct the condition and shall be responsible for and shall indemnify the City for any damage arising therefrom.

(f) Clearing of Wharf. If Executive Director requests the use of some portion of the premises for a secondary, tertiary or other user as provided in Section 1, Tenant, at its cost, shall, within twenty-four (24) hours of such request, clear the wharf for the working length of the vessel inboard to the bulkhead wall so that such area shall be available for use in connection with cargo to be loaded or discharged from other appropriately scheduled vessels when necessary to reasonably accommodate the operational needs of

secondary, tertiary and other users permitted in accordance with the terms of this Agreement and the Tariff.

(g) Wilmington Truck Route. It is recognized by both parties that Tenant does not directly control the trucks serving the terminal. However, Tenant will make its best effort to notify truck drivers, truck brokers and trucking companies, that trucks serving the terminal must confine their route to the designated Wilmington Truck Route of Alameda Street and "B" Street; Figueroa Street from "B" Street to "C" Street; and Anaheim Street east of Alameda Street. A copy of the Wilmington Truck Route is attached hereto and marked Exhibit "E," which may be modified from time to time at the sole discretion of the Executive Director with written notice to Tenant.

(h) Use of Port of Los Angeles Facilities. Tenant agrees to move all of the Southern California cargo it handles for itself and for any of its customers exclusively through the Port of Los Angeles, except to the extent that the Port of Los Angeles facility cannot physically accommodate the volume of cargo Tenant or Tenant's customers transport.

#### Section 5. Default and Termination.

##### (a) Default and Right to Terminate.

(1) Upon the neglect, failure or refusal by Tenant to comply with any of the terms or conditions of this Agreement constituting a substantial breach of contract, after thirty (30) days' written notice and demand by Executive Director to comply with any such term or condition, Board may, at its option, if such default is continuing or, in the event such default cannot be cured within such 30-day period, the cure has not been initiated, declare this Agreement terminated. Thereafter, Board may recover possession of the premises as provided by law. However, if there is any material default in the payment by Tenant of the compensation or other consideration required by this Agreement, except in instances where a bona fide dispute exists between the parties as provided in Section 3(m) of this Agreement, Executive Director may give to Tenant a thirty (30) calendar day notice to pay all sums then due, owing and unpaid. If such payment is not made within such thirty (30) calendar day period, at the election of City, stated in such notice, this Agreement and Tenant's rights hereunder shall terminate and City has the rights above set forth.

(2) Upon any termination of this Agreement, Tenant shall immediately surrender all rights in and to the premises and all improvements. Tenant expressly agrees to indemnify City for any loss City may suffer if the Agreement is terminated and Tenant fails to vacate the premises. Upon any such termination of this Agreement, any and all buildings, structures and improvements of any character whatsoever, erected, installed or made by Tenant shall immediately ipso facto either

become the property of City free and clear of any claim of any kind or nature of Tenant or its successors in interest, and without compensation to Tenant or its successors, or become removable by Board at the sole expense of Tenant, at the option of Board.

(3) If this Agreement is terminated as set forth above, Board may enforce all of its rights and remedies under this Agreement. The damages that City may recover include the worth at the time of the award of the amount by which the unpaid compensation for the balance of the term of this Agreement exceeds the amount of such compensation loss for the same period Tenant proves could have been reasonably avoided by City.

(b) Forty-five Day Nonuse. If Tenant fails or ceases to use the premises or any substantial portion thereof for the purposes and in the manner herein prescribed for a period of more than forty-five (45) consecutive days without the consent of Board, Board may declare this Agreement terminated in accordance with the provisions of subsection (a) of this Section 5. Thereupon, all the right, title and interest of Tenant hereunder shall cease and terminate. However, if cessation of or failure to use as herein prescribed is caused by reason of war, strikes, lockouts, work stoppages, riots, civil commotion, acts of God, acts of public enemies, earthquake, other natural disaster or action of the elements, explosions or vessel casualties, and Tenant so notifies the Board within ten (10) days from the date said period of cessation or failure to use began, such period of nonuse shall be excluded in computing the forty-five (45) day period set forth herein.

(c) Termination by Court Decree. If a United States court, state or federal, having jurisdiction, renders a decision which has become final and which will prevent the performance by City of any of its obligations under this Agreement, then either party hereto may terminate this Agreement by written notice. Thereafter all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall terminate.

(d) Termination by Destruction of Premises. If all of the major structures owned by or under control of Board are totally destroyed by fire not resulting from Tenant's neglect or fault, or by earthquake, other natural disaster or action of the elements, or are so nearly destroyed as to require rebuilding, then the compensation payable under this Agreement shall be paid to the time of such destruction and this Agreement shall thereupon terminate. Neither party hereto shall have any further rights or be under any further obligations on account of this Agreement, except that City shall be entitled to receive all rent accrued to the date of destruction. For the purposes hereof, damage or injury to the extent of fifty percent (50%) of the replacement value of all of the major structures owned by or under the control of Board shall constitute a total destruction thereof. If such structures are partially destroyed by fire not resulting from Tenant's neglect or fault, earthquake, or other natural disaster or action of the elements, City with reasonable promptness and dispatch shall repair and rebuild the same, providing the same can be repaired and rebuilt within one hundred eighty (180) working days. Tenant shall pay compensation during such period

of repair or rebuilding in the proportion that the portion of the premises available to Tenant for occupancy bears to the entire premises. This provision, however, shall not be construed to entitle Tenant to a refund of charges counting toward the minimum annual guarantee which have accrued if these charges, at the end of the year, exceed any prorated minimum. For the purposes hereof, damage or injury that amounts to less than fifty percent (50%) of the replacement value of all the major structures owned by or under the control of Board shall be considered as a partial destruction. This provision does not apply to structures constructed by Tenant.

(e) Bankruptcy, Credit Arrangements, Attachments, Tax Liens. The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Tenant:

(1) The making by Tenant of any general assignment, or general arrangement for the benefit of creditors;

(2) The filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy;

(3) The appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the premises or of Tenant's interest in this Agreement;

(4) Any attachment where such seizure is not discharged within thirty (30) days.

(f) Reduction in Minimum Annual Guarantee. Tenant's obligation to pay the minimum annual guarantee and additional sums shall not be reduced or excused when this Agreement is terminated except when this Agreement is terminated pursuant to the terms of subsections (c) and (d) of this Section 5 [Termination by Court Decree, Termination by Destruction of the Premises]. If a termination occurs under Section 5(c) or (d), and if the minimum annual guarantee has not been achieved by the end of the year, Tenant shall be liable for only the pro rata portion of the minimum annual guarantee for that period the premises were actually available for use by Tenant; provided, however, if charges for the prorated year have accrued in excess of the prorated minimum annual guarantee, Tenant shall remit all these charges to City as provided by Section 3.

(g) City as Agent to Store Property. If Tenant fails or refuses to remove its property from the premises at the expiration or termination of this Agreement, Tenant hereby irrevocably appoints City as the agent of Tenant to enter upon the assigned premises and remove any and all persons and/or property whatsoever situated upon the assigned premises and to place all or any portion of said property (except such property as may be forfeited to City) in storage for the account of and at the expense of Tenant; provided, however, this provision shall not prevent City from taking possession and

disposing of Tenant's property in any way permitted by law and provided that this provision shall not obligate City to move or dispose of Tenant's property. It is agreed this provision is intended to assure City it may maintain complete control over the premises granted to Tenant and is not to be construed as creating any duties of City to third persons interested in Tenant's personal property.

(h) Relocation Assistance. It is understood and agreed that nothing contained in this Agreement shall create any right in Tenant for relocation assistance or payment from City upon the expiration or termination of this Agreement or upon termination of any holdover period. Tenant acknowledges and agrees that it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) or any other California code or federal code with respect to any relocation of its business or activities upon the expiration or termination of this Agreement or upon the termination of any holdover period. In consideration of the level of compensation set under this Agreement, Tenant expressly waives any relocation assistance which such statutes or any future statutes may allow.

#### Section 6. Design and Construction of Terminal Improvements.

(a) General Description of Terminal Facility. City anticipates constructing a container terminal complex approximating 110 acres in two phases, as described more particularly in Exhibit "F," entitled "China Shipping Facility Berth 100-102 Facility Conceptual Design Requirements for Container Terminal" (dated February 27, 2001), which is attached hereto and incorporated herein by reference.

(1) Phase I consists of a container facility referred to in this Agreement as the "Terminal Area" [as defined more particularly in Section 1(a)], initially encompassing approximately 75 acres, shown as Area 1 on Exhibit "A," plus 1,200 feet of wharf at Berth 100. The wharf depth at pierhead lines will be -53 feet MLLW. Phase I shall be completed and delivered to Tenant for use and occupancy pursuant to this Agreement not later than November 30, 2002, subject to the provisions of subsection (e) of this Section 6.

(2) Phase II consists of an approximately 35-acre addition to the Terminal Area, shown as Area 2 on Exhibit "A." During Phase II, City shall extend the length of the wharf at Berth 100 to the length necessary to accommodate one 9,100-TEU vessel [an extension approximating not less than 200 nor more than 400 feet] together with supporting backland, indicated as Area 2-A on Exhibit "A." The extension to the Berth 100 wharf shall be completed and available for Tenant's use not later than July 1, 2004, subject to the provisions of subsection (e) of this Section. Within forty-eight (48) months of the date this Agreement is signed on behalf of Tenant, subject to the provisions of subsection (e) of this Section, City shall construct a second wharf at Berth 102, of an approximate length not less than

1,400 nor more than 1,600 feet and shall complete and deliver the balance of the 35-acre expansion area shown as Area 2-B on Exhibit "A." The wharf depth at pierhead lines will be -53 feet MLLW.

As used in this Agreement, the term "Terminal Area" is defined as the total acreage provided for Tenant's occupancy and use as a container facility. The "Terminal Area" shall be understood to mean the actual number of acres currently provided to Tenant for such use at any time during the term of this Agreement, and shall incorporate and reflect all subsequent additions to the initial acreage provided by City upon delivery of Phase I as well as any deletions of acreage at any time thereafter.

(b) City Improvements. City shall design and construct for use by Tenant the improvements as described in Exhibit "F" [collectively referred to herein as "City Improvements"]. All City Improvements shall conform in all respects to applicable federal, state and local statutes, ordinances, rules and regulations, and shall meet prevailing standards of quality of design and construction applicable to marine terminals. City at all times reserves to itself the sole right to select consultants and contractors, to award contracts for the design and construction of the City Improvements, the right to direct, supervise and approve all design and construction work required by this Agreement, and the right to administer all contracts awarded for such purposes. City shall issue notice advertising plans and specifications for the award of contract(s) for the construction of all City Improvements by competitive bidding in accordance with the requirements of the City Charter, reserving to itself all rights set forth therein. Tenant is informed by City and recognizes that the Charter contains certain express requirements which must be met by bidders to qualify for an award of contract by City, and that City at all times reserves to itself the right to reject any and all bids.

(c) Occupancy Date. The Occupancy Date shall be the first (1st) day of the month following the date of "substantial completion," as the term is defined below at subsection (d) of this Section 6, of all City Improvements which are hereby required to be completed and delivered during Phase I.

(d) Substantial Completion Defined. The term "substantial completion" as used in this Agreement shall mean that stage of nearly complete construction of all the City Improvements as described in this Section 6 and Exhibit "F," in accordance with the plans and specifications, which permits occupancy and use of such improvements for intended purposes by Tenant without material interference with Tenant's operations by reason of, and without substantial economic penalty due to, unfinished work or construction [minor deficiency items commonly referred to as "punch list" items need not be completed so long as completion does not materially interfere with Tenant's use of the premises]. The Harbor Engineer shall issue written notice to Tenant upon substantial completion of the City Improvements.

(e) Extension of Occupancy Date and/or Delivery of City Improvements. The Occupancy Date, as defined above in subsection (c) of this Section 6, and the dates

established above in subsection (a), paragraphs (1) and (2) of this Section 6, for the completion and delivery of City Improvements scheduled in Phase I and Phase II, shall be extended to the extent that delay in substantial completion of the City Improvements which are required to be completed and delivered in Phase I or Phase II results from any of the following causes which impacts the critical path of design or construction: (i) unforeseen circumstances arising during design or during construction, which are beyond City's control and are not caused by the fault of City, including failure to receive a responsive and acceptable bid for the award of any contract for design or construction services, which could not be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures by City; (ii) any rebidding required by City Charter; (iii) events of force majeure, including civil commotion, war or warlike operations, strikes or other labor disputes, acts of public enemies, fire, explosion, earthquake or other natural disaster or action of the elements, or acts of God; (iv) prevention or interference with construction caused by failure of timely issuance of necessary governmental permits, including federal, state, county, city, and regional permits, for reasons other than fault of City; and (v) prevention, interference or impairment resulting from any valid order, decision, decree or enactment issued by any governmental authority, federal, state, county, city, or regional, and including any federal or state court, of competent jurisdiction.

Upon the occurrence of any of the events listed herein which will result in delay of substantial completion of the Phase I or Phase II City Improvements, the parties shall mutually determine the amount of time by which the terminal Occupancy Date or delivery of Phase I or Phase II shall be extended, and, if agreement is reached, the period of extension shall be documented in writing with copies to both parties.

(f) Ownership. All City Improvements upon the premises shall be and remain the property of City. Trade fixtures placed upon the premises by Tenant shall be and remain the property of Tenant and shall be removed from the premises by Tenant at its sole cost after termination of this Agreement.

(g) Alteration of Premises by Tenant. Following completion of construction of the City Improvements, Tenant shall not install, construct or alter any works, structures or other improvements upon the premises, including a change in the grade thereof, without first submitting to Harbor Engineer a complete set of drawings, plans, and specifications and obtaining his/her approval. Harbor Engineer shall have the right to order changes in said drawings, plans and specifications and Tenant shall make such changes at its expense.

(h) Compliance with Applicable Laws. Every work, structure or improvement constructed, or alteration or change of grade made by Tenant shall conform with the plans and specifications submitted to the Harbor Engineer, including any modifications required by the Harbor Engineer, and shall conform in all respects to the applicable federal, state, regional, and local laws, statutes, ordinances, rules and regulations. The approval of Harbor Engineer given as provided in this Section 6 shall not constitute a representation or warranty as to such conformity. Tenant, at its own expense, shall obtain all permits necessary for such construction and shall require by contract that its construction



contractors and subcontractors comply with all applicable federal, state, regional, and local statutes, ordinances, rules and regulations.

(i) Cost of Construction. All construction by Tenant pursuant to this Section 6 shall be at Tenant's sole expense. Tenant agrees to keep the premises and improvements constructed free and clear of liens for labor and materials. Tenant agrees to hold City harmless and agrees to defend City against liability or responsibility resulting from Tenant's construction.

(j) Notices. Tenant shall give written notice to Harbor Engineer, in advance, of the date it will commence any construction. Immediately upon the completion of the construction, Tenant shall notify Harbor Engineer of the date of such completion and shall, within thirty (30) days after such completion, file with him a statement, verified by the oath of Tenant or its duly authorized representative, setting forth the cost of the labor and material used. Tenant shall also file with Harbor Engineer, in a form acceptable to Harbor Engineer, a set of "as built" plans for such construction.

(k) Ownership. All improvements, works and structures made or erected by Tenant upon the premises shall be and remain the property of Tenant, subject to the terms and conditions contained herein.

(l) Pipelines. For any pipelines, utilities or structures ("structures") of any type Tenant places on the premises, whether placed above or below ground, Tenant agrees to maintain on the premises as-built drawings and agrees to provide to City within twenty-four (24) hours' notice of City's request a copy of such as-built drawings. Tenant also agrees within such period to precisely locate the position of such structures if City considers the drawings insufficient to locate them. Tenant agrees any work necessary to locate such structures or any damage which may result from the location being misdescribed, whether incurred by Tenant or City, shall be borne exclusively by Tenant.

(m) Supervision of Work. If City constructs any improvements on the premises, Tenant recognizes that City reserves total control over the design of City-constructed facilities, award of the contract, and supervision of contractor. During construction of the improvements, Tenant shall give no orders to any contractors constructing City improvements unless first requested in writing by City to do so and agrees to cooperate fully with contractors in providing all necessary access to the premises and generally cooperating with the contractor. City shall use its best efforts to see that the work does not unreasonably interfere with Tenant's operations.

#### Section 7. Delivery and Installation of Cranes.

(a) Tenant-Provided Cranes. Not later than the Occupancy Date as defined above in Section 6(c), Tenant shall have purchased and installed on the premises not fewer than four (4) one hundred (100) feet gauge post-Panamax container cranes, and

shall maintain such cranes in use on the premises in good operational condition at all times during the term of this Agreement. Upon delivery of the wharf extension at Berth 100, Tenant shall have installed at least one (1) additional crane, and upon delivery of the second wharf at Berth 102, Tenant shall have installed a minimum of four (4) additional cranes at Berth 102; all cranes shall be of the type specified herein. Tenant shall obtain a Harbor Engineer's permit for and prior to the onloading of all container cranes, transtainers and similar equipment onto and across the wharves. A maximum of ten (10) cranes may be installed on the premises.

(b) Purchase and Sale Options re Tenant-Owned Container Cranes. Tenant shall have the option of whether or not to offer to sell to City any number of the container cranes owned by Tenant on the premises, but City shall have no obligation to purchase such container crane(s) from Tenant. Tenant shall notify City whether or not it wishes to sell such crane(s) to City by written notice delivered to and received by City not later than thirty (30) months prior to the scheduled expiration of the term of this Agreement. If Tenant wishes to sell such crane(s) to City, Tenant shall specify in its written notice which crane(s) are available for purchase by City. City's option shall be exercisable by delivering to Tenant written notice specifying which container crane(s) offered by Tenant City intends to purchase; such notice shall be delivered to Tenant by City not later than six (6) months after notice is given by Tenant.

If the option to purchase any Tenant-owned cranes is exercised by City, the selling price of such crane(s) shall be at fair market value. Fair market value shall be determined prospectively as of the time the term hereof is scheduled to expire. City and Tenant shall attempt in good faith to agree upon the fair market value of each crane to be purchased by City. Failing to reach such agreement, the parties shall promptly jointly appoint a qualified independent appraiser to determine the fair market value of such crane(s). If the parties are unable to agree upon such joint appointment, each shall designate an independent appraiser, and their respective appraisers together shall appoint a third. The failure of either party to appoint an independent appraiser within thirty (30) days of the appointment of an appraiser by the other party shall be deemed a joint appointment of the appraiser appointed by the other. The appraisal provided by a jointly appointed appraiser, or of two (2) or more of a panel of three (3) appraisers shall be binding and conclusive; provided, that if a majority of a panel do not agree, the appraisal which is neither highest nor lowest shall be binding and conclusive. Appraisers shall be jointly instructed to render their appraisals not later than thirty (30) days prior to the expiration of this Agreement. Title shall pass to City and payment of the purchase price shall be concurrent with the expiration of this Agreement unless otherwise agreed between City and Tenant. Expenses of appraisal shall be shared equally by the parties.

Section 8. Maintenance and Restoration.

(a) Maintenance.

The maintenance obligations of the parties are as follows:

(1) Maintenance Performed by City at City's Expense (Except as Noted). Except as provided in subsections (a)(3), (a)(4), (a)(7) and (a)(8) of this Section 8, City will maintain at its expense the roofs and exteriors of all buildings owned by City and the structural integrity of wharf structures as defined below and buildings owned by City. The "wharf structure" for purposes of this subsection means the beams, girders, subsurface support slabs, bulkheads and prestressed concrete or wood piling, joists, pile caps and timber decking (except as noted below), and any and all mooring dolphins. The wharf structure does not include the paving, the surface condition of timber decking or the fendering system. City will perform dredging as necessary to maintain a depth of -53 feet MLLW at the berths, to a width of 125 feet from pierhead lines. City will maintain and repair at its expense all fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems, and other fire protective or extinguishing systems or appliances (portable fire extinguishers and hoses excluded) which have been or may be installed in buildings or structures City owns on the premises. City shall be responsible, at its expense, for the repair of any "pavement failure," i.e., pavement deterioration resulting from defective design or construction which impacts the safety and efficiency of Tenant's operations within the premises. Pavement repairs, if any, shall be coordinated with Tenant to minimize impacts to Tenant's operations. City shall also perform at its expense all electrical substation and switchgear preventive maintenance.

(2) Maintenance Performed by City at Tenant's Expense. Subject to the provisions of subsections (a)(3), (a)(4), (a)(7) and (a)(8), City shall maintain and repair the fender system along the wharves, (in accordance with City's wharf damage procedures, a copy of which will be provided to Tenant upon its request), refrigerated receptacle outlets, backflow devices and potable water systems and heating and air conditioning systems, so long as City forces are available. Unless otherwise agreed, such maintenance and repair shall be at Tenant's expense. If, however, Tenant fails to pay City in accordance with City's wharf damage procedure (which contains depreciation criteria favorable to Tenant), then City reserves the right to collect the actual cost of repair based on actual depreciation factors as established by City.

(3) Maintenance Performed by Tenant at Its Expense. Tenant shall be responsible for performing and paying for all maintenance and repairs not expressly covered above. Tenant shall be responsible at its expense for inspecting and assuring that all necessary portable fire extinguishers are present on the premises and maintained in an operable condition. Notwithstanding subsection (1) above, all modifications or repairs to the electrical, plumbing or mechanical systems resulting

from "call outs" (Tenant-requested repairs requested on weekend, holidays or other than 7:45-4:15 Monday-Friday or such other times as City adopts as its maintenance force work hours) are at Tenant's expense. Tenant shall also be responsible at its expense for inspecting the premises and keeping the premises, [including, but not limited to, the surface of timber decking, all paving, landscaping, irrigation systems, fencing, signage, and striping (if any) and relamping] and all works, structures and improvements thereof, whether a part of the premises or placed by Tenant in a safe, clean, sanitary and sightly condition. All maintenance performed by Tenant shall assure the premises are maintained in a good operating condition and in conformance with all applicable federal, state, regional, municipal and other laws and regulations. The appearance, safety and operational capability of the premises shall be maintained to the satisfaction of the Executive Director. Tenant shall exercise reasonable care to immediately discover and guard against any defects in all surfaces of timber decking, paving, buildings, structures and improvements on the premises without request from City. Tenant shall also completely maintain at its expense all buildings, structures, improvements, timber decking surfaces and paving it erects, owns, or installs. All modifications and repairs which Tenant makes to City-owned or Tenant-owned buildings, structures, improvements, timber decking and paving require a Harbor Department Engineering permit. Sample permits are available upon request from the Harbor Engineer. Tenant agrees to strictly comply with all the terms and conditions of the Harbor Engineer's permit. Tenant shall maintain in its offices at the premises at all times the Harbor Engineer's permit allowing the work performed and proof that the work has been performed in accordance with all terms and conditions of the permit. Modifications and repairs shall be made using materials of a kind and quality comparable to the items being replaced (in-kind replacement shall be utilized if material still manufactured). Tenant is obligated at its expense to take both such preventive and remedial maintenance actions as are necessary to assure that premises are at all times safe and suitable for use regardless of whether Tenant is itself actively using all of the premises. Tenant shall provide notice to the Harbor Engineer five (5) calendar days before any paving work is performed; provided, however, Tenant shall immediately repair any condition creating a risk of harm to any user of the premises. All materials used and quality of workmanship shall be satisfactory to the Harbor Engineer.

(4) Tenant's Responsibility for Damage to City-Owned Structures. Notwithstanding the foregoing, if damage to the wharf structure or any other building, structure, improvement or surface area is caused by the acts or failure to act of Tenant, its officers, agents, employees or its invitees, (including, but not limited to, customers of Tenant and contractors retained by Tenant to perform work on the premises, hereafter collectively "invitees"), Tenant shall be responsible for all costs, direct or indirect, associated with repairing the damage and the City shall have the option of requiring Tenant to make the repairs or itself making the repairs. If City makes the repairs, Tenant agrees to reimburse City for the City's cost of repair. All damage shall be presumed to be the responsibility of Tenant and Tenant

agrees to be responsible for such damage unless Tenant can demonstrate to the reasonable satisfaction of City that someone other than its officers, agents, employees, or invitees caused the damage. Tenant agrees to reimburse City for the cost of repair to City's wharf for any damage to the wharf resulting from a collision between a vessel and the wharf while docking or undocking unless Tenant demonstrates that such damage was caused by the sole active negligence of City or demonstrates that such damage was caused by an invitee of some other tenant to which the premises are also assigned. The sufficiency of proof presented by Tenant to City shall be as reasonably determined by City.

(5) City's Option to Perform Work at Tenant's Expense. If Tenant fails to repair, maintain and keep the premises and improvements as above required, Executive Director may give thirty (30) days' written notice to Tenant to correct such default, except that no notice shall be required where, in the opinion of Executive Director, the failure creates a hazard to persons or property. If Tenant fails to cure such default within the time specified in such notice, or if Executive Director determines that a hazard to persons or property exists due to such failure, Executive Director may, but is not required to, enter upon the premises and cause such repair or maintenance to be made, and the costs thereof, including labor, materials, equipment and administrative overhead, to be charged against Tenant. Such charges shall be due and payable with the next rent payment. During all such times, the duty shall be on Tenant to assure the premises are safe and Tenant shall erect barricades and warning signs to assure workers and the public are protected from any unsafe condition.

(6) Inspection of Premises and Tenant Repairs. Tenant shall be responsible for inspecting the premises (including all surfaces of timber decking, paving, structures, buildings and improvements) and at all times maintaining the premises in a safe condition. Executive Director and/or his representatives shall have the right to enter upon the premises and improvements constructed by Tenant at all reasonable times for the purpose of determining compliance with the terms and conditions of this Agreement or for any other purpose incidental to the rights of City. This right of inspection imposes no obligation upon City to make inspections nor liability for failure to make such inspections. By reserving the right of inspection, City assumes no responsibility or liability for loss or damages to the property of Tenant or property under the control of Tenant, whether caused by fire, water or other causes. City assumes no responsibility for any shortages of cargo handled by Tenant. If City requests drawings and/or specifications showing the location and nature of repairs to be made or previously made by Tenant (including by its invitees), Tenant agrees to provide to City the material requested in writing within ten (10) calendar days of request by City.

(7) City's Access to Maintain and Repair Premises. If City deems it necessary to maintain or repair the premises, Tenant shall cooperate fully with City to assure that the work can be performed timely and during City's normal working

hours. If City is required to perform any work outside its normal working hours, even work which would otherwise be at City's expense, the entire cost of such work shall be at Tenant's expense, unless the work is deemed by the City to be an emergency, in which case City will bear all costs. If such work would ordinarily be at Tenant's cost, the entire cost of such work shall be at Tenant's expense.

(8) Maintenance/Repair Obligations Dependent on Indemnity/Insurance Provisions. City's agreement to perform certain maintenance and repairs and to pay for certain repairs is expressly conditioned on the indemnity and insurance provisions of this Agreement remaining in force and effect. If Tenant fails to comply with the indemnity and insurance provisions, then Tenant shall be obligated to perform and pay for all maintenance and repairs to the premises without exception at its own expense. Tenant shall perform such maintenance and repairs only after it has secured the Harbor Engineer's general permit. Such work shall be deemed completed only when all terms of the permit have been satisfied. If City inspects any work performed by Tenant and finds it unsatisfactory, Tenant shall be obligated to correct the work to City's satisfaction at Tenant's expense.

(9) Definition of City's Actual Costs. Whenever this Section requires Tenant to reimburse City for the City's cost of maintenance, the City's cost of maintenance is agreed to include all actual costs which City incurs whether with its own forces or with an independent contractor. These costs include salary and all other costs City incurs from its employees ("salary burden"), all material and equipment costs including an administrative equipment handling charge, and also a general administrative overhead cost consistent with City's billing practice to its other tenants.

(10) Exhibit Listing More Common Maintenance Items. Attached as Exhibit "G," is a detailed description of items which is intended to describe the more common maintenance work which may be necessary at the premises. Not all items listed will be present at all premises within the Port. Costs and responsibilities shall be apportioned as set forth in Exhibit "G" except as may otherwise be required by the provisions above.

(11) Maintenance by City. All maintenance performed by City shall conform in all respects to the applicable federal, state, regional, and local laws, statutes, ordinances, rules and regulations.

(b) Restoration and Surrender of Premises.

(1) Restoration. Unless otherwise agreed by the parties, on or before expiration of the term of this Agreement, or any sooner termination thereof other than pursuant to subsections (a) and (b) of Section 5 of this Agreement, Tenant shall remove, at its sole cost and expense, all works, structures, improvements and pipelines of any kind including paving (collectively referred to as "structures") placed

on the premises by Tenant. Tenant shall leave the premises, including all structures constructed, owned or controlled by Tenant, free from hazardous substance and hazardous waste contamination, including hazardous liquid bulk products and petroleum products (hereinafter collectively referred to in this Agreement as "hazardous material") as those terms are defined under any federal, state, local law or ordinance (hereinafter sometimes collectively referred to in this Agreement as "Law") that arise from Tenant's use of or operations on the premises, and leave the surface of the ground in a clean, level, graded and compacted condition with no excavations or holes resulting from structures removed. Upon the expiration of the term of this Agreement or any sooner termination thereof, other than by forfeiture pursuant to subsections (a) and (b) of Section 5 of this Agreement, Tenant shall quit and surrender possession of the premises to Board leaving all City improvements in at least as good and usable a condition, acceptable to Executive Director, as the same were in at the time of the first occupation thereof by Tenant under this or any prior Agreement, lease or permit, ordinary wear and tear excepted. However, the exception for wear and tear shall not entitle Tenant to damage paving installed by City or any unpaved areas regardless of the nature of Tenant's operations on the effective premises. If the condition of the premises is upgraded during occupancy of the premises, such as by maintenance dredging, Tenant agrees to be responsible for restoring the premises to the upgraded condition. Tenant agrees to remove all debris and sunken hulks that arise from Tenant's use of or operations on the premises from channels, slips and water areas within or fronting upon premises. Tenant expressly waives the benefits of the "Wreck Act" (Act of March 3, 1899) 33 U.S.C. Section 401 et seq. and the Limitation of Liability Acts (March 3, 1851, c. 43, 9 Stat. 635) (June 26, 1884, c. 121, Sec. 18, 23 Stat. 57) 46 U.S.C. 189 (Feb. 13, 1893, c. 105, 27 Stat. 445) 46 U.S.C. Sec. 190-196 and any amendments to these Acts if it is entitled to claim the benefits of such acts. If City terminates this Agreement pursuant to subsection (a) or (b) of Section 5, Tenant is also obligated to restore the premises as provided above or to pay the cost of restoration if City chooses to perform the work. Tenant shall have no responsibility for the removal and clean-up of oil or other hydrocarbon substances on the premises arising from any oil drilling operations conducted by City pursuant to Section 1(e)(4) of this Agreement.

(2) Rent During Restoration. Tenant understands and agrees it is responsible for complete restoration of the premises including the clean up of any hazardous material contamination arising from Tenant's use of or operations on the premises at any time between the Occupancy Date and the expiration or earlier termination of this Agreement pursuant to subsection (a) or (b) of Section 5. If, for any reason, such restoration is not completed before such expiration, then Tenant is obligated to pay City the MAG during such restoration as provided in Section 3. However, the rent during restoration shall not be less than provided in Section 3. After the expiration or earlier termination of this Agreement as provided herein, upon Tenant's completion of the clean up and restoration of each area of the premises,

such area(s) shall be surrendered to City and the MAG shall be adjusted pro rata to reflect the decrease in acreage during the restoration period.

(c) Hazardous Material.

The obligations imposed upon Tenant to remediate hazardous waste contamination of the premises, set forth below in paragraphs (1) through (4) of this subsection (c), Section 8, shall apply only to the extent that such contamination arises from Tenant's use of or operations on the premises. If contamination should be found on the premises which is demonstrated by Tenant, to the reasonable satisfaction of Executive Director at Tenant's sole cost and expense, to have existed prior to the Occupancy Date, or to have resulted from any cause other than Tenant's use of or operations on the premises regardless of when such contamination occurred, Tenant shall have no responsibility to City for the removal or remediation of such contamination; provided, however, that if Tenant's operations contribute or add to such pre-existing contamination or contamination resulting from causes other than Tenant's operations, Tenant shall be liable and responsible to City to the extent of the incremental contamination by Tenant.

(1) Use of Hazardous Material. If Tenant handles, uses, stores, transports, transfers, receives or disposes of, or allows to remain on the premises (hereinafter sometimes collectively referred to as "handle"), any substance classified as hazardous material in such quantities as requires the reporting of such activity to any person or agency having jurisdiction thereof, Tenant shall also report such activity to City at the time such report is made to the person or agency having such jurisdiction, and shall at all times comply with all applicable federal, state and local statutes, ordinances, rules, regulations and guidelines. Tenant may handle and temporarily store hazardous materials in the course of normal operations in connection with common carriage by water in interstate and foreign commerce, subject to regulations contained in 33 C.F.R. Part 126 or its successor and the conditions of this Section 8. If Tenant has handled material on the premises classified by law as hazardous material [Tenant's attention is particularly called to the Resource Conservation and Recovery Act of 1967 (RCRA), 42 U.S.C. Sec. 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. Sec. 9601, et seq.; the Clean Water Act, 33 U.S.C. Sec. 1251 et seq.; the Clean Air Act, 42 U.S.C. Sec. 7901 et seq.; California Health & Safety Code Sec. 25100 et seq., Sec. 25300 et seq. and Sec. 28740 et seq.; California Water Code Sec. 13000 et seq.; California Administrative Code, Title 22, Division 4, Chapter 30, Article 4; Title 49 CFR 172.101; Title 40 CFR Part 302 and any amendments to these provisions or successor provisions] and such material has contaminated or threatens to contaminate the premises or adjacent premises (including structures, harbor waters, soil or groundwater), Tenant, to the extent obligated by law and to the extent necessary to satisfy City, shall at its own expense perform soil and groundwater



tests to determine the extent of such contamination, and shall immediately remediate any such material from the premises. If in the determination of the Executive Director such hazardous material cannot be remediated on site to the satisfaction of City, Tenant shall remove and properly dispose of all contaminated soil, material or groundwater and replace such soil or material with clean soil or material suitable to City.

If during Tenant's occupancy hazardous materials are discovered on the premises or such materials have migrated to or threaten to contaminate adjacent premises (including structures, harbor waters, soil or groundwater), Tenant shall immediately notify the City and Tenant at its sole expense shall perform such soil and groundwater testing as required by law and as City deems necessary and take immediate steps to remediate the premises to the satisfaction of City.

If Tenant disposes of any soil, material or groundwater contaminated with hazardous material, Tenant shall provide City copies of all records including a copy of each uniform hazardous waste manifest indicating the quantity and type of material being disposed of, the method of transportation of the material to the disposal site and the location of the disposal site. The name of the City of Los Angeles shall not appear on any manifest document as a generator of such material.

Any tests required of Tenant by this Section shall be performed by a State of California Department of Health Services certified testing laboratory satisfactory to City. By signing this Agreement, Tenant hereby irrevocably directs any such laboratory to provide City, upon written request from City, copies of all of its reports, test results, and data gathered. As used in this Section 8, the term "Tenant" includes agents, employees, contractors, subcontractors, and/or invitees of the Tenant.

(2) Site Characterization. Within sixty (60) days of written notice by the Executive Director, Tenant shall at its expense prepare and submit to City for its approval a complete site characterization plan to enable a determination of the extent of soil and groundwater contamination at the premises. The plan shall include a detailed program for sampling and chemical analysis of the soil and groundwater and shall be in conformance with all applicable federal, state and local laws, regulations and guidelines. Provided Tenant has delivered to City a complete site characterization plan, City shall use its best efforts to expeditiously approve or disapprove the plan. Tenant shall provide additional information upon request of City if City deems the plan inadequate. Upon notice of approval of the complete site characterization plan, Tenant shall forthwith commence investigation and testing of soil and groundwater in accordance with the plan, and shall provide to City the results of such investigation and tests as they become available but in any event the investigation and tests shall be completed and the results submitted to City within forty-five (45) days of notice of approval of the plan by City. If such site

characterization plan demonstrates to the reasonable satisfaction of Executive Director that no contamination for which Tenant has remediation responsibility under the provisions of this Agreement is present on the premises, then Tenant shall be given a credit in the amount of the cost of such site characterization plan. Such credit may thereafter be applied by Tenant to any future amount payable to City by Tenant pursuant to this Agreement.

(3) Site Remediation. Upon written notice by the Executive Director, Tenant shall at its expense prepare and submit to City for its approval a feasible remediation action plan (including soil, harbor waters and groundwater remediation) for removal and monitoring of hazardous material contamination arising from Tenant's use of or operations on the premises discovered during site characterization and contamination which may occur after Tenant has received City's approval of Tenant's site characterization plan. The plan shall include a discussion of remedial action alternatives for restoration of the premises and a timetable for each phase of restoration. The remedial action plan shall be in conformance with all applicable federal, state and local laws, regulations and guidelines. Provided Tenant has delivered to City a complete site remediation action plan, City shall use its best efforts to approve or disapprove the plan in a timely manner. Tenant shall provide additional information upon request of City if City deems the plan inadequate. Tenant shall submit to City its remediation action plan for review within a reasonable time after receiving City's written notice to prepare same. Upon approval of the site remediation action plan by City, Tenant at its sole expense, to the reasonable satisfaction of City, and in accordance with all applicable laws, shall take immediate steps to remediate all contamination arising from Tenant's use of or operations on the premises and perform such soil and groundwater testing as City deems necessary to assure the premises are free from such contamination.

(4) Annual Disclosure. Upon sixty (60) days' written request by Executive Director, Tenant shall submit to City the names and amounts of all hazardous materials, or any combination thereof, which were stored, used or disposed of on the premises during the previous year, or which Tenant intends to store, use or dispose of on the premises in the future.

(5) Tanks. If Tenant constructs or installs any storage tanks on the premises, Tenant shall at its expense within sixty (60) days of Executive Director's written request, submit to City an inventory of all storage tanks located on the premises indicating the number of tanks, type (atmospheric, etc.), contents, capacity, past historical use, location and the date each tank was last tested for structural integrity and leaks. Tenant shall also at its sole expense, when required by law or when deemed necessary by the Executive Director or his designee, test all storage tanks located on the premises for structural integrity and leaks. Upon written request, Tenant shall make available to City the results of all such tests. Testing required herein shall be to the satisfaction of City and in conformance with

applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently exist, or as they may be amended or enacted. If during Tenant's occupancy of the premises a tank or the pipelines servicing a tank containing hazardous material are discovered to be leaking, Tenant shall immediately notify the City and take all steps necessary to repair the tank and/or pipelines and clean up the contaminated area to the satisfaction of City and in accordance with this Agreement and all applicable law.

(d) Services and Utilities. Unless otherwise provided for herein, Tenant shall pay all charges for services furnished to the premises or used in connection with its occupancy, including, but not limited to, heat, gas, power, telephone, water, light and janitorial services, and pay all deposits, connection fees, charges and meter rentals required by the supplier of any such service, including City.

(e) Inspection of Premises. Executive Director and his duly authorized representatives shall have the right to enter upon the premises and improvements constructed by Tenant at any and all reasonable times during the term of this Agreement for the purpose of determining compliance with its terms and conditions or for any other purpose incidental to the rights of City. The right of inspection reserved hereunder shall impose no obligation upon City to make inspections to ascertain the condition of the premises, and shall impose no liability upon City for failure to make such inspections. By reserving the right of inspection, City assumes no responsibility or liability for loss or damage to the property of Tenant or property under the control of Tenant, whether caused by fire, water or other causes. Nor does it assume responsibility for any shortages of cargo handled by Tenant at the premises.

(f) Signs. Tenant shall not erect or display, or permit to be erected or displayed, on the premises, or upon works, structures and improvements made by Tenant, any advertising matter of any kind, including signs, without first obtaining the written consent of Executive Director. Tenant shall post, erect and maintain on the premises such signs as Executive Director may direct.

#### Section 9. Indemnity and Insurance.

(a) Indemnity. Except as may arise from the sole negligence or willful misconduct of City, Tenant shall at all times relieve, indemnify, protect, defend and save harmless City and any and all of its boards, officers, agents and employees from any and all claims and demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including expenses incurred in defending against legal actions, for death of or injury to persons or damage to property including property owned by or under the care and custody of City, and for civil fines and penalties, that may arise from or be caused directly or indirectly by:

- (1) Any dangerous, hazardous, unsafe or defective condition of, in or on the premises, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the premises by Tenant, its officers, agents, employees, sublessees, licensees or invitees;
- (2) Any operation conducted upon or any use or occupation of the premises by Tenant, its officers, agents, employees, sublessees, licensees or invitees under or pursuant to the provisions of this Agreement or otherwise;
- (3) Any act, omission or negligence of Tenant, its officers, agents, employees, sublessees, licensees or invitees, except to the extent that Tenant proves that any negligence of City, its officers, agents, invitees, secondary assignees or employees contributed thereto, in which case Tenant shall provide a legal defense to City and indemnify City to the extent set forth below in this part;
- (4) Any failure of Tenant, its officers, agents or employees to comply with any of the terms or conditions of this Agreement or any applicable federal, state, regional, or municipal law, ordinance, rule or regulation; or
- (5) The conditions, operations, uses, occupations, acts, omissions or negligence referred to in subdivisions (1), (2), (3) and (4) of this subsection (a), existing or conducted upon or arising from the use or occupation by Tenant or its invitees on any other premises within the Harbor District, as defined in the Charter of City.

Tenant also agrees to indemnify City and pay for all damages or loss suffered by City and the Harbor Department, including, but not limited to: damage to or loss of City property, to the extent not insured by City's property insurance coverage; injury to city employees; and from loss of City revenue from any source, caused by or arising out of the conditions, operations, uses, occupations, acts, omissions or negligence referred to in subdivisions (1), (2), (3) (4) and (5) of this subsection (a). The term "persons" as used in this subsection (a) shall include, but not be limited to, officers and employees of Tenant.

Tenant shall also indemnify, defend and hold City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the Agreement term as a result of contamination of the premises by hazardous materials for which Tenant is responsible pursuant to Section 8 of this Agreement. This indemnification of City by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency because of hazardous material present in the soil or groundwater on or under the premises for which Tenant is responsible under Section 8 of this Agreement. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement.

In the event that contributory negligence on the part of City is alleged in any legal action or proceeding which may be brought against City for death of or injury to person(s) or for damage to property of others arising from and alleged to be caused directly or indirectly by Tenant's operations, uses, acts and activities pursuant to this Agreement, Tenant shall, at its option, either (i) provide to City, at Tenant's expense, an independent legal defense conducted by counsel of City's choice and bear City's costs of suit, or (ii) defend and indemnify City against any liability for damages and bear all costs of suit determined in the course of such legal action or proceeding. If Tenant elects to provide an independent legal defense to City as described herein, Tenant shall have no obligation to indemnify or to reimburse City for damages imposed upon City by final judgment or conclusive determination of City's liability for the negligent or willful acts or omissions of City's officers, employees or agents, including final determination of liability upon stipulation by City or by final settlement. If Tenant elects to defend itself and City against such legal action or proceeding by joint representation by counsel, Tenant shall pay any and all damages which may be imposed upon City as a result of such action or proceeding. The term "persons" as used in this subsection (a) shall include, but not be limited to, officers and employees of Tenant and City.

Tenant shall have no obligation to indemnify, defend and otherwise hold City harmless under the provisions of Section 9(a) for damage to property or for death or injury to persons which is caused by the active negligence, sole negligence or willful misconduct of City arising in connection with construction of the City Improvements in accordance with Section 6 of the Agreement. This provision shall remain in effect after completion of construction by City.

(b) Liability for Damages to Premises Caused by Third Parties. City's grant of the premises to Tenant imposes the obligation on Tenant to maintain the necessary security on the premises to assure they are not used by anyone not having the permission of Tenant or City. Tenant is liable for all damages to the premises caused by its invitees. It is also responsible for damage to the premises caused by non-invitee third parties, unless Tenant, within a reasonable period after said damages occur, secures and furnishes the City with information and evidence reasonably satisfactory to the City reasonably fixing liability on some responsible person other than Tenant, its invitees, licensees, sublessees or contractors and subcontractors. Damages to the facility are conclusively presumed to be caused by the Tenant unless Tenant demonstrates to the reasonable satisfaction of the City that said damages were caused by a third party unconnected to Tenant's operations. If Tenant demonstrates to the satisfaction of the City that said damages were caused by such other person, Tenant shall not be responsible for the cost of repairing the damage but shall be responsible for assuring the premises are kept in a safe condition until repaired.

Tenant shall have no obligation to indemnify, defend and otherwise hold City harmless under the provisions of Section 9(a) for damage to property or for death or injury to persons which is caused directly or indirectly by any act, omission or negligence in the

operations or uses of the premises by any third-party user or assignee of City, pursuant to Section 1(b) of this Agreement.

(c) Insurance. Tenant shall procure and maintain at its expense and keep in force at all times during the term of this Agreement the following insurance:

(1) Public Liability and Property Damage. Broad form comprehensive public liability and property damage insurance (including automobile and contractual liability assumed coverages) written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if a Best's Rating is not available) with Tenant's normal limits of liability but not less than Five Million Dollars (\$5,000,000) combined single limit for injury or death or property damage arising out of each accident or occurrence. If the submitted policy provides for an aggregate limit, such limit shall not be less than Five Million Dollars (\$5,000,000) except as otherwise may be acceptable to Executive Director. Said limits shall be without deduction, provided that Executive Director may permit a deductible amount in those cases where, in his judgment, such a deductible is justified. The insurance provided shall contain a severability of interest clause. In all cases, regardless of any deductible, said insurance shall contain a defense of suits provision. If Tenant operates watercraft or incurs other marine liability exposure, liability coverage for such watercraft and marine exposure must be provided as above. All submitted policies, unless otherwise provided, shall, in addition, provide the following coverage either in the original policy or by endorsement substantially as follows:

"(i) Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or in any endorsement or certificate now or hereafter attached hereto, it is agreed that the City of Los Angeles, its Harbor Department, the City's and Department's officers, agents and employees, are additional insureds hereunder, and that coverage is provided for risks arising out of all operations, uses, occupations, acts and activities of the insured under Permit No. 999 for which Tenant is responsible to indemnify the City of Los Angeles, its Harbor Department, the City's and Department's boards, officers, agents and employees pursuant to Section 9(a) of this Agreement, and under any amendments, modifications, extensions or renewals of said Agreement regardless of whether such operations, uses, occupations, acts and activities occur on the premises or elsewhere within the Harbor District, and regardless of whether liability is attributable to the insured or a combination of the insured and the additional insured;

"(ii) The policy to which this endorsement is attached shall not be canceled, reduced in coverage or nonrenewed until after the Board and the City Attorney of City have each been given thirty (30) days' prior written notice by certified mail addressed to P.O. Box 151, San Pedro, California 90733-0151;

"(iii) The coverage provided by the policy to which this endorsement is attached is primary coverage (or excess of primary coverage when an excess policy is also submitted) and any other insurance carried by City is excess of this insurance and shall not contribute to it;

"(iv) If one of the insureds incurs liability to any other of the insureds, this policy shall provide protection for each insured against whom claim is or may be made, including claims by other insureds, in the same manner as if separate policies had been issued to each insured. Nothing contained herein shall operate to increase the company's limit of liability.

"(v) Notice of occurrences or claims under the policy shall be made to [Tenant's insurance carrier is to provide this information]."

(2) Fire Legal Liability. In addition to and concurrently with the aforesaid insurance coverage, Tenant shall also procure and maintain, either by an endorsement thereto or by a separate policy, fire legal liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000), covering legal liability of Tenant for damage or destruction by fire or explosion to the works, structures and improvements owned by City provided that said minimum limits of liability shall be subject to adjustments by Executive Director to conform with the deductible amount of the fire insurance policy maintained by Board. Such policy may provide for waiver of subrogation in favor of Tenant so long as permitted by Board's fire insurance policy. Neither City nor Board should be named as additional insureds in such policy; however, the same cancellation notice as required for the public liability policy above described must be included.

(3) Fire and Extended Coverage Insurance. Tenant shall secure, and shall maintain at all times during the life of this Agreement, fire and extended coverage insurance covering ninety percent (90%) of the replacement value of the works, structures and improvements erected by Tenant on the premises, with such provision in the policies issued to cover the same, or in riders attached thereto, as will provide for all losses over Twenty-five Thousand Dollars (\$25,000) to be payable to Board to be held in trust for reconstruction. Such policies shall provide that Tenant's insurance carrier waive any right of subrogation against the City if it is contended that the City caused or contributed to any loss. In the event of loss or damage by fire to any of such structures or improvements, Tenant shall undertake replacement or reconditioning of such structures within ninety (90) days following any such loss. In the event Tenant shall undertake such replacement or reconditioning within said period of ninety (90) days, such proceeds shall be released by Board to Tenant as payments are required for said purpose. Upon the completion of such replacement or reconditioning to the satisfaction of Executive Director, any balance thereof remaining shall be paid to said Tenant forthwith. In the event Tenant fails to undertake such replacement or reconditioning within said period of ninety (90) days, such proceeds shall be retained by City.

(4) Notice of Cancellation. Each insurance policy described above shall provide that it will not be cancelled or reduced in coverage until after Board and the City Attorney of City have each been given thirty (30) days' prior written notice by certified mail addressed to P. O. Box 151, San Pedro, California 90733-0151.

(5) Duplicate Insurance Policies. Tenant shall furnish two certified copies of each policy to Board. Alternatively, two duplicate original endorsements on forms provided by the Department may be submitted. The form of such policy or endorsement shall be subject to the approval of the City Attorney of City.

(6) Renewal of Policies. At least thirty (30) days prior to the expiration of each policy, Tenant shall furnish to Board a certificate or certificates showing that the policy has been renewed or extended or, if new insurance has been obtained, two certified copies of each new policy or two duplicate original endorsements on forms provided by the Department shall be furnished to Board, and the form thereof shall be subject to the approval of the City Attorney of City. If Tenant neglects or fails to secure or maintain the required insurance, or if Tenant fails to submit copies thereof as required above, Board may, at its option and at the expense of Tenant, obtain such insurance for Tenant.

(7) Modification of Coverage. Executive Director, at his discretion based upon recommendation of independent insurance consultants to City, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Tenant.

(d) Accident Reports. Tenant shall report in writing to Executive Director within fifteen (15) days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Ten Thousand Dollars (\$10,000) to property, occurring upon the premises, or elsewhere within the Harbor District if Tenant's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Tenant, its officers or managing agents.

(e) Compensation Terms Dependent on Indemnity Provisions. Tenant is aware that the City's willingness to agree to the compensation provision of this Agreement is dependent upon Tenant's complying with each of the indemnity obligations above and on the enforceability of such provisions. Therefore, it is agreed that if any of these provisions shall be determined to be unenforceable, City may require Tenant to pay an adjusted minimum annual guarantee. If City chooses to adjust the minimum annual guarantee due from Tenant, the revised minimum annual guarantee shall be increased by five percent (5%) effective thirty (30) days after the date the provisions were rendered unenforceable. Notwithstanding the foregoing, if Tenant continues to provide City insurance which provides



the same protection to City that City would have had prior to any provisions being rendered unenforceable, then City's right to increase compensation shall be delayed so long as Tenant provides said insurance.

Section 10. Sublease and Assignment.

(a) Assignments/Subleases. Except as specifically permitted in this Section, no assignment, sublease, transfer, gift, hypothecation or grant of control, or other encumbrance of this Agreement, or any interest therein or any right or privilege thereunder, whether voluntary or by operation of law, shall be valid for any purpose. For purposes of this subsection, the term "by operation of law" includes:

- (1) the placement of all or substantially all of Tenant's assets in the hands of a receiver or trustee;
- (2) an assignment by Tenant for the benefit of creditors;
- (3) the adjudication of Tenant as a bankrupt; or
- (4) the institution of any proceedings (by Tenant or against Tenant) under the Bankruptcy Act as the same now exists or under any amendment thereof which may hereafter be enacted or under any other act relating to the subject of bankruptcy wherein Tenant seeks to be adjudicated bankrupt, or to be discharged from its debts, or to effect a plan of liquidation, composition or reorganization.

(b) Conditions on Assignment. Tenant and any of its successors and assignees shall be permitted to assign, sublease, transfer, hypothecate, grant control of or encumber this Agreement with the advance approval and consent of the Board of Harbor Commissioners, which shall not unreasonably be withheld, provided that the Board finds that all of the following conditions are met:

- (1) The independently audited financial records and statements of the proposed assignee demonstrate that its financial strength and net worth are equal to or greater than that of Tenant, both as of the effective date of this Agreement and at the time of the proposed assignment;
- (2) The proposed assignee is a shipping line or a terminal operator which is a subsidiary of China Shipping (Group) Company, China Shipping Container Line, Ltd., or China Shipping Holding Co., Ltd.;
- (3) Tenant's Guarantor of this Agreement shall continue to guarantee the performance by the proposed assignee of all terms and conditions of this Agreement; and

(4) Tenant is in full compliance with all terms, conditions and obligations of this Agreement.

(c) Transfer of Stock. If Tenant is a corporation and more than ten percent (10%) of the outstanding shares of capital stock of Tenant is traded during any calendar year after filing its application for this Agreement, Tenant shall notify Executive Director in writing within ten (10) days after the transfer date; provided, however, that this provision shall have no application in the event the stock of Tenant is publicly listed on any internationally recognized stock exchange. If more than twenty-five percent (25%) of the Tenant's stock is transferred, regardless of whether Tenant is a publicly or privately held entity, such transfer shall be deemed an assignment within the meaning of the preceding paragraph. Any such transfer shall void this Agreement. Such a transfer is agreed to be a breach of this Agreement which shall entitle City to evict Tenant on at least seven (7) days' notice; provided, however, that this provision shall not apply to transfers of stock between and among China Shipping (Group) Company, China Shipping Container Line, Ltd. and/or their subsidiaries.

#### Section 11. Miscellaneous.

(a) Statements of Tenant as Applicant. This Agreement is granted pursuant to an application filed by Tenant with Board. If the application or any of the attachments thereto contain any material misstatements of fact, Board may cancel this Agreement. Upon any such cancellation of the Agreement granted hereunder, Tenant shall quit and surrender the premises as provided in subsection (a) of Section 5 hereof.

(b) Applicable Law. It is expressly understood and agreed that this Agreement and all questions arising thereunder shall be construed according to the laws of the State of California.

(c) Compliance with Applicable Laws. Tenant shall, at all times, in its use and occupancy of the premises and in the conduct of its operations thereon, comply with all laws, statutes, ordinances, rules and regulations applicable thereto, enacted and adopted by federal, state, regional, municipal or other governmental bodies, or departments or offices thereof. In addition to the foregoing, Tenant shall comply immediately with any and all directives issued by Executive Director or his authorized representative under authority of any such law, statute, ordinance, rule or regulation.

(d) Affirmative Action. Tenant agrees not to discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, sexual orientation, age or physical handicap. All assignments, subleases and transfers of interest in this Agreement under or pursuant to this Agreement shall contain this provision.

The provisions of Section 10.8.4 of the Los Angeles Administrative Code, as set forth in the attached Exhibit "H," are incorporated herein and made a part hereof.

(e) Minority Business Enterprise/Women Business Enterprise/Other Business Enterprise. Tenant is aware of the Los Angeles Harbor Department's Minority Business Enterprise/Women Business Enterprise/Other Business Enterprise (MBE/WBE/OBE) policy (hereinafter "Policy"). Tenant shall comply with the Harbor Department's Policy for any construction it undertakes on the premises. Any construction contracts, assignments or subleases by Tenant involving the premises shall include the Department's MBE/WBE/OBE policy, attached as Exhibit "I," which is incorporated herein and made a part hereof.

Tenant acknowledges that Board reserves the right to amend or modify its Policy from time to time. Any such amendment or modification to the Policy shall be binding on Tenant from the date Board approves such changes at a public meeting after notice and an opportunity to be heard thereon. Any contracts including subleases entered into by Tenant pursuant to this Agreement prior to Board approval of changes to the Policy shall not be affected by such changes.

(f) License Fees and Taxes. Tenant shall pay all taxes and assessments of whatever character levied upon or charged against the interest of Tenant, if any, created by this Agreement in the premises or upon works, structures, improvements or other property thereof, or upon Tenant's operations hereunder. Tenant shall also pay all license and permit fees required for the conduct of its operations hereunder.

TENANT IS AWARE THAT THE GRANTING OF THIS AGREEMENT TO TENANT MAY CREATE A POSSESSORY PROPERTY INTEREST IN TENANT AND THAT TENANT MAY BE SUBJECT TO PAYMENT OF A POSSESSORY PROPERTY TAX IF SUCH AN INTEREST IS CREATED.

(g) Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable to any extent by a final judgment of any court of competent jurisdiction, the remainder of the Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and shall continue in full force and effect.

(h) Waiver of Claims. Tenant hereby waives any claim against City and Board and its officers, agents or employees for damages or loss caused by any suit or proceedings directly or indirectly challenging the validity of this Agreement, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable or delaying the same or any part thereof from being carried out.

(i) Conflict of Interest. It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section

87100 et seq. of the Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of the Harbor Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

(j) Visitors. Tenant shall allow Executive Director and his designated representatives access to the premises for the purpose of showing the premises and works, structures and improvements made by Tenant to visitors upon the giving of reasonable notice to Tenant; provided, however, that such entry shall not unreasonably interfere with Tenant's operations.

(k) Notices. In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to City shall be addressed to Executive Director, Los Angeles Harbor Department, P. O. Box 151, San Pedro, California 90733-0151 and notice to Tenant shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

(l) Agent to Receive Service of Process. Tenant hereby irrevocably appoints the Terminal Manager at premises or an officer of company located at the address as set forth above as its agent for the purpose of service of process in any suit or proceeding which may be instituted in any court of the State of California or in any federal court in said State by City which arises out of or is based upon this Agreement. Delivery to such agent or delivery to the Terminal Manager's office of a copy of any process in any such action shall constitute valid service upon Tenant. It is further expressly agreed, covenanted and stipulated that if for any reason service of such process upon such agent is not possible, then in such event Tenant may be served with such process in or out of this State in any manner authorized by California law. It is further expressly agreed that Tenant is amenable to the process so served, submits to the jurisdiction of the court so acquired, and waives any and all objection and protest thereto. It is Tenant's obligation at all times, whether during the term of this Agreement or after its termination, to provide the Harbor Department Executive Director in writing a correct address where Tenant can be located. Tenant agrees all disputes shall be resolved in California courts in the County of Los Angeles unless the parties otherwise agree in writing.

(m) Waivers. No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the

proper party. The subsequent acceptance of rent by Board shall not be deemed to be a waiver of any other breach by Tenant of any term, covenant or condition of this Agreement other than the failure of Tenant to timely make the particular rent payment so accepted, regardless of Board's knowledge of such other breach. No delay, failure or omission of either party to execute any right, power, privilege or option arising from any default, nor subsequent acceptance of guarantee then or thereafter accrued, shall impair any such right, power, privilege, or option, or be construed to be a waiver of any such default or relinquishment thereof, or acquiescence therein, and no notice by either party shall be required to restore or revive the time is of the essence provision hereof after waiver by the other party or default in one or more instances. No option, right, power, remedy or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to City by this Agreement are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, in that the exercise of one right, power, option or remedy by City shall not impair its rights to any other right, power, option or remedy.

(n) Extent of Water Frontage. In case this Agreement or any improvements made hereunder or this Agreement or any part thereof shall be assigned, transferred, leased or subleased and the control thereof be given or granted to any person, firm, or corporation so that such person, firm or corporation shall then own, hold or control more than the length of water frontage permitted or authorized under Section 654(a) of the Charter of City or if Tenant shall hold or control such water frontage, then this Agreement and all rights hereunder shall thereupon and thereby be absolutely terminated, and any such attempted or purported assignment, transfer or sublease, or giving or granting of control to any person, firm or corporation which will then own, hold or control more than such permitted or authorized length of water frontage shall be void and ineffectual for any purpose whatsoever.

(o) Integration. This Agreement constitutes the whole Agreement between City and Tenant. There are no terms, obligations or conditions other than those contained herein. No modifications of this Agreement shall be valid and effective unless evidenced by an agreement in writing.

(p) Time of the Essence. Time is expressly declared to be of the essence in this Agreement.

(q) Extensions. Board shall have the right to grant reasonable extensions of time to Tenant for any purpose or for the performance of any obligation of Tenant hereunder.

(r) Vessels. Tenant shall file with the Executive Director, upon acceptance of this Agreement, a statement in writing showing the names of persons, firms or corporations owning or operating any vessel or vessels which are represented by its customers, and the names of any vessel or vessels owned or operated by Tenant, and shall immediately file

with Executive Director supplemental statements in writing showing any deletions from or additions to such statement.

(s) Business Tax Registration Certificate. Tenant represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the City's Business Tax Ordinance (Article 1, Charter 2, Sections 21.00 and following, of the Los Angeles Municipal Code) or is exempt. Tenant shall maintain, or obtain as necessary, all such Certificates required of it under said Ordinance and shall not allow any such Certificate to be revoked or suspended.

(t) Reference to City's Tariff in Tenant's Tariffs and Contracts.

Tenant agrees to insert into all of its tariffs and contracts with its vessel-owning and vessel-operating customers the following provision:

"Every vessel owner and operator understands and agrees that vessels, their owners and operators using pilots offered by the City of Los Angeles agree to be contractually bound to the terms and conditions of Port of Los Angeles Tariff No. 4 or its successor. Vessel owners' and operators' attention is particularly directed to Item 305 of this Tariff which provides that any pilot provided by the City of Los Angeles to assist the vessel is the borrowed servant of the vessel and that neither the City nor the pilot is liable for any accident except as provided in Tariff Item 305. Vessel owners and operators agree that the vessel master at all times remains in control of the vessel and the pilot's assistance is advisory only. Such owners and operators are aware that pilotage trip insurance may be purchased from the City if they wish to cover pilotage-associated risks."

Tenant agrees to provide City such proof of its compliance with this subsection 11(t) as the Executive Director may reasonably request.

(u) Living Wage Ordinance. This Agreement is subject to the City's Living Wage Ordinance ["LWO," Los Angeles Administrative Code § 10.37 et seq.]. Tenant hereby acknowledges that it has received a copy of the ordinance and is aware of its provisions. Violation of its provisions, where applicable, shall entitle City to terminate this Agreement and otherwise pursue legal remedies which may be available. Tenant shall complete and submit a Declaration of Compliance in the form prescribed by City, a copy of which is attached and incorporated by reference as Exhibit "J," at the time this Agreement is executed by Tenant.

(v) Guaranty of Agreement. In further consideration of the grant of this Agreement to Tenant by City, Tenant has provided to City a Guaranty of Agreement executed by China Shipping (Group) Company, its parent company, which is attached hereto as Exhibit "K" and incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

Date: 5/15, 2001

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

By *Larry A. Keller*  
Executive Director

Attest: *Rose M. Dworschak*  
Acting Secretary

CHINA SHIPPING HOLDING COMPANY, LTD.

Date: March 9, 2001

By *Li Ke Lin*  
Li Ke Lin, President  
(Print/type name and title)

Attest: \_\_\_\_\_  
\_\_\_\_\_  
(Print/type name and title)

APPROVED AS TO FORM  
March 12, 2001

JAMES K. HAHN, City Attorney

By *Catharine H. Vale*  
Catharine H. Vale, Assistant

3/07/01

*Larry A. Keller*  
LARRY A. KELLER, Executive Director  
HARBOR DEPARTMENT OF THE  
CITY OF LOS ANGELES

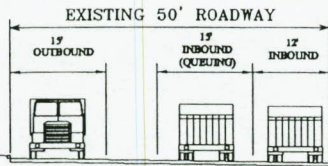
CHINA SHIPPING HOLDING COMPANY, LTD.

EXHIBIT LIST

- |                  |  |
|------------------|--|
| <b>Exhibit A</b> | <b>Premises Drawing No. 1-2339</b>   |
| <b>Exhibit B</b> | <b>TEU/Acre Rate Schedule</b>  |
| <b>Exhibit C</b> | <b>Illustration of TEU Rate Change Calculations due to<br/>Tariff Adjustments Adopted by City</b>      |
| <b>Exhibit D</b> | <b>Illustration: Discount on Empties Exceeding 20% Total Volume</b>                                    |
| <b>Exhibit E</b> | <b>Wilmington Truck Route</b>  |
| <b>Exhibit F</b> | <b>China Shipping Facility Berth 100-102 Conceptual Design<br/>Requirements for Container Terminal</b> |
| <b>Exhibit G</b> | <b>Maintenance List</b>  |
| <b>Exhibit H</b> | <b>Affirmative Action Policy</b>   |
| <b>Exhibit I</b> | <b>MBE/WBE/OBE Policy</b>  |
| <b>Exhibit J</b> | <b>Living Wage</b>   |
| <b>Exhibit K</b> | <b>Guaranty of Permit</b>  |



DATE: 02-27-01



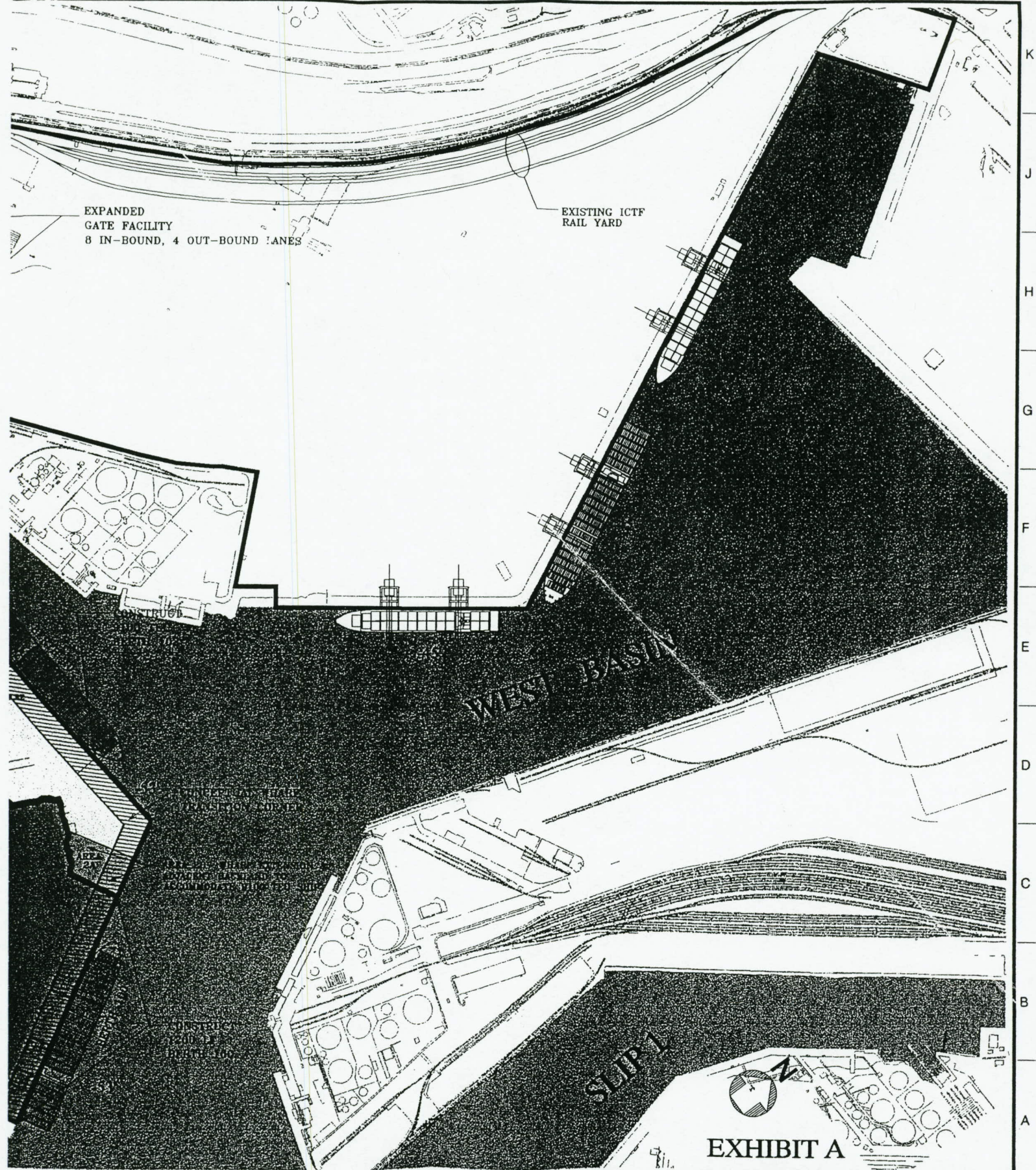
A SECTION A  
NO SCALE

- :75± ACRE TERMINAL DEVELOPMENT
- 1200' WHARF (100' GAUGE)
- EXPAND EXISTING GATE
- MARINE BLDG.
- LONGSHORE RESTROOM
- AREA 2 :35± ACRE BACKLAND
- 1200' WHARF (100' GAUGE)

Note: This drawing reflects a graphical representation of the proposed berthing for the Berth 100-102 Terminal area and the proposed Area 2 35 acre expansion area. Final alignment and length of berths and shoreline configuration to be determined as part of the terminal planning effort.



NO.	DATE	DRAWN	REVISIONS -	APP'D	NO.	DATE	DRAWN	REVISIONS -



**EXHIBIT A**

BERTH 100-102

**CONCEPTUAL TERMINAL LAYOUT**

**THE PORT OF LOS ANGELES**

ENGINEERING DIVISION P.O. BOX 151 SAN PEDRO, CA 90733-0151

DRAWING NUMBER

1-2339 1

APP'D	SCALE: NTS	CHIEF OF DESIGN
DRAWN: DW		ASSISTANT CHIEF HARBOR ENGINEER
CHECKED: SGJ		
DESIGNED: DW		
ENGR/ARCH		
		CHIEF HARBOR ENGINEER DATE

**CHINA SHIPPING  
TEU PER ACRE RATE SCHEDULE  
FOR INITIAL FIVE YEARS**

February 22, 2000

	<u>EFFICIENCY BRACKET</u>	<u>RATE / TEU</u>
<b>I. SLIDING SCALE</b>		
	3,000 - 3099	\$49.02
	3,100 - 3199	48.01
	3,200 - 3299	47.08
	3,300 - 3399	46.21
	3,400 - 3499	45.39
	3,500 - 3599	44.63
	3,600 - 3699	43.92
	3,700 - 3799	43.25
	3,800 - 3899	42.61
	3,900 - 3999	42.02
	4,000 - 4099	41.46
	4,100 - 4199	40.94
	4,200 - 4299	40.44
	4,300 - 4399	39.97
	4,400 - 4499	39.52
	4,500 - 4599	39.10
	4,600 - 4699	38.70
	4,700 - 4799	38.32
	4,800 - 4899	37.96
	4,900 - 4999	37.62

**II. INCREMENTAL TEU'S**

- TEU'S IN EXCESS OF 4,999 TEU'S PER ACRE WILL BE SUBJECT TO A TEU RATE OF \$30.00 PER TEU.

**III. TOTAL TEU CHARGES**

- TOTAL TEU CHARGES INCLUDE THE CHARGES DERIVED FROM THE EFFICIENCY BRACKET RATE PLUS CHARGES FOR INCREMENTAL TEU'S.

<b>CHINA SHIPPING PROPOSED PRICING</b>					
<b>ILLUSTRATION OF RATES CHANGE CALCULATIONS</b>					
<b>AS A RESULT OF A TARIFF ADJUSTMENT ADOPTED BY CITY</b>					
<b>ASSUME CONTRACT YEAR COMMENCES FEBRUARY 1</b>					
ASSUMPTIONS:					
TERMINAL AREA SUBJECT TO EFFICIENCY SCALE				100.00	
TOTAL TERMINAL ACRES				100.00	
TOTAL TEUS FOR THE YEAR (LOADED AND EMPTIES; ASSUME EMPTIES AT 20%)				402,000	
TARIFF INCREASE ADOPTED BY CITY (SAY, EFFECTIVE JUNE 1)				10%	
TOTAL TEUS, FEBRUARY 1 - MAY 31				135,000	
TOTAL TEUS, JUNE 1 - JANUARY 31				267,000	
NUMBER OF DAYS BEFORE TARIFF CHANGE				120	
NUMBER OF DAYS AFTER TARIFF CHANGE				245	
EFFICIENCY SCALE IN EFFECT FROM BEGINNING OF YEAR (ASSUMED)				4,000	
COMPENSATION BEFORE AND AFTER TARIFF CHANGE:					
			<b>BEFORE</b>	<b>AFTER</b>	
TEU CHARGES			\$ 41.46	\$ 45.61	
MAG PER ACRE			\$ 142,000	\$ 156,200	
CALCULATION OF TOTAL COMPENSATION:					
			<b>BEFORE</b>	<b>AFTER</b>	<b>TOTAL</b>
TEU CHARGES, FEBRUARY 1 - MAY 31 (135,000 @ \$41.46)			\$ 5,597,100		\$ 5,597,100
TEU CHARGES, JUNE 1 - JANUARY 31 (267,000 @ \$45.61)				\$12,177,870	\$ 12,177,870
TOTAL COMPENSATION FOR THE YEAR			\$ 5,597,100	\$12,177,870	\$ 17,774,970
TOTAL MAG, FEBRUARY 1 - MAY 31 (\$142,000 x 100 ACRES x 120/365)					\$ 4,668,493
TOTAL MAG, JUNE 1 - JANUARY 31 (\$156,200 x 100 ACRES x 245/365)					10,484,658
TOTAL MAG FOR THE YEAR					\$ 15,153,151
<b>EXHIBIT C</b>					

## EXHIBIT C

<b>CHINA SHIPPING PROPOSED PRICING</b>				
<b>DISCOUNT ON EMPTIES EXCEEDING 20% OF TOTAL VOLUME PER YEAR DURING THE INITIAL FIVE YEARS</b>				
ESTIMATED BASIS FOR FULL CONTRACT YEAR				
ACREAGE SUBJECT TO EFFICIENCY SCALE				100.00
TOTAL TERMINAL ACRES				100.00
ASSUME TOTAL TEUS MOVED (LOADED AND EMPTIES)				402,000
ASSUME EMPTIES AS A PERCENT OF TOTAL TEUS AT				25%
<b>STEP 1: ORIGINAL BILLING (ACTUAL BILLINGS ISSUED DURING CONTRACT YEAR) -</b>				
	%	LOADED	EMPTY	TOTAL
LOADED TEUS	75%	301,500		301,500
EMPTY TEUS	25%		100,500	100,500
TOTAL TEUS COUNTING TOWARDS SCALE	100%	301,500	100,500	402,000
EFFICIENCY SCALE - 402,000 TEUS/100 ACRES				4,020
TEU CHARGE PER SCALE				\$ 41.46
TOTAL BILLING (402,000 TEUS @ \$41.46 PER TEU)			(A)	\$ 16,666,920
<b>STEP 2: ADJUSTED BILLING (PREPARED AT YEAR-END) -</b>				
LOADED TEUS	75%	301,500		301,500
EMPTY TEUS	20%		80,400	80,400
TOTAL TEUS COUNTING TOWARDS SCALE	95%	301,500	80,400	381,900
EFFICIENCY SCALE - 381,900 TEUS/100 ACRES				3,819
TEU CHARGE PER SCALE				\$ 42.61
ADJUSTED EFFICIENCY SCALE BILLING - 381,900 TEUS @ \$42.61 PER TEU)			(B)	\$ 16,272,759
EMPTY TEUS EXCLUDED FROM EFFICIENCY SCALE	5%		20,100	20,100
TARIFF RATE FOR 20-FOOT EMPTY CONTAINERS				\$ 8.47
BILLING FOR EMPTY TEUS EXCEEDING 20% (20,100 TEUS @ \$8.47)			(C)	\$ 170,247
TOTAL ADJUSTED BILLING (B + C)			(D)	\$ 16,443,006
STEP 3: CREDIT ISSUED AFTER YEAR-END			(A - D)	\$ 223,914
<b>NOTES:</b>				
(1) TEU RATES IN THIS EXAMPLE ARE BASED ON THE EFFICIENCY SCALE (EXHIBIT B), SUBJECT TO CHANGE AS A RESULT OF RENEGOTIATED ADJUSTMENT EVERY FIVE YEARS, AND FUTURE TARIFF CHANGES.				
(2) TOTAL BILLINGS ILLUSTRATED ARE EXCLUSIVE OF SPECIAL CREDITS ALLOWED DURING THE INITIAL FIVE YEARS.				
<b>EXHIBIT D</b>				

## EXHIBIT D

TRUCKS ENTERING AND LEAVING THE PORT MUST USE THE ROUTE SHOWN BELOW.  
CAMIONES ENTRANDO Y SALIENDO EL PORTO DEVEN DE USAR LA RUTA INDICADO ABAJO.

Ruta designado de camión de carga

# Designated Truck Route

at the Port of Los Angeles

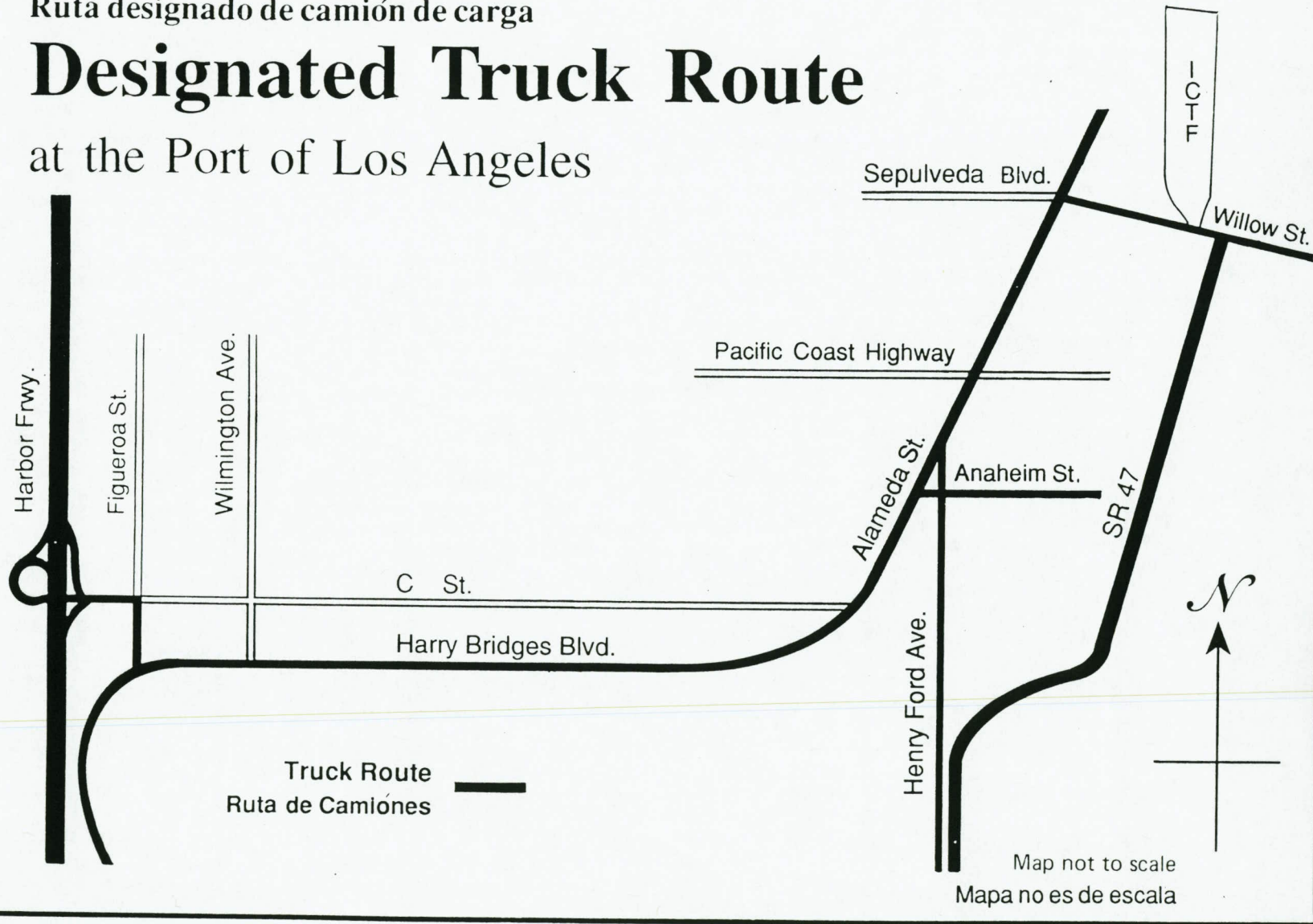


EXHIBIT E

# BERTH 100 – 102 FACILITY

## Conceptual Design Requirements for Container Terminal

### EXHIBIT F

Attachment 1 – Preliminary Data Conduit Communications Requirements

Attachment 2 – 9100 TEU Container Vessel Specifications

#### 1. Introduction

The Berths 100-102 development project will create a container terminal complex with the following major elements: (see Exhibit A)

1. Area 1: 75 acre container terminal including 1200' wharf at Berth 100 - (November 30, 2002)
2. Area 2: 35 acre backland expansion area including:
  1. Wharf extension at Berth 100 to accommodate one (1) 9100 TEU Vessel with supporting backland (July 1, 2004), and
  2. another wharf at Berth 102 to accommodate one (1) 9100TEU vessel and the balance of the 35-acre fill(within 48 months after execution of permit by tenant)
3. Adjacent property as it becomes available

Utilities to serve the terminal including:

- Water – Domestic and fire protection systems
- Gas
- Sewer
- Telephone/Communications (see Attachment 1)
- Power

#### 1.2 General Facility Requirements (City Improvements)

This scope of work defines the basic design parameters and terminal facilities for the Berth 100-102 container terminal development. Final location of facilities will be determined during terminal planning in conjunction with the final design of the container yard layout and berth lengths.

February 27, 2001

EXHIBIT F 1

### 1.2.1 Bridges

1. Two (2) bridges each a maximum width of 4 lanes with k-rail median will be provided connecting Berth 115 to backland or connecting existing land as part of the Area 1 development

### 1.3 Buildings

1. Marine Building  
Longshore Toilet
2. Expand existing gate facility at Rear berths 121 - The nature of the gate expansion will determined as part of the terminal planning effort. It may include up to 8 inbound & 4 outbound lanes.
3. Additional out-gate facilities up to six (6) lanes at Rear Berths 100-102.
4. Terminal entrance signs
5. Utility/infrastructure provided to buildings
  - a. Tenant shall provide all furniture and computer systems and vending machines.
  - b. The Port will provide conduits for computer and telecommunication systems at gate complexes. (Conduit requirements will be provided by tenant). (see Attachment 1)
  - c. Security system (cameras & card readers).

### 1.4 Container Yard

The terminal layout will provide a flexible design and the ability to change from wheeled operation to grounded operation and vice versa. A modular grid will incorporate traffic isles, lighting, fire hydrants, storm drains, sewers, signage, electrical distribution and other elements and infrastructures detailed below.

#### 1.4.1 Paving

1. Container yard pavement will be designed for 125 KIP wheel loads without the need for RTG runways parallel to grounded container piles to maximize operational flexibility transitions over time. Pavement design life will be 20 years. The analysis for Top-Pick and RTG load cycle repetitions are unique to each terminal and will depend on tenant operational needs. This analysis is will be based on the final terminal layout as part of the terminal planning effort.



2. Heavy-duty bituminous concrete or reinforced concrete paving will be provided to support landing legs of forty-foot wheeled reefer container loads.
3. Hatch cover storage area within crane backreach along the wharf will be protected using heavy-duty bituminous concrete or reinforced concrete paving to prevent damage from corner castings of hatch covers.

#### **1.4.2 Security Fencing**

Eight-foot high chain link fence on k-rail with 1-ft. barbed wire extension will be used.

#### **1.4.3 Striping**

Cal-Trans traffic paint shall be used throughout the container terminal. Paint shall be highly reflective for nighttime visibility.

#### **1.4.4 Storm Drain**

Design of the storm drain system will include a hydrological study, hydraulic calculations, structural analysis, and determination of vertical and horizontal alignments. The configuration of the storm drain system such as location of catch basins and/or slotted drains will be determined as part of the terminal planning effort.

Design criteria for the storm drain system will be based on the Los Angeles City Storm Drain Design Manual. A 10-year design storm will be the basis for sizing the system. D-load calculations will be based on a live-load of 100-kips plus 25% live-impact at the surface. All major storm drain pipe lines shall be reinforced concrete.

#### **1.4.5 Sanitary Sewer System**

Sewer system including gravity and force main will be provided to handle flow from all the proposed buildings. Below grade utility structures and piping shall be capable of supporting heavy-duty pavement design loads.

#### **1.4.6 Water and Fire Protection System**

The fire hydrant locations are set based on City of Los Angeles Fire Department requirements. The fire hydrants are located with each light pole for quick location of hydrants by the Fire Department and integral with the container yard grid module. The design will be based on three adjacent hydrants flowing simultaneously the same time with a minimum combined flow of 4500 gpm at 20 psi.

#### **1.4.7 Power Distribution System**

- Container yard lighting - 4160 feed switch gear/transformer, step down to 480V for container yard lighting
- Dockside cranes – 4160V feeds to dockside switchgears as required.

#### **1.4.8 Yard Lighting**

A system of high mast area lighting will be integral with the container yard grid module and provide an average lighting level at the pavement elevation of five foot-candles at wharf without additional light supplemented by the cranes and 5 foot-candles throughout the container yard and intermodal yard.

#### **1.4.9 Signage**

#### **1.4.10 Reefers**

A total of 600 480 volt 4-plug reefer outlets will be provided.

#### **1.5 Wharf**

Two (2) berths will be provided to accommodate the berthing of two (2) 9100 TEU Container vessels (as specified in attachment 2), a minimum of 1400-ft. and a maximum of 1600-ft. along Berth 100 and a minimum of 1400-ft. and a maximum of 1600-ft. along Berth 102. A concrete deck system will be supported by pre-stressed concrete piles. The wharf deck will be designed to support 1000 pounds per square foot (psf). The depth at Berths 100 and 102 will be -53-ft. MLLW.

#### **1.5.1 Crane rails**

A 100-foot gauge crane rail without an intermediate 50-foot gauge rail will be provided for consistency with current practice throughout the industry. Crane rails and supporting structures will be designed to support gantry crane operating wheel loads equivalent to 50,000 pounds per linear foot. Crane rails will be 171 lb./yd. Soft mount system will be used to attach the rail to the deck. Continuous crane rails will be installed to reduce the initial capital costs and future maintenance costs. High-capacity energy-absorbing crane bumpers will be used at the ends of the pier to protect the container cranes. Crane bumpers shall be designed for 330 kips per rail. The wharf will be designed with curved rail at the angle point to allow gantry of cranes from Berth 100 to Berth 102.

#### **1.5.2 Crane power**

The wharf configurations as planned will allow the installation of bus bars in power trench for power supply for the wharf. A total of 4 cranes are planned for the initial 1200' of wharf, an additional crane upon delivery of the second wharf, and up to a total of 10 cranes after completion of both berths. The cranes will service ships up to 22 wide and will weigh approximately 2200 tons. (The cranes will be of similar specifications to the ZPMC cranes delivered to the Port of Oakland.) The tenant will supply the crane specifications. The cranes delivered to Berth 100 and 102 will need to clear the Vincent Thomas Bridge. Bridge clearance at mean lower low water (mllw) is:

193.5 ft. vertical clearance for 62.5 ft. east and west of the center of bridge.

185.0 ft. vertical clearance between 62.5 ft. and 250 ft. east and west of center of bridge.

165.0 ft. vertical clearance between 250 ft. and end of bridge on each side.

### **1.5.3 Fendering system**

The fendering system will be designed to accommodate large class vessels along the wharf and to accept low freeboard vessels and barges as well as large class line haul vessels. Loading and specifications will be further defined in detail during the design process. The fendering system will be designed for 9100 TEU capacity vessel as specified in Attachment 2 and consist of TTV-Unit type fenders or equal.

### **1.5.4 Bollards**

Single bollards with 150 metric ton capacity will be provided. 0 to 60 degrees vertical. 0 to 180 degrees horizontal.

### **1.5.5 Service vaults**

Provisions will be made for standard POLA wharf utilities at the wharf face (water and power and telephone).

### **1.5.6 Dock ladders**

Ladders will be provided to allow access to the wharf deck from small service boats at any tide condition.

### **1.5.7 Fire Protection**

Flush mounted fire hydrants will be provided along the wharf if not located adjacent to high-mast light poles.

## **1.6 Infrastructures**

The following infrastructure and systems will be provided:

- Sanitary sewer system for various buildings

- Natural gas

- Fire protection system

- Lighting system

- Electrical power distribution system

- Domestic water supply system

- Storm drainage system

- Public address system (tenant will provide design)

- Telecommunication system (conduits only, tenant will provide conduit requirements) (see Attachment 1)

- Security system (conduits only, tenant will provide design) (Security system will be addressed as part of the overall data and communications requirements)

- AEI system (conduits only, tenant will provide design)

- Computer system & LAN (conduits only, tenant will provide conduit requirements)

EXHIBIT "G"

MARINE TERMINAL MAINTENANCE PROVISIONS  
FOR ALL LEASE AGREEMENTS

- I. Structural Maintenance & Repair Performed by City at City's Expense\* Within Lease Area
1. Roofs
  2. Exteriors of structures, including exterior painting
  3. Wharf structure (as defined)
  4. Wharf bulkheads
  5. Rock slopes
  6. Maintenance dredging
  7. Replacement of deteriorated electrical conduit and pipeline system
  8. High and low voltage systems, including switchgear and crane power trench
  9. Fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems
  10. Pavement failure (as defined in agreement)
- II. Maintenance & Repair Performed by City at Tenant's Expense Within Lease Area
1. Fender system repair (wharf damage procedure)
  2. Refrigerated receptacle outlet (reefer) maintenance
  3. Backflow devices and potable water systems
  4. HVAC servicing and repair
- III. Operational Maintenance & Repair to be Performed by the Tenant. Port Will Perform if Forces Available by Accommodation Work Order Within Leased Area at Tenant's Expense. Tenant However Remains Responsible for Sufficiency of All Work

This portion of the Exhibit describes the maintenance and repair of items commonly found on terminal premises granted to Tenants. Not all items listed below may be present on all terminal premises. This list is only illustrative of the items which Tenant must maintain.

1. All landscaping, including irrigation systems
2. Daily janitorial service\*\*\*
3. Relamping of terminal wharf and backland light standards\*\*
4. Interior painting
5. Elevator and escalator maintenance\*\*
6. Clarifier maintenance & servicing\*\*\*
7. All toxic waste removal\*\*\*
8. Storm drain inlet maintenance and cleaning
9. Cleaning clogged drains, including toilet/urinal stoppages
10. Pneumatic tube system maintenance\*\*
11. Emergency generator unit maintenance\*\*
12. Mooring capstans
13. Mechanical ramps and loading dock boards
14. Passenger gantries\*\*, baggage systems\*\*, conveyor systems\*\*
15. Replacement of all light bulbs
16. Traffic and backland area striping (requires permit & approval by Harbor Engineer)
17. Weigh scales\*\*
18. Wheel stop maintenance
19. Fence and gate maintenance
20. Rolling and sliding door maintenance

21. Window, door glass replacement
22. Carpet, tile, and vinyl floor replacements
23. All mechanical, electrical, hydraulic and air equipment and devices used by Tenant to maintain Tenant-owned machinery and equipment
24. Gate house equipment, including gate arms and mechanical/electrical equipment therein
25. Recharging and servicing of fire extinguishers
26. Surface paving, wharf and backland (exclusive of pavement failures, as defined in agreement)
27. All underground and above ground tanks, pipelines and appurtenances unless the Agreement specifically otherwise provides.

\* To be maintained at Tenant's expense if damaged by Tenant.

\*\* To be maintained to Port's standards and subject to periodic audits and inspection by the Port of Los Angeles

\*\*\* At no time does Port provide or perform

2/27/01

## AFFIRMATIVE ACTION PROGRAM

### A. Definitions

The following definitions shall apply to the terms used in this Exhibit:

"Affirmative Action" means the taking of positive steps by a contractor or subcontractor to ensure that its practices and procedures will promote and effectuate the employment, retention and advancement of a particular class or category of employee, generally referred to as a minority group, including women and any person or group described by race, religion, sex, sexual orientation, ancestry, national origin, age, and physical handicap. The action may also involve the concept, when applicable, of remedying the continuing effects of past discrimination.

"Affirmative Action Plan" means a plan, program, scheme, or policy setting forth in detail acts to be taken, procedures to be followed, and standards to be adhered to to establish an Affirmative Action Program. It may include provisions for positive recruitment, training and promotion, and procedures for internal auditing and reporting to ensure compliance and measure the success of the program.

"Awarding Authority" means any Board or Commission of the City of Los Angeles, or any authorized employee or officer of the City of Los Angeles, including the Purchasing Agent of the City of Los Angeles, who makes or enters into any contract or agreement for the provision of any goods or services of any kind or nature whatsoever for or on behalf of the City of Los Angeles.

"Contract" means any agreement, franchise, lease, or concession, including agreements for any occasional professional or technical personal services, for the performance of any work or service, the provision of any materials or supplies, or the rendition of any service to the City of Los Angeles or to the public, which is let, awarded or entered into with, or on behalf of, the City of Los Angeles or any awarding authority thereof.

"Contractor" means any person, firm, corporation, partnership, or any combination thereof, who submits a bid or proposal or enters into a contract with any awarding authority of the City of Los Angeles.

"Employment Practices" means any solicitation of, or advertisement for, employees, employment, change in grade or work assignment, assignment or change in place or location of work, lay-off, suspension or termination of employees, rate of pay or other form of compensation including vacation, sick and compensatory time, selection for training, including apprenticeship programs, any and all employee benefits and activities, promotion and upgrading, and any and all actions taken to discipline employees for infractions of work rules or employer requirements.

"Office of Contract Compliance" is that office of the Department of Public Works of the City of Los Angeles created by Article X of Chapter 13 of Division 22 of the Los Angeles Administrative Code.

"Subcontractor" means any person, firm or corporation or partnership, or any combination thereof who enters into a contract with a contractor to perform or provide a portion or part of any contract with the City.

B. During the performance of this contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, age or physical handicap.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work, or service category.

3. The contractor or subcontractor agrees to post a copy of paragraph B hereof in conspicuous places at its place of business available to employees and applicants for employment.

C. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, age or physical handicap.

D. At the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify, on a form to be supplied, that the contractor has not discriminated in the performance of this contract against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, age or physical handicap.

E. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program of this contract, and on their or either of their request to provide evidence that it has or will comply therewith.

F. The failure of any contractor or subcontractor to comply with the Affirmative Action Program of this contract may be deemed to be a material breach hereof. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor or subcontractor in

accordance with the provisions of Section 22.359.3 of the Los Angeles Administrative Code.

G. Upon a finding duly made that the contractor or subcontractor has breached the Affirmative Action Program of this contract, this contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor or subcontractor is an irresponsible bidder pursuant to the provisions of Section 386 of the Los Angeles City Charter. In the event of such determination, such contractor or subcontractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he shall establish and carry out a program in conformance with the provisions hereof.

H. In the event of a finding by the Fair Employment Practice Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any Court of competent jurisdiction that the contractor or subcontractor has been guilty of a willful violation of the Fair Employment Practice Act of California, or the Affirmative Action Program of this contract, there may be deducted from the amount payable to the contractor or subcontractor by the City of Los Angeles under this contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of this contract.

I. Notwithstanding any other provision of this contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.

J. The office of Contract Compliance shall promulgate rules and regulations and forms for the implementation of the Affirmative Action Program of this contract, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.

K. Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

L. At the time its bid is submitted, the contractor shall submit an AFFIRMATIVE ACTION PLAN to the awarding authority which shall meet the requirements of this ordinance. The awarding authority may also require contractors and suppliers to take part in a pre-bid or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months next succeeding the date of contract award or the date of first approval by the Office of Contract Compliance, whichever is the earliest.

L.(1). Every contract or subcontract in excess of \$5,000 which may provide construction, demolition, renovation, conservation, or major maintenance of any kind shall



in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

L.(2). A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance.

M. Contractors and suppliers who are members in good standing of a trade association which has negotiated an Affirmative Action Program with the Board of Public Works, Office of Contract Compliance may make the program of such association their commitment for the specific contract upon approval of the Office of Contract Compliance, without the process of a separate pre-bid or pre-award conference. Such an association agreement shall be effective for a period of twelve months next succeeding the date of approval by the Office of Contract Compliance. Trade associations shall provide the Office of Contract Compliance with a list of members in good standing in such association.

N. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed approved Affirmative Action Nondiscrimination Programs. For each contractor and supplier, the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any affirmative action plan or change the affirmative action plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.

O. The Affirmative Action Plan required to be submitted hereunder and the pre-bid or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Apprenticeship where approved program are functioning, and other on-the-job training for nonapprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Preapprenticeship education and preparation;
4. Upgrading training and opportunities;
5. Encouraging the use of contractors, subcontractors and suppliers of all ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions, and practices generally observed in private industries in the contractor's, subcontractor's, or supplier's geographical area for such work; and
6. The entry of qualified women and minority journeyman into the industry.

7. The provision of needed supplies or job conditions to permit persons with some unusual physical condition to be employed, and minimize the impact of any physical handicap.

P. Any adjustments which may be made in the contractor's or supplier's work force to achieve the requirements of the City's affirmative action contract compliance program in purchasing and construction shall be accomplished by either or both an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement, or death and not by termination, lay-off, demotion, or change in grade.

Q. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-bid or pre-award conferences shall not be confidential and may be publicized by the contractor at his discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its contract compliance affirmative action program.

R. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors, subcontractors or suppliers engaged in the performance of City contracts.

## MINORITY BUSINESS ENTERPRISE/WOMEN BUSINESS ENTERPRISE

It is the policy of the City of Los Angeles to provide Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs)<sup>1</sup> and all other business enterprises an equal opportunity to participate in the performance of all City contracts. Bidders and proposers shall assist the City in implementing this policy by taking all reasonable steps to ensure that all available business enterprises, including local MBEs and WBEs, have an equal opportunity to compete for and participate in City contracts. Bidders' or proposers' good faith efforts to reach out to MBEs, WBEs and all other business enterprises shall be determined by the following factors:

(1) The bidder's or proposer's efforts to obtain participation by MBEs, WBEs and other business enterprises could reasonably be expected by the Awarding Authority to produce a level of participation by interested subcontractors, including 18 percent MBE and 4 percent WBE as established by the Awarding Authority.

(2) The bidder or proposer attended pre-solicitation or pre-bid meetings, if any, scheduled by the Awarding Authority to inform all bidders or proposers of the requirements for the project for which the contract will be awarded. The Awarding Authority may waive this requirement if the bidder or proposer certifies it is informed as to those project requirements.

(3) The bidder or proposer identified and selected specific items of the project for which the contract will be awarded to be performed by subcontractors to provide an opportunity for participation by MBEs, WBEs and other business enterprises. The bidder or proposer shall, when economically feasible, divide total contract requirements into small portions or quantities to permit maximum participation of MBEs, WBEs and other business enterprises.

(4) The bidder or proposer advertised for bids or proposals from interested business enterprises not less than 10 calendar days prior to the submission of bids or proposals, in one or more daily or weekly newspapers, trade association publications, minority or trade-oriented publications, trade journals, or other media specified by the Awarding Authority.

(5) The bidder or proposer provided written notice of its interest in bidding

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<sup>1</sup> Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) - for the purposes of this City policy, Minority Business Enterprises and Women Business Enterprises are defined as any business, bank or financial institution which is owned and operated by a minority group member or woman, or such business, bank or financial institution of whom 50% or more of its partners or stockholders are minority group members or women. If the business is publicly owned, the minority members or stockholders must have at least 51% interest in the business and possess control over management capital earnings.

on the contract to those business enterprises, including MBEs and WBEs, having an interest in participating in such contracts. All notices of interest shall be provided not less than 10 calendar days prior to the date the bids or proposals were required to be submitted. In all instances, the bidder or proposer must document that invitations for subcontracting bids were sent to available MBEs, WBEs and other business enterprises for each item of work to be performed.

The Mayor's Office of Small Business Assistance shall be available to help identify interested MBEs, WBEs and other business enterprises.

(6) The bidder or proposer documented efforts to follow up initial solicitations of interest by contacting the business enterprises to determine with certainty whether the enterprises were interested in performing specified portions of the project.

(7) The bidder or proposer provided interested enterprises with information about the plans, specifications and requirements for the selected subcontracting work.

(8) The bidder or proposer requested assistance from organizations that provide assistance in the recruitment and placement of MBEs, WBEs and other business enterprises not less than 15 days prior to the submission of bids or proposals.

(9) The bidder or proposer negotiated in good faith with interested MBEs, WBEs and other business enterprises and did not unjustifiably reject as unsatisfactory bids or proposals prepared by any enterprise, as determined by the Awarding Authority. As documentation, the bidder or proposer must submit a list of all sub-bidders for each item of work solicited, including dollar amounts of potential work for MBEs, WBEs and other business enterprises.

(10) The bidder or proposer documented efforts to advise and assist interested MBEs, WBEs and other business enterprises in obtaining bonds, lines of credit, or insurance required by the Awarding Authority or contractor.

Achievement of expected levels of participation in paragraph (1) above may only be used as one of the 10 indicia, above, of whether a bidder or proposer has made a good faith effort to recruit MBEs, WBEs and other business enterprises. If the Awarding Authority has established expected levels of participation for MBE and WBE contractors, failure to meet those levels shall not by itself be the basis for disqualification of the bidder or proposer. An Awarding Authority's determination of the adequacy of the bidder's or proposer's good faith effort must be based on due consideration of all indicia of good faith as set forth above.

In the event that an Awarding Authority is considering awarding away from the lowest bidder or not awarding a contract to a proposer because the bidder or the proposer is determined to be nonresponsive for failure to comply with the good faith indicia set forth above, the Awarding Authority shall, if requested, and prior to the award of the contract, afford the bidder or proposer the opportunity to present evidence to the Awarding

Authority in a public hearing of the bidder's or proposer's good faith efforts in making its outreach. In no case should an Awarding Authority award away pursuant to this program if a bidder or proposer makes a good faith effort but fails to meet the expected levels of participation.

CITY OF LOS ANGELES  
 Office of the City Administrative Officer  
 Contractor Enforcement Section  
 111 North Hope Street, Room 625  
 Los Angeles, CA 90012  
 Phone: (213) 367-5077 – Fax: (213) 367-5081

**DECLARATION OF COMPLIANCE**  
 Service Contract Worker Retention Ordinance and the Living Wage Ordinance

Los Angeles Administrative Code (LAAC) Sections 10.36 et seq. and 10.37 et seq. provide that all employers (except where specifically exempted) under contracts primarily for the furnishing of services to or for the City and that involve an expenditure in excess of \$25,000 and a contract term of at least three months; leases; licenses; or, certain recipients of City financial assistance, shall comply with all applicable provisions of the Ordinances.

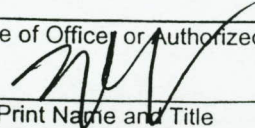
During the performance of this agreement, the contractor, lessee, licensee, or City financial assistance recipient certifies that it shall comply and require each subcontractor hereunder to comply with the provisions of the above referenced Ordinances. The contractor shall provide to the City a list of all subcontractors and a list of all employees under the agreement (including employees of subcontractors) within 10 days after execution. The list of employees shall include the name, position classifications and rate of pay for each employee. An updated list shall be submitted upon demand and upon termination of the contract. A completed Declaration of Compliance from each subcontractor subject to the Living Wage Ordinance must be provided to the City Administrative Officer within 90 days of execution of the subcontract. In case of a successor service contract, a successor contractor shall retain for a 90-day transition employment period, employees who have been employed by the terminated contractor or its subcontractor, if any, for the preceding 12 months or longer, pursuant to Section 10.36.2.

The contractor, lessee, licensee, or City financial assistance recipient further agrees:

- (a) To pay covered employees a wage no less than the minimum initial compensation of \$7.72 per hour (adjusted July 1, 2000) with health benefits, as referred to in (c) below, or otherwise \$8.97 per hour (adjusted July 1, 2000), pursuant to Section 10.37.2(a). Such rates shall be adjusted annually and shall become effective July 1.
- (b) To provide at least 12 compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and at least 10 additional days per year of uncompensated time off pursuant to Section 10.37.2(b) and Regulation 4(e)(3);
- (c) Where so elected under (a) above, to pay at least \$1.25 per hour per employee toward the provision of health benefits for the employees and their dependents pursuant to Section 10.37.3;
- (d) To inform employees making less than \$12 per hour of their possible right to the federal Earned Income Tax Credit (EITC) and make available the forms required to secure advance EITC payments from the employer pursuant to Section 10.37.4;
- (e) To permit access to work sites for authorized City representatives to review the operation, payroll and related documents, and to provide certified copies of the relevant records upon request by the City; and,
- (f) Not to retaliate against any employee claiming non-compliance with the provisions of these Ordinances and to comply with federal law prohibiting retaliation for union organizing.

**Failure to complete and submit this form to the Awarding Authority and to the City Administrative Officer may result in withholding of payments by the City Controller, or contract termination.**

Check box only if applicable:  I certify under penalty of perjury that I do not have any employees earning less than \$15 per hour working on this City agreement.

Company Name		Signature of Officer or Authorized Representative	
China Shipping Holding Company, Ltd.			
Company Address and Phone Number		Type or Print Name and Title	
100 Plaza Dr., Secaucus, NJ 07096 (201) 392-2900		Zhang Bing, President	
Date	Contract Number	Awarding City Department	Type of Service
March 9, 2001	Permit No. 999	Harbor Department	Marine Terminal

CITY OF LOS ANGELES  
Office of the City Administrative Officer  
Living Wage Section  
111 North Hope Street, Room 625  
Los Angeles, CA 90012  
(213) 367-5077

## NOTICE TO EMPLOYEES WORKING ON CITY CONTRACTS RE: LIVING WAGE ORDINANCE AND PROHIBITION AGAINST RETALIATION

"Section 10.37.5 Retaliation Prohibited" of the Living Wage Ordinance (LWO) provides that any employer that has a contractual relationship with the City may not discharge, reduce the pay of, or discriminate against his or her employees working under the City contract for any of the following reasons:

1. Complaining to the City if your employer is not complying with the Ordinance.
2. Opposing any practice prohibited by the Ordinance.
3. Participating in proceedings related to the Ordinance, such as serving as a witness and testifying in a hearing.
4. Seeking to enforce your rights under this Ordinance by any lawful means.
5. Asserting your rights under the Ordinance.

Also, you may not be fired, lose pay or be discriminated against for asking your employer questions about the Living Wage Ordinance, or asking the City about whether your employer is doing what is required under the LWO. If you are fired, lose pay, or discriminated against, you have the right to file a complaint with the City's Living Wage Section, as well as file a claim in court.

For more information, or to obtain a complaint form, please call the Living Wage Section at (213) 367-5077.

## EXHIBIT K

### GUARANTY OF PERMIT NO. 999

This Guaranty of Permit No. 999 ("Guaranty") is made by CHINA SHIPPING (GROUP) COMPANY, a corporation organized under the laws of the People's Republic of China, 700 Dong Da Ming Road, Shanghai 200080 China ("Guarantor"), to and for the benefit of the City of Los Angeles ("City").

WHEREAS, City has been requested to grant Permit No. 999 ("Permit") to CHINA SHIPPING HOLDING COMPANY, LTD., a Delaware corporation, whose address is 100 Plaza Drive, Secaucus, New Jersey 07096 ("Tenant") for the use and occupancy of premises owned by City located at Berths 100-102 in the Harbor District of the City of Los Angeles, as set forth in the said Permit; and

WHEREAS, Tenant is a wholly owned subsidiary of Guarantor; and

WHEREAS, City requires, as a condition to the grant of the Permit to Tenant, that Guarantor execute and deliver this Guaranty to City;

NOW THEREFORE, in consideration of the grant of the Permit to Tenant by City, Guarantor agrees as follows:

1. Guarantor hereby unconditionally and irrevocably guarantees to City the prompt performance by Tenant of all financial obligations and responsibilities, including the prompt payment of all rent and other sums payable by Tenant to City, and the prompt and faithful performance and discharge of each and every term, condition, covenant and obligation required of Tenant pursuant to the said Permit.

2. The terms of the said Permit may be altered, amended, assigned in accordance with the terms thereof, modified or changed by agreement between City and Tenant without notice to or consent of Guarantor, and this Guaranty shall thereafter be fully applicable to guarantee the performance of the Permit as altered, amended, modified or changed.

3. In the event of any failure by Tenant to pay rent or other sums payable to City or failure to perform or discharge any other term, condition, covenant or obligation required of Tenant by the Permit, Guarantor shall, upon thirty (30) days' written notice of default by Tenant and demand by City, promptly pay, perform and discharge each of the terms, conditions, covenants and obligations required by the Permit.

4. Following such written notice of default and demand by City, City shall have the right to proceed immediately against Guarantor to enforce the provisions of the Permit and this Guaranty, regardless of whether or not City, at its sole option, proceeds against Tenant for default or breach of the Permit or for the enforcement of any other right which may have accrued to City against Tenant.

**EXHIBIT K**





FIRST AMENDMENT TO PERMIT NO. 999  
BETWEEN THE CITY OF LOS ANGELES AND  
CHINA SHIPPING HOLDING COMPANY, LTD.

Permit No. 999 between the City of Los Angeles (City) and China Shipping Holding Company, Ltd. (China Shipping) is hereby amended for the first time to provide that:

1. The following subparagraph (8) is added to permit No. 999, Section 3(e), Minimum Annual Guarantee:
  - “(8) Credit against MAG and TEU Charges for Costs and Damages, including but not limited to, Delays in Providing the Premises at Berths 100-102 and Environmental Mitigation Impact to Tenant related to Amended Stipulated Judgment. It is recognized by and between the parties to the First Amendment to this Permit, that certain measures required under this Amendment have resulted in significant costs to the Tenant and its affiliates due to implementation of environmental mitigation measures and impacts on shipping and terminal operations, including delays in provision of terminal facilities, gate modifications, and problems associated with delivery of the four existing cranes at Berth 100. In consideration of these costs and anticipated impacts on operations of Tenant and its affiliates, there shall be a Credit of USD \$12,224,583.33 given by the City to Tenant to be applied as directed by Tenant against accumulated TEU charges or the MAG payable by Tenant pursuant to this Section 2. The Credit shall be available to the Tenant commencing July 1, 2005, and thereafter until fully applied against accumulated TEU charges or MAG. In the event this First Amendment is not effective on or before July 1, 2005, the credit will be made available to Tenant on the effective date but may be applied by the Tenant retroactively to July 1, 2005.”
2. The Tenant agrees that, at Berths 100-102, all yard tractors utilized by Tenant at the Premises shall be powered by “alternative fuels” (as defined by the California Air Resources Board) and that all top picks and side picks shall utilize emulsified diesel fuel and diesel oxidation catalysts unless they cannot be used for safety or technical reasons for a particular application, as provided in § VIII.A.1 of the Amended Stipulated Judgment (hereafter “Amended Stipulated Judgment”) in the Los Angeles Superior Court Case captioned *Natural Resources Defense Council, Inc., et al. v.*

*City of Los Angeles, et al.* (L.A.S.C. Case No. BS 070017). The credits set forth in Paragraph 1 of this First Amendment to Permit No. 999 include reimbursement from the City to China Shipping for these environmental mitigation costs.

3. The Parties agree that the document entitled "Agreement to Supply and to Use Alternative Maritime Power and Low Profile Cranes", which is Exhibit "B" to the Amended Stipulated Judgment, is hereby attached as Exhibit "A" to this First Amendment to Permit No. 999. The provisions of Exhibit "A" to this First Amendment, governing Alternative Maritime Power and provision of low-profile cranes, are hereby incorporated into and made a part of Permit No. 999. The credits set forth in Paragraph 1 of this First Amendment to Permit No. 999 do not include reimbursement from the City to China Shipping for the costs of Alternative Maritime Power or low profile cranes. The costs of Alternative Maritime Power and low profile cranes shall be separately paid by the City or reimbursed from the City to China Shipping as set forth in §§ VIII.A.2 and VIII.A.3 of the Amended Stipulated Judgment and as set forth in Paragraphs 1 through 8 of Exhibit "A" to this First Amendment. The City shall compensate China Shipping for any additional cost of AMP power above the cost of power supplied by vessel generators based on the prevailing cost of fuel on the date of the vessel's arrival. These costs shall include the costs of connecting and disconnecting the vessel to the power source and DWP charges for power and service. The City agrees to reimburse China Shipping for differential AMP electricity costs. Five years from the effective date of this First Amendment and every five years thereafter, the Parties shall review the compensation for the differential costs between AMP electricity costs and fuel costs and shall agree to adjust that compensation to reflect any changes in the industry standard or regulations for air emission controls. In no event shall the compensation exceed the cost of AMP power. The City shall also compensate China Shipping for the cost of equipping, retrofitting, or modifying China Shipping's vessels to use AMP, up to the limits provided in Exhibit "A", attached hereto. The parties have not reached agreement concerning the extent to which the City shall reimburse China Shipping for the differential costs of low profile cranes under Exhibit "A" and hereby agree to defer resolution of this issue to a future agreement.
4. Notwithstanding any deadlines for providing the premises at Berths 100-102 to China Shipping set forth in Permit No. 999 and notwithstanding any penalties for exceeding those deadlines set forth in Permit No. 999, including, but not limited to, all completion deadlines set forth in Section 6(a) of Permit No. 999 and all "credits" set forth pursuant to Section 1(h) of Permit No. 999, it is agreed that each of those deadlines and penalties shall be amended as follows:

- a. "In the event that City cannot deliver 18 of the 35 acres of backlands included in the "Phase II" premises described in the first paragraph of subsection (a)(2) of Section 6 of Permit No. 999 within 24 months of the date that the Environmental Impact Statement/Environmental Impact Report for Berths 100-102 is certified by the Board of Harbor Commissioners (and subject to extension of the 24-month period as provided in Section 6(e) of Permit No. 999), Tenant shall be entitled to a credit in the amount of \$25,000 per year per acre, up to a total of 18 acres City may fail to provide to Tenant by such date, for every year thereafter until the total 18 acres are delivered for Tenant's use, up to a limit of \$1,350,000 of total credits. If the City cannot deliver the 925-foot northerly wharf extension included in such "Phase II" Premises, within such 24-month period (subject to Permit No. 999, Section 6(e), the Tenant's obligation to pay TEU charges or MAG for the 18 acres or portion thereof delivered pursuant to Phase II as described above shall be modified to require Tenant to pay rent for such portion of the 18 acres as may have been delivered at the rate of \$3,600.00 per acre per month until delivery of such wharf. Any such rent shall be subject to any tariff adjustments in the same manner as set forth in Section 3(c)(2) of Permit 999. In the event that the City cannot deliver the additional 17 acres included in such Phase II Premises, within 34 months of the date that the Environmental Impact Statement/Environmental Impact Report for Berths 100-102 is certified by the Board of Harbor Commissioners (and subject to extension of the 34-month period as provided in Section 6(e) of Permit No. 999), the Tenant shall be entitled to a credit in the amount of \$25,000.00 per acre per year up to a total of 17 acres City may fail to provide to Tenant by such date for every year thereafter until the total 17 acres are delivered for Tenant's use up to a limit of \$1,275,000. If the City cannot deliver the 925-foot northerly wharf extension within such 34-month period (subject to Permit No. 999, Section 6(e)), Tenant's obligation to pay rent for such portion of the 17 acres as may have been delivered shall be modified to require Tenant to pay \$3,600.00 per acre per month for the 17 acres until delivery of such wharf. Any such rent shall be subject to any tariff adjustments in the same manner as set forth in Section 3 (c)(2) of Permit 999. In the event that the City cannot deliver the 375-foot southerly wharf extension included in such Phase II Premises, within 48 months of the date that the Environmental Impact Statement/ Environmental Impact Report for Berths 100-102 is certified by the Board of Harbor

Commissioners (and subject to extension of the 48-month period as provided in Section 6(e) of Permit No. 999), the Tenant shall be entitled to a credit of \$875,000 per year until delivery of such wharf extension up to a limit of \$2,625,000 in such credit. Any credits or rent modifications adopted or provided pursuant to this Paragraph shall be determined at the end of each year following the elapse of the applicable 24-month, 34-month or 48-month period, and shall be decreased proportionately to reflect any fraction of the 35 acres delivered to Tenant and any portion of the year any of such acreage is available for Tenant's use. Tenant's credit may be applied to any monies payable to City by Tenant."

- b. The last paragraph of subsection (h) of Section 1 of Permit No. 999 is revised to provide as follows:

"In the event that City cannot deliver at least 24 additional acres for Tenant's preferential use within 48 months of the date that the Environmental Impact Statement/Environmental Impact Report for Berths 100-102 is certified by the Board of Harbor Commissioners (and subject to extension of the 48-month period as provided in Section 6(e) of Permit No. 999), Tenant shall be entitled to a credit in the amount of \$25,000 per year per acre, up to a total of 24 acres City may fail to provide to Tenant by such date, for every year thereafter until the total 24 acres are delivered for Tenant's use, up to a limit of \$1,800,000 of total credits. Such credit shall be determined at the end of each year following the elapse of the 48-month period, and shall be decreased proportionately to reflect any fraction of the 24 acres delivered to Tenant and any portion of the year any of such acreage is available for Tenant's use. Tenant's credit may be applied to any monies payable to City by Tenant."

- c. The credits set forth above in this Section 4 of this First Amendment shall be the sole and exclusive legal remedy available to Tenant for any future City delays in providing the premises defined in Permit No. 999.
5. An amended rate schedule is attached to this First Amendment to Permit No. 999 as Exhibit "B-2", which exhibit shall replace and shall be substitute for the rate schedule previously attached to Permit No. 999 as Exhibit "B". The Exhibit "B-2" rate schedule is subject to tariff adjustments that occur after May 1, 2005 pursuant to Section 3(c) of this Permit.

6. The "Nonexclusive Berth Assignment Agreement No. 77-81" for Berth 100 is superseded by Permit No. 999 on the effective date of this First Amendment to Permit No. 999 (which shall be the date of City Council approval of this First Amendment), and the "Occupancy Date" as used in Permit No. 999 shall be the effective date of this First Amendment to Permit No. 999.
7. The TEU charge for the year 2005 shall be recalculated based on the rates set forth in Exhibit B-2 to this First Amendment and on TEU volume at the terminal for the entire year of 2005, commencing January 1, 2005. If a tariff adjustment occurs during the year 2005, the TEU charge to be applied shall be determined pursuant to Section 3(d)(4) of this Permit.
8. Subsections (2) ("MAG for the First 5-Year Period") and (3) ("Discount on MAG and TEU Charges for Construction Impacts") of Section 3(e) ("Minimum Annual Guarantee") of Permit No. 999 are revised to provide as follows. The rates set forth below are subject to Tariff adjustments that occur after May 1, 2005 pursuant to Section 3(c) of this Permit:

"(2) MAG for the First 5-Year Period. For the first 5-Year Period, the MAG shall be One Hundred Forty-nine Thousand Fifteen Dollars (\$149,015), based upon the actual acreage of the Terminal Area, provided that the per acre amount shall at all times be subject to increase in accordance with any increase in the N.O.S. rate, pursuant to subsection (c)(2) of this Section 3, as illustrated in Exhibit "C" to Permit No. 999.

"(3) Discount on MAG and TEU Charges for Construction Impacts. It is recognized by and between the parties to this Agreement that the construction to be undertaken by City pursuant to Section 6 for delivery of Area 2 will result in significant interference with Tenant's operations, the MAG payable by Tenant pursuant to subsection (e)(2) of this Section 3 during the period between the Occupancy Date through the date of delivery of Area 2 shall be reduced from \$149,015 per acre to \$131,173 per acre, or, if the applicable efficiency bracket for such period averages not less than 3,500 TEUs per annum, Tenant shall be allowed a credit of \$17,842 per acre per year of the total TEU charges paid pursuant to this Section 3, provided that the per acre amount of the credit shall at all times be subject to increase in accordance with any increase in the N.O.S. rate, pursuant to

subsection (c)(2) of this Section 3, as illustrated in Exhibit "C" to Permit No. 999. "

This adjustment in the MAG or the credit on TEU charges shall be prorated to reflect any period of less than one (1) year they shall remain in effect. For purposes of meeting the qualifying minimum average throughput of 3,500 TEUs per acre per year, 'discounted empties,' as defined above in subsection (d)(5) of this Section 3, shall be disregarded.

- 9. The premises, including the additional acreage and wharves identified in Paragraph 4 of this First Amendment, are depicted in the diagram attached hereto as Exhibit "C" to this First Amendment, which is hereby substituted for Exhibits "A" and "A-1" to Permit No. 999.

Except as amended herein, all remaining terms and conditions of Permit No. 999 shall remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Permit No. 999 on the date to the left of their signatures.

Date: 5. 21, 2005

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners  
By [Signature]  
Interim Executive Director  
Attest \_\_\_\_\_  
Secretary

Date: \_\_\_\_\_, 2005

CHINA SHIPPING HOLDING COMPANY, LTD.  
By [Signature]  
[Print Name and Title]  
Attest \_\_\_\_\_  
[Print Name and Title]

APPROVED AS TO FORM  
June 3, 2005  
ROCKARD J. DELGADILLO, City Attorney

By: [Signature]

WLW:jpm  
05/17/05

**EXHIBIT B**  
**AGREEMENT TO SUPPLY AND TO USE ALTERNATIVE**  
**MARITIME POWER AND LOW PROFILE CRANES**

The Parties to this Agreement are the Port of Los Angeles ("the Port"), the City of Los Angeles, China Shipping Holding Co., (North America), Ltd., ("China Shipping"), and the Natural Resources Defense Council, Inc. ("NRDC"), on its own behalf and on behalf of petitioners in the action entitled Natural Resources Defense Council, Inc., et al. v. City of Los Angeles, et al., Los Angeles Superior Court Case No. BS 070017. The Parties agree as follows:

1. The Port shall pay the cost of equipping China Shipping vessels to use Alternative Maritime Power ("AMP") up to the aggregate cost of \$5 million. Subject to the opening of Phase I of the Terminal assigned to China Shipping pursuant to Permit No. 999, including Berths 97-100, China Shipping shall retrofit four vessels equipped to operate on AMP at the Port and use AMP for hoteling pursuant to the following schedule:
  - a. By August 31, 2004, China Shipping shall retrofit two vessels, which vessels shall be dedicated to service of the Port of Los Angeles and shall call at Berths 97-109 ("the Terminal") and use AMP while docked at berth;
  - b. During the period from August 31, 2004 through January 1, 2005, a minimum of 30% of ship calls, on average, at the Terminal shall utilize AMP while at berth;
  - c. By January 1, 2005, China Shipping shall retrofit a total of three vessels, which vessels shall be dedicated to service of the Port of Los Angeles and shall call at the Terminal and use AMP while docked at berth;



- d. During the period from January 1, 2005 through July 1, 2005, a minimum of 60% of ship calls, on average, at the Terminal shall utilize AMP while at berth;
- e. By March 31, 2005, China Shipping shall retrofit a total of four vessels, which vessels shall call at the Terminal and use AMP while docked at berth;
- f. For every twelve-month-period commencing July 1, 2005, a minimum of 70% of ship calls, on average, at the Terminal shall utilize AMP while at berth.
- g. If for reasons of a vessel emergency or vessel casualty, a China Shipping AMP-equipped vessel is out of service and unavailable for use at the Terminal, the percentage of AMP calls required at the Terminal shall be reduced at an annual rate of 10% for the period of unavailability. In this case, China Shipping shall provide notice to the parties of the emergency or casualty and the reasons therefore.

2. China Shipping may equip additional vessels for AMP use, such to be paid for by the Port up to the \$5 million aggregate cost. China Shipping may commence use of Phase I of the Terminal, as defined in the Amended Stipulated Judgment, subject to the terms and conditions of this Agreement. Subject to the feasibility provisions in Paragraph 5 herein, the Port shall compensate China Shipping and any other user of the Terminal affiliated with China Shipping, for any additional cost of AMP power above the cost of power supplied by vessel generators based on the prevailing cost of fuel on the date of the vessel's arrival. These costs shall include the additional costs of connecting and disconnecting the vessel to the power source. The Port shall compensate China Shipping for the additional cost of electricity for AMP use above the cost of power supplied by the vessel generators based upon the prevailing industrial charge for electricity and the prevailing cost of fuel on the date of that vessel's arrival ("Excess AMP

Cost") up to but not to exceed \$3 million per calendar year for the terminal. This calculation of Excess AMP Cost shall exclude the cost of equipping China Shipping vessels to use AMP subject to the aggregate cost cap of \$5 million referenced in numbered paragraph 1 above and the costs of connecting and disconnecting the vessels and power source. If the Excess AMP Cost exceeds \$3 million, the percentage requirements of AMP usage pursuant to paragraph 1 shall be reduced in an amount so that the Excess AMP Cost is \$3 million per calendar year; in this event, the Port shall not be responsible for Alternative Air Emissions Mitigation.

3. The Port shall make good faith efforts to ensure that the infrastructure to provide AMP, including the barge delivering AMP ("AMP Infrastructure"), is available for use upon arrival by any China Shipping AMP-equipped vessel that calls at the Terminal. China Shipping shall give the Port 48 hours advanced notice that an AMP-equipped vessel will be arriving at the Terminal. If an AMP-equipped China Shipping vessel calls at the Terminal and China Shipping has provided the Port with the required advance notice of that vessel call, but the AMP Infrastructure is not available to provide electric power to the ship, then the vessel may use its on-board generators for power until such time as AMP becomes available. If an AMP-equipped vessel runs its on-board generators at the Terminal as a result of the lack of availability of AMP under this paragraph, the ship call will still count as an AMP call for purposes of calculating the percentage AMP under paragraph 1.

4. China Shipping shall be entitled to use its AMP-equipped vessels at other terminals within the port, including those terminals that are not equipped for AMP use. China Shipping may count a vessel call by a China Shipping vessel at a berth other than the Terminal as an AMP

call at the Terminal for purposes of calculating the percentage AMP usage under paragraph 1 if the China Shipping vessel calling at a berth other than the Terminal is equipped with the necessary AMP connection and uses AMP while at berth. Notwithstanding paragraph 3 of this Agreement, if the AMP Infrastructure is unavailable for a ship calling at another berth or if such ship does not use AMP while at berth for any reason, that ship call shall not count for purposes of calculating the percentage AMP usage under paragraph 1.

5. If AMP use at the Terminal is determined by mutual agreement of the Parties or by the Arbitrator to be infeasible within the meaning of this Agreement, China Shipping shall not be required to use AMP at the Port under this Agreement. The use of AMP may be deemed infeasible only in the event that the use of AMP, and not the negligence of China Shipping, the Port, or any of their agents or contractors, causes one or more of the following problems, which problem(s) cannot be remedied through reasonable modifications to AMP or other reasonable measures: (a) a significant and unreasonable risk of injury or death to vessel, stevedore, terminal or other personnel; (b) a significant and unreasonable risk of damage to the vessel, cargo, or terminal property; (c) a violation of a Federal, State or local law or regulation that is not de minimis; (d) significant and recurring loss of power to the vessel that unreasonably affects China Shipping's operations; (e) significant and recurring interference with vessel loading and unloading operations that unreasonably affects China Shipping's operations; or (f) significant and recurring delays in vessel arrivals, commencement of cargo operations, or vessel departures as a result of the act of connecting or disconnecting the vessel to or from the AMP that unreasonably affects China Shipping's operations. The Parties agree that costs related to the

categories above may be considered in the determination of infeasibility. The Parties further agree that this feasibility test shall have no effect on the Port's determinations under CEQA.

6. If a determination of AMP infeasibility is made by mutual agreement of the Parties or by the Arbitrator pursuant to this Agreement, the Parties shall meet and confer concerning appropriate alternative air emissions mitigation and, if the Parties cannot reach agreement, any Party may submit the matter for binding arbitration pursuant to the arbitration procedures of the Amended Stipulated Judgment. The plan for Alternative Air Emissions Mitigation shall be adopted within 180 days of the Arbitrator's determination of infeasibility, if any, with implementation of the plan as soon as practicable thereafter. The Parties agree that the Port's obligation for Alternative Air Emissions Mitigation shall be up to but not exceed \$3.0 million annually. The Port and China Shipping shall cooperate in an effort to achieve on a yearly basis equivalent amounts of emissions reductions as would have been achieved by China Shipping's use of AMP at the Terminal at full capacity assuming 70% of the ships docked at the Terminal use AMP, but that the costs of this Alternative Air Emissions Mitigation shall be up to but not exceed \$3.0 million annually. The Alternative Air Emissions Mitigation shall be in addition to (1) the mitigation measures committed to in Section VIII.A of the Amended Stipulated Judgment; and (2) the mitigation measures adopted to mitigate an air quality impact of the China Shipping Project other than from ship hoteling.

7. The four existing conventional gantry cranes presently at the Terminal may remain and be operated at the Terminal. If Berth 102 is constructed, then prior to commencing operations at Berth 102 China Shipping shall cause the installation on Berth 102 of two "low

profile" cranes that are designed to reduce visual impact. If the total price of these two cranes exceeds \$25 million, including but not limited to design costs of the supplier and its subcontractor, then the Port or China Shipping may submit to the Arbitrator the question of whether that cost makes those cranes infeasible. Low profile cranes include cranes that are designed to reduce visual impact by the use of a horizontal boom that does not need to be raised up when the crane is not in use such that the overall crane height is reduced to 185 feet or less when the crane is not in use and mobile harbor cranes. The Port agrees to pay all costs of the purchase, preparation, delivery, maintenance and repair (including planning, inspection, consulting and design) of the two low profile cranes for Berth 102 in excess of what conventional gantry cranes would cost, subject to the condition that the low profile cranes comply with the Specification issued by the Port dated March 11, 2003, Addendum 1, and technical deviations submitted by ZPMC, as modified by the letter from ZPMC to the Port dated April 14, 2004, including but not limited to the cost estimate of \$9.9 million per crane. The Port shall take, and agrees to pay for, all measures necessary to ensure that the load bearing capability of the Phase II terminal will be sufficient to allow the installation, and normal and safe operation of the low-profile cranes. If Berth 102 is not utilized as a berth for container operations, then the Port shall bear all costs of transport and storage and, if applicable, disposal of the low profile cranes. At its option and sole discretion, the Port may purchase the cranes at their fair market value. If the cranes are not utilized at Berth 102 pursuant to this paragraph, and use of the cranes is feasible, the Port shall cause the low-profile cranes to be utilized at another terminal. If additional cranes are purchased for use at Berth 102, they shall be low profile cranes unless low profile cranes are determined to be infeasible as provided in paragraphs 8 and 9 below.

8. If the use of the low profile cranes at Berth 102 is determined by mutual agreement of the parties or by the Arbitrator to be infeasible within the meaning of this Agreement, China Shipping shall not be required to use the low profile cranes on Berth 102. The use of low profile cranes may be deemed infeasible only if: (1) the use of the low profile cranes does not meet standard industry requirements for the movement of containers between the vessels and the Terminal; (2) the infeasibility is not the result of the negligence or failure of China Shipping, the Port, or any of their agents, limited partners or contractors; and (3) the infeasibility cannot be remedied through reasonable modifications to the low-profile cranes or related infrastructure. The Parties agree that costs related to these categories may be considered in the determination of infeasibility. In no event shall the low profile cranes' technical or operational requirements exceed those of the existing four cranes used at Berths 97-100. The Parties agree that this feasibility test shall have no effect on the Port's determinations under CEQA.

9. Any dispute among the parties arising out of or related to the feasibility of AMP use or use of low-profile cranes, a breach of the schedule and/or percentages of AMP use pursuant to paragraph 1 above, or Alternative Air Emissions Mitigation that cannot be resolved by mutual agreement of the parties shall be referred to the Arbitrator, selected by the process described in Section VII of the Amended Stipulated Judgment in the above-mentioned action, for determination according to the following procedures and standards; arbitration regarding the feasibility of AMP and Alternative Air Emissions Mitigation shall be binding:

a. Any party may, at any time, demand arbitration pursuant to this Agreement regarding (1) the feasibility of AMP based solely on the conditions described in paragraphs 5(a) through (c) hereof, (2) application of the cap for payment of excess AMP costs pursuant to

paragraph 2 above, (3) a breach of the schedule and/or percentage of AMP use pursuant to paragraph 1 above, or (4) if AMP is determined to be infeasible in accordance with the terms of this Agreement, Alternative Air Emissions Mitigation pursuant to paragraph 6 above.

b. No party may demand arbitration regarding the feasibility of AMP based on the conditions described in paragraphs 5(d) through 5(f), until the requirements under paragraph 9(c) have been fulfilled, unless (1) the continued use of AMP is rendered wholly and immediately ineffective over a sufficient period of time to demonstrate that the vessel cannot perform its required functions without the use of its on-board power generators, (2) where the failure is not the result of the negligence of China Shipping, the Port, or any of their agents, limited partners, or contractors, and (3) the failure cannot be remedied through reasonable modifications to AMP or other reasonable measures.

c. After a six-month period during which 60% or more of the vessels calling at the Terminal use AMP, any party may demand arbitration of any dispute regarding the feasibility of AMP based on any of the conditions described in paragraphs 5(d) through 5(f). After a three-month period of use of the low-profile cranes for the loading and unloading of containers, any party may demand arbitration of any dispute regarding the feasibility of the use of low-profile cranes based on the conditions described in paragraph 8. If the continued use of the low profile cranes is rendered wholly and immediately ineffective over a sufficient period of time (including testing) to demonstrate that the cranes cannot perform their required functions, then any party may demand arbitration at that time.

d. Any demand for arbitration of any issue under this Agreement shall be made in writing to all parties, with a copy to the Arbitrator. The demand shall include a detailed statement of the issue or issues to be presented to the Arbitrator, the grounds on which relief is

sought, and the evidence supporting such request for relief. Any other party shall have the right to respond to a demand for arbitration. Following a written demand for arbitration, the parties shall meet in an attempt to resolve any disputes regarding feasibility. All parties agree to provide within 15 days of a written request all information relevant to a determination of feasibility and, if a determination of infeasibility is made, information relevant to equivalent emissions reductions, unless the parties mutually agree to a different time limit, or the Arbitrator extends the time limit.

e. Arbitration proceedings shall commence immediately following a demand for arbitration made by any party under this agreement. An arbitration hearing shall commence on a schedule to be agreed upon by the parties or determined by the Arbitrator, but shall be held no later than sixty days following the demand for arbitration. The Arbitrator shall at all times retain the authority to issue such orders as he or she deems appropriate with respect to the time, place and manner in which the arbitration shall proceed. The parties shall be entitled to present evidence at the arbitration according to rules and procedures established by the Arbitrator. Section VII.F of the Amended Stipulated Judgment in the above-mentioned action shall apply to these arbitration proceedings.

f. The use of AMP will not be required for sixty days from the time a written demand for arbitration is made regarding the feasibility of conditions described in paragraph 5, unless the Arbitrator orders otherwise. If the use of AMP ceases during the sixty day period allowed by this subsection or by order of the Arbitrator, then the period of time during which AMP is not required shall not be considered in calculating the AMP percentage requirements set forth in paragraph 1 of this Agreement.



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**PROOF OF SERVICE BY MAIL**  
(Code Civ. Proc. secs. 1013(a), 2015.5)

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 555 West Fifth Street, Suite 3500, Los Angeles, California 90013-1024; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

**[PROPOSED] AMENDED STIPULATED JUDGMENT, MODIFICATION OF STAY, AND ORDER THEREON**

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 555 West Fifth Street, Suite 3500, Los Angeles, California 90013-1024, in accordance with Morrison & Foerster's ordinary business practices:

**Gail Ruderman Feuer, Esq.**  
**Natural Resources Defense Council, Inc.**  
**1314 Second Street**  
**Santa Monica, CA 90401**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at Los Angeles, California, this 9th day of June, 2004.

Cheryl Lawson  
(typed)



(signature)

**CHINA SHIPPING  
TEU PER ACRE RATE SCHEDULE  
FOR INITIAL FIVE YEARS**

May 5, 2005

<b>I. SLIDING SCALE</b>	<b>EFFICIENCY BRACKET</b>	<b>RATE / TEU</b>
	3,000 - 3099	\$ 51.44
	3,100 - 3199	50.38
	3,200 - 3299	49.40
	3,300 - 3399	48.49
	3,400 - 3499	47.63
	3,500 - 3599	46.83
	3,600 - 3699	46.09
	3,700 - 3799	45.39
	3,800 - 3899	44.71
	3,900 - 3999	44.10
	4,000 - 4099	43.51
	4,100 - 4199	42.96
	4,200 - 4299	42.44
	4,300 - 4399	41.94
	4,400 - 4499	41.47
	4,500 - 4599	41.03
	4,600 - 4699	40.61
	4,700 - 4799	40.21
	4,800 - 4899	39.83
	4,900 - 4999	39.48

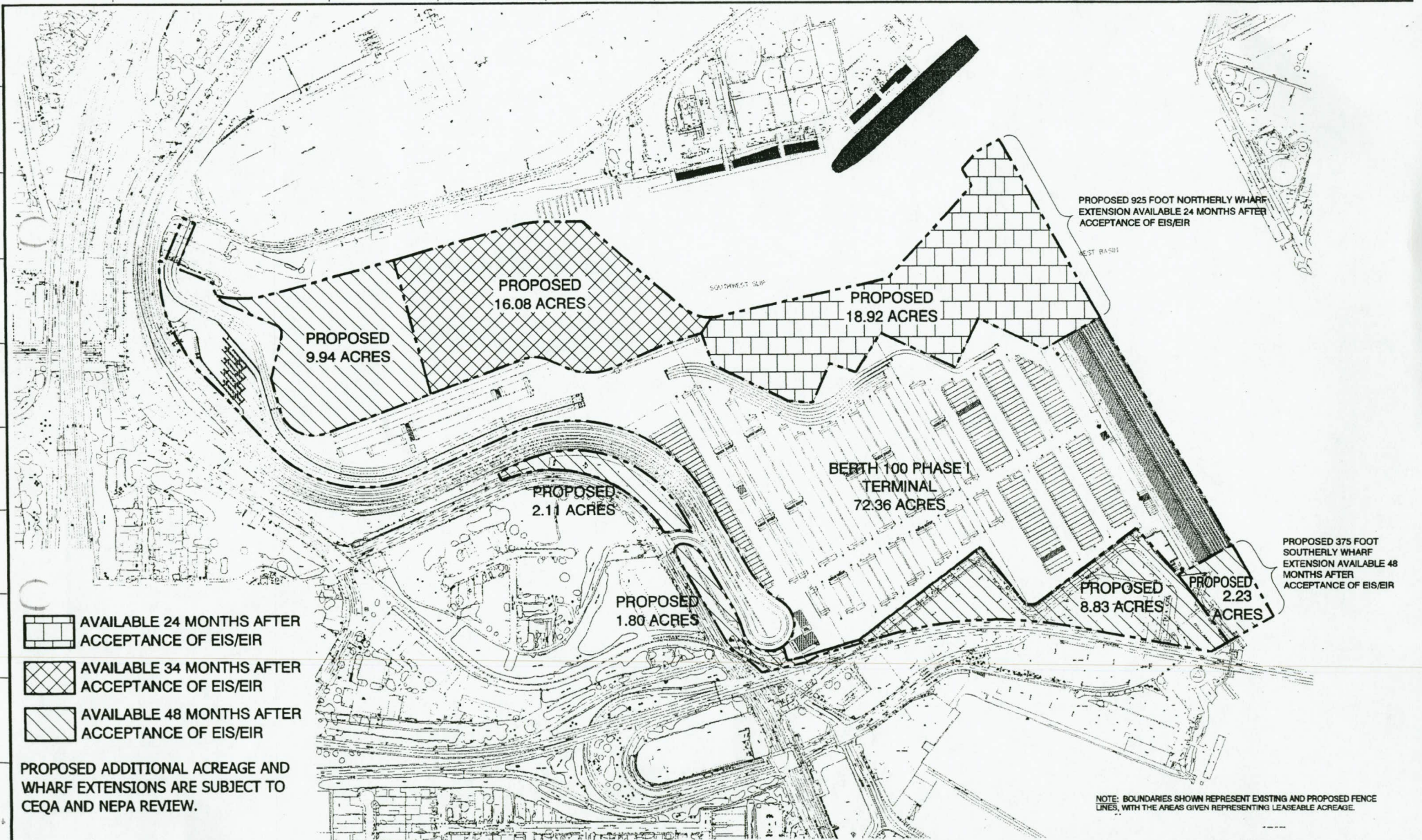
**II. INCREMENTAL TEU'S**




- TEU'S IN EXCESS OF 4,999 TEU'S PER ACRE WILL BE SUBJECT TO A TEU RATE OF \$31.48 PER TEU.

**III. TOTAL TEU CHARGES**

- TOTAL TEU CHARGES INCLUDE THE CHARGES DERIVED FROM THE EFFICIENCY BRACKET RATE PLUS CHARGES FOR INCREMENTAL TEU'S.

**EXHIBIT B-2**



-  AVAILABLE 24 MONTHS AFTER ACCEPTANCE OF EIS/EIR
-  AVAILABLE 34 MONTHS AFTER ACCEPTANCE OF EIS/EIR
-  AVAILABLE 48 MONTHS AFTER ACCEPTANCE OF EIS/EIR

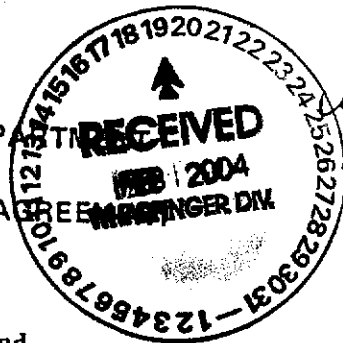
PROPOSED ADDITIONAL ACREAGE AND WHARF EXTENSIONS ARE SUBJECT TO CEQA AND NEPA REVIEW.

NOTE: BOUNDARIES SHOWN REPRESENT EXISTING AND PROPOSED FENCE LINES, WITH THE AREAS GIVEN REPRESENTING LEASABLE ACREAGE.

NO. DATE DRAWN REVISIONS -				APP'D. NO. DATE DRAWN REVISIONS -				APP'D.		SCALE: 1" = 200'		CHIEF OF DESIGN		PERMIT NO. 999	
														EXHIBIT C	
														THE PORT OF LOS ANGELES	
														DRAWING NUMBER	
														CHIEF HARBOR ENGINEER	

## Attachment 2

CITY OF LOS ANGELES HARBOR DEPARTMENT  
PORT OF LOS ANGELES  
NONEXCLUSIVE BERTH ASSIGNMENT AGREEMENT



No. 04-05

Berth Berth 100 - Backland

The General Manager of the Harbor Department of the City of Los Angeles hereby (preferentially) (secondarily) (temporarily) assigns to

whose address is

WEST BASIN CONTAINER TERMINAL LLC  
111 W. OCEAN BOULEVARD, SUITE 1610  
LONG BEACH, CA 90802

(hereinafter called "assignee") that certain wharf and/or wharf premises (hereinafter called "premises") shown on Drawing No. See Attached on file in the office of the Harbor Engineer. A copy of said drawing is attached hereto as Exhibit A.

This berth assignment shall be nonexclusive, and shall at all times be subject to the Charter of the City of Los Angeles, to Port of Los Angeles Tariff No. 3 and all amendments, supplements thereto and reissues thereof (hereinafter referred to as "Tariff No. 3"), to all orders, rules and regulations of the Board of Harbor Commissioners (hereinafter referred to as "Board"), to the ordinances of the City of Los Angeles (hereinafter referred to as "City") and the following terms, covenants and conditions:

1. The premises shall be used for the berthing and mooring of vessels owned, operated, serviced or represented by assignee, for the embarking and disembarking of passengers and their baggage, and the assembling, distributing, loading and unloading of goods, wares and merchandise on and from such vessels over, through and upon such premises and from and upon other vessels; provided, however, that the right hereby granted to use the premises for said purposes shall not be exclusive, and whenever the premises, or any part thereof, are not required in whole or in part for the use of assignee for the stated purposes, the General Manager shall have the right to and may make other assignments to any other person, firm or corporation to use such premises, or any part thereof, as provided in Tariff No. 3.
2. Assignee shall be liable for and shall pay to City, upon demand, the actual cost of all damages or repairs, other than normal wear and tear, to property owned by or in the care and custody of City caused, negligently or otherwise, by assignee, its officers, agents, employees, licensees, invitees or permittees, or by vessels owned, operated or represented by it. In the event that City chooses not to make repairs, or in the event that repairs will be delayed for any substantial period, assignee shall pay the estimated cost of repairs; provided, however, that when assignee has made a payment based on an estimate, assignee shall be billed or credited for any variance between the estimated cost and actual cost. Assignee agrees that damage to any part of the wharf or wharf fender system, fixed or floating, shall be considered as damage to the premises.
3. Assignee shall at all times keep and maintain the premises in a safe, clean, wholesome, sanitary and sightly condition and in conformance with all applicable Federal, state, regional, municipal and other laws, ordinances, rules and regulations. The appearance of the premises shall be maintained to the satisfaction of the General Manager.
4. Assignee shall, at its own cost and expense, provide all tackle, gear and labor for the berthing and mooring of vessels at the premises, and shall provide, at its own cost and expense, such appliances and employ such persons as it may require for the handling of passengers, goods, wares and merchandise thereat; provided, however, that nothing contained herein shall prevent assignee from using such appliances as may be installed by City at the premises upon the payment to City of the charges fixed therefor. Assignee shall pay all license and excise fees and occupation taxes covering the business conducted on the premises and all taxes on all property, or interests therein, of assignee in or on the premises. THE PROPERTY INTEREST, IF ANY, WHICH MAY BE CREATED BY THIS ASSIGNMENT MAY BE SUBJECT TO PROPERTY TAXATION AND ASSIGNEE MAY BE SUBJECT TO THE PAYMENT OF PROPERTY TAXES LEVIED ON SUCH INTEREST.
5. Assignee agrees to furnish all statements, manifests, reports and other supporting documents and to pay the total amount of all charges accruing at the premises pursuant to and at or before the time provided in Tariff No. 3.

REA 2 YANG MING - SPACE ASSIGNMENTS



costs and judgments of any kind and nature whatsoever, including expenses incurred in defending against legal actions, for death of or injury to persons or damage to property, including property owned by or under the care and custody of City, and for civil fines and penalties, that may, in whole or in part, arise from or be caused, directly or indirectly, by:

- (a) Any dangerous, hazardous, unsafe or defective condition of, in or on the premises, of any nature whatsoever, which may exist by reason of any act, omission, or neglect of, or by any use or occupation of the premises by, assignee, its officers, agents, employees, licensees, permittees, or invitees;
- (b) Any operation conducted upon or any use or occupation of the premises by assignee, its officers, agents, employees, licensees, permittees, or invitees, under or pursuant to the provisions of this assignment or otherwise;
- (c) Any act, omission or negligence of assignee, its agents, officers, employees, licensees, permittees, or invitees, regardless of whether any act, omission or negligence of City, its officers, agents or employees, contributed thereto;
- (d) Any failure of assignee, its officers, agents or employees, to comply with any of the terms or conditions of this assignment or any applicable Federal, state, regional or municipal law, ordinance, rule or regulation; or
- (e) The conditions, operations, uses, occupations, acts, omissions, or negligence referred to in (a), (b), (c) and (d) above, existing or conducted upon or arising from the use or occupation by assignee, its agents, officers, employees, licensees, permittees or invitees, of any other area within the Harbor District, as defined in the Charter of City, including the approaches, channels, turning basins and other waters.

The term "person", as used in this paragraph 12 and paragraph 13 shall include, but not be limited to, officers and employees of assignee.

Assignee hereby waives any right to limit its liability by abandonment of a wreck or otherwise under any Wreck Act or Limitation of Liability Act.

13. Assignee shall procure and maintain at all times during the life of this assignment at its expense the following insurance:

(a) Broad form comprehensive public liability and property damage insurance written by an insurance company authorized to do business in the State of California and rated AAA or better in Best's Insurance Guide, with assignee's normal limits of liability but not less than five hundred thousand dollars (\$500,000) for injury or death to one person and one million dollars (\$1,000,000) for injury or death to more than one person arising out of each accident or occurrence and five hundred thousand dollars (\$500,000) for property damage for each accident or occurrence. Said limits shall be without deduction, provided that the General Manager may permit a deductible amount in those cases where, in his judgment, such a deductible is justified by the net worth of assignee. Such policy shall contain an endorsement substantially as follows:

"(i) Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that the City of Los Angeles, its Board of Harbor Commissioners, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all operations, uses, occupations, acts and activities of the insured under Berth Assignment No. \_\_\_\_\_, and under any amendments, modifications, extensions or renewals of said berth assignment regardless of whether such operations, uses, occupations, acts and activities occur on the premises or elsewhere within the Harbor District, and regardless of whether liability is attributable to the insured, or a combination of the insured and additional insured.

"(ii) The policy to which this endorsement is attached shall not be cancelled or reduced in coverage until after the Board and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to P.O. Box 151, San Pedro, California 90733;

"(iii) The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by City is excess coverage;

"(iv) The inclusion of more than one named insured under this policy shall not operate to impair the rights of one insured against another insured and the coverages afforded by this policy shall apply as though separate policies had been issued to each insured. The inclusion of more than one insured shall not, however, operate to increase the limit of liability;

"(v) Notice of occurrences of claims under the policy shall be made to [the name and address of the person to be notified]."

(b) In addition to and concurrently with the aforesaid insurance coverage, assignee shall also secure and maintain, either by an endorsement thereto or by a separate policy, fire legal liability insurance with a minimum limit of one hundred thousand dollars (\$100,000) covering legal liability of assignee for damage or destruction to the works, structures and improvements owned by City; provided, that said minimum limit of liability shall be subject to adjustments by General Manager to conform with the deductible amount of the fire insurance policy maintained by Board, with waiver of subrogation in favor of assignee so long as permitted by Board's fire insurance policy, upon thirty (30) days' prior written notice thereof to assignee at any time during the term of this berth assignment. The provisions of subparagraph (a) of this paragraph 13 relating to the insurer and endorsement shall apply to the fire legal liability coverage, except that City shall not be an additional named insured with respect to such coverage.

(c) Two certified copies of each policy shall be furnished to Board and the form of such policy shall be subject to the approval of the City Attorney of City. The City Attorney may accept certificates evidencing the required insurance coverage in lieu of the policies.

(d) At least sixty (60) days prior to the expiration of each policy, assignee shall furnish to Board a certificate or certificates showing that the policy has been renewed or extended or, if new insurance has been obtained, assignee shall comply with subsection (c) hereof. If assignee neglects or fails to submit copies thereof or certificates as required above, Board may, at its option and at the expense of assignee, obtain such insurance for assignee.

(e) The General Manager, at his discretion, based upon recommendation of independent insurance consultants to City, may require an increase or decrease in the amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to assignee.

14. Assignee shall report in writing to the General Manager, within fifteen (15) days after assignee, its officers or managing agents, have knowledge thereof, any and all accidents or occurrences involving death of or injury to persons or damage in excess of one thousand dollars (\$1,000) to property occurring on said premises or other premises in the Harbor District used or occupied by it without express written authorization of Board or General Manager, which may arise from or be caused by (a) the condition of structures or facilities owned by City on the premises or (b) conditions or occurrences which may give rise to claims against, or liability to others on the part of City referred to in the provisions of clauses (b), (c), (d), or (e) of paragraph 12 hereof. The report shall contain: (1) The name and address of each person involved, (2) a general statement as to the nature and extent of the injuries or damage, (3) the date and hour of the accident or occurrence, (4) the names and addresses of known witnesses, and (5) such other information relative to such accident or occurrence as may be in the possession of or known to assignee, its officers or managing agents.

15. No additions, alterations or repairs shall be made by assignee, its officers, agents or employees, to the premises or to any of the buildings, structures or improvements located thereon and owned by City. No facilities, equipment or appliances, including space heaters, shall be installed or located on the premises or in or about any building, structure or improvement located thereon, until and unless a permit has first been obtained from the Chief Harbor Engineer. When so installed or located, such facilities, equipment or appliances must conform in all respects to all applicable Federal, state or municipal building, fire safety, environmental and other laws, ordinances, rules and regulations. The provisions of this paragraph requiring that a permit be obtained from the Chief Harbor Engineer shall not apply to office equipment and furniture. A permit from the Chief Harbor Engineer shall not be required for cargo, cargo-handling equipment or rolling equipment of assignee if assignee has a valid cargo-handling permit issued by the General Manager.

16. Upon acceptance of this assignment assignee shall file with the General Manager a statement in writing containing the names of all vessels represented by assignee which it anticipates will be berthing or mooring at the premises, together with the names and addresses of the persons, firms or corporations owning or operating said vessels, and shall annually file with the General Manager supplemental statements in writing showing any deletions from or additions to such statement.

17. Unless otherwise provided for herein, assignee shall pay all charges for services furnished to the premises or used in connection with its occupancy, including but not limited to heat, gas, power, telephone, water, light and janitorial services, and pay all deposits, connection fees, charges and meter rentals required by the supplier of any such service, including City.

18. The General Manager and any duly authorized representatives shall have the right to enter upon the premises and improvements constructed by assignee at any and all reasonable times during the term of this assignment for the purpose of determining compliance with its terms and conditions or for any other purpose incidental to the rights of City. The right of inspection reserved hereunder shall impose no obligation upon City to make inspections to ascertain the condition of the premises and shall impose no liability upon City for failure to make such inspections. By reserving the right of inspection, City assumes no responsibility or liability for loss or damage to the property of assignee or property under the control of assignee whether caused by fire, water or other causes, nor does City assume responsibility for any shortages of cargo handled by assignee at the premises.



19. Assignee shall not erect or display, or permit to be erected or displayed, on the premises, or upon works, structures and improvements made by assignee, any advertising matter of any kind, including signs, without the prior written consent of General Manager. Assignee shall post, erect and maintain on the premises such signs as General Manager may direct.

20. This assignment is granted pursuant to an application filed by assignee with the General Manager. If the application or any of the attachments thereto contain any material misstatement of fact, the General Manager may cancel this assignment.

21. Assignee agrees not to discriminate in its employment practices against any employee or applicant for employment because of the applicant's race, religion, national origin, ancestry, sex, age or physical handicap. All subcontracts awarded under or pursuant to this assignment shall contain this provision.

22. It is hereby understood and agreed that the parties to this assignment have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of the Harbor Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this assignment. Notwithstanding any other provision of this assignment, it is further understood and agreed that if such a financial interest does exist at the inception of this assignment, the General Manager may immediately terminate it by giving written notice thereof.

23. If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of or based upon this assignment, including but not limited to the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to recovery of its costs and reasonable attorneys' fees, including the reasonable value of the services rendered by the Office of the City Attorney or house counsel of assignee, if any.

24. In all cases where written notice is to be given under this assignment, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to City shall be addressed to General Manager, Los Angeles Harbor Department, P. O. Box 151, San Pedro, California 90733, and notice to assignee shall be addressed to it at the address set forth hereinabove. Nothing herein contained shall preclude or render inoperative service of such notice in the manner prescribed by law.

25. Assignee hereby irrevocably appoints The Prentice-Hall Corporation System, Inc., at 5225 Wilshire Boulevard, Los Angeles, California 90036, as its agent for the purpose of service of process in any suit or proceeding which may be instituted in any court of the State of California or in any Federal court in said State by the City which arises out of or is based upon this assignment, and delivery to such agent of a copy of any process in any such action shall constitute valid service upon assignee. It is further expressly agreed, covenanted and stipulated that if for any reason service of such process upon such agent is not possible, then in such event assignee may be served with such process in or out of this State in any manner authorized by the California Code of Civil Procedure. It is further expressly agreed that assignee is amenable to the process so served, submits to the jurisdiction of the court so acquired, and waives any and all objection and protest thereto. All costs in connection with such appointment shall be borne by City.

26. No waiver by either party at any time of any of the terms, conditions, covenants of this assignment shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the proper party.



27. Any default in assignee's obligation to make payments to City under the terms of any other berth assignment, lease, permit or other agreement, when such default involves the sum of five hundred dollars (\$500) or more, shall constitute a default on the part of assignee with respect to this assignment.

28. The following numbered paragraphs, to wit: \_\_\_\_\_ are deleted and are not to be considered as constituting a part of this assignment, and they are so marked.

29. There is attached to this assignment an addendum consisting of numbered paragraphs 30 to 31 inclusive, the provisions of which paragraphs are made a part of this assignment as though set forth herein in full. [If no addendum is attached, this paragraph 29 shall be deleted, and so marked.]

Effective \_\_\_\_\_, 19\_\_\_\_.

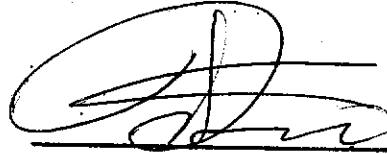
CITY OF LOS ANGELES HARBOR DEPARTMENT

  
General Manager  


ACCEPTANCE

The undersigned assignee hereby accepts the foregoing assignment and agrees to abide and be bound by and to observe each and every of the terms and conditions thereof, including those set forth in the addendum, if any, and excluding those marked as being deleted. Assignee acknowledges that it has received a copy of Tariff No. 3, has read it, and agrees to be bound by all of its terms and conditions.

Dated: \_\_\_\_\_, 19\_\_\_\_.



Assignee

(SEAL)

By \_\_\_\_\_

President

Attest: \_\_\_\_\_

Secretary

Approved as to Form

\_\_\_\_\_, 19\_\_\_\_

JAMES K. HAHN, City Attorney

By \_\_\_\_\_

MUTUAL TERMINATION

It is mutually agreed that this assignment is revoked and shall no longer have any force or effect from and after \_\_\_\_\_, 19\_\_\_\_.

CITY OF LOS ANGELES HARBOR DEPARTMENT

\_\_\_\_\_  
General Manager

\_\_\_\_\_  
Assignee

By \_\_\_\_\_

President

Addendum to Temporary Berth Assignment No. 04-02  
Between the City and West Basin Container Terminal LLC

30. Assignee understands that City has adopted Tariff No. 4 which supercedes Tariff No. 3 and that all references in this temporary assignment to Tariff No. 3 shall be deemed to refer to Tariff No. 4.  
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//// 31. This Agreement shall not affect the claims, rights, obligations or liabilities of either China Shipping Holding Company, Ltd. or the City of Los Angeles with respect to Permit No. 999. The parties agree that the execution of this Agreement has no legal bearing or effect upon the "Occupancy Date" defined in Permit No. 999.  
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SUPPLEMENT NO. 1 TO  
NONEXCLUSIVE PREFERENTIAL BERTH ASSIGNMENT NO. 04-05

SPACE ASSIGNMENT

WEST BASIN CONTAINER TERMINAL LLC

assignee, is hereby granted a Space Assignment to use the following designated area on the premises described in the abovementioned Berth Assignment, to wit: 24,829 sq. ft. (0.57 acres) of backland area at Berth 100 to be used as follows: 2,880 sq. ft. for a Marine Ops Building, and 864 sq. ft. for a Crane Maintenance Building @ \$1.23 per sq.ft. for Class A office buildings; the remaining 21,085 sq. ft. of uncovered, paved land @ \$0.16 per sq. ft. to be used for parking.

WEST BASIN CONTAINER TERMINAL LLC WILL USE THESE AREAS AT NO CHARGE

This Space Assignment shall begin on January 1, 2004 and continue for a minimum of twenty-nine (29) consecutive days thereafter, unless cancelled by the Executive Director upon five (5) days' prior notice in writing to assignee. Either the Executive Director or assignee may cancel this Space Assignment at any time after thirty (30) days from its effective date by giving to the other party five (5) days' prior written notice.

This Space Assignment is a supplement to and a part of the abovementioned Berth Assignment and shall be held by assignee subject to the provisions of Port of Los Angeles Tariff No. 4 as amended, and all of the terms, conditions and provisions contained in the abovementioned Berth Assignment.

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


CITY OF LOS ANGELES HARBOR DEPARTMENT

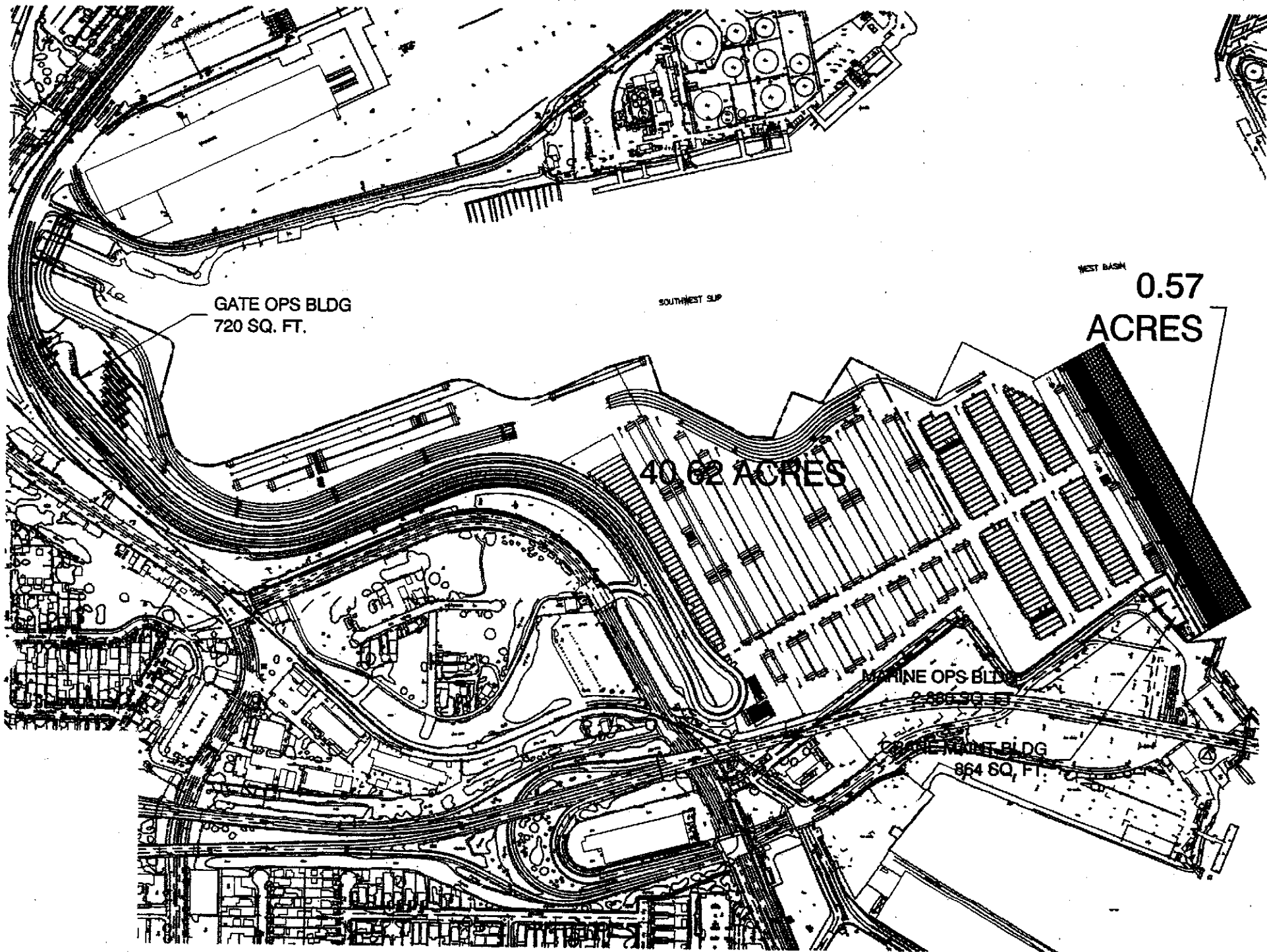
BY   
Executive Director

RECOMMENDED BY:

  
Chief Wharfinger

The undersigned assignee hereby accepts the foregoing Space Assignment and agrees to abide and be bound by and to observe each and every of the terms and conditions thereof.

  
Assignee



GATE OPS BLDG  
720 SQ. FT.

SOUTHWEST SLIP

WEST BASH  
0.57  
ACRES

40.62 ACRES

MARINE OPS BLDG  
2,886 SQ. FT.

CORP. MAINT. BLDG  
864 SQ. FT.

*1-23-04*

CITY OF LOS ANGELES HARBOR DEPARTMENT  
PORT OF LOS ANGELES  
NONEXCLUSIVE BERTH ASSIGNMENT AGREEMENT

No. 04-02

Berth 100

The General Manager of the Harbor Department of the City of Los Angeles hereby (preferentially) (secondarily) (temporarily) assigns to

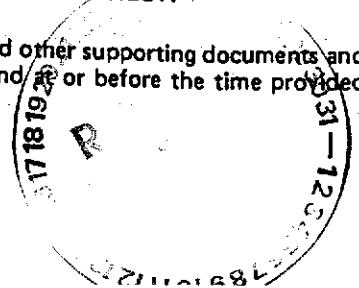
whose address is

WEST BASIN CONTAINER TERMINAL LLC  
111 W. Ocean Boulevard, Suite 1610  
Long Beach, CA 90802

(hereinafter called "assignee") that certain wharf and/or wharf premises (hereinafter called "premises") shown on Drawing No. See attached on file in the office of the Harbor Engineer. A copy of said drawing is attached hereto as Exhibit A.

This berth assignment shall be nonexclusive, and shall at all times be subject to the Charter of the City of Los Angeles, to Port of Los Angeles Tariff No. 3 and all amendments, supplements thereto and reissues thereof (hereinafter referred to as "Tariff No. 3"), to all orders, rules and regulations of the Board of Harbor Commissioners (hereinafter referred to as "Board"), to the ordinances of the City of Los Angeles (hereinafter referred to as "City") and the following terms, covenants and conditions:

1. The premises shall be used for the berthing and mooring of vessels owned, operated, serviced or represented by assignee, for the embarking and disembarking of passengers and their baggage, and the assembling, distributing, loading and unloading of goods, wares and merchandise on and from such vessels over, through and upon such premises and from and upon other vessels; provided, however, that the right hereby granted to use the premises for said purposes shall not be exclusive, and whenever the premises, or any part thereof, are not required in whole or in part for the use of assignee for the stated purposes, the General Manager shall have the right to and may make other assignments to any other person, firm or corporation to use such premises, or any part thereof, as provided in Tariff No. 3.
2. Assignee shall be liable for and shall pay to City, upon demand, the actual cost of all damages or repairs, other than normal wear and tear, to property owned by or in the care and custody of City caused, negligently or otherwise, by assignee, its officers, agents, employees, licensees, invitees or permittees, or by vessels owned, operated or represented by it. In the event that City chooses not to make repairs, or in the event that repairs will be delayed for any substantial period, assignee shall pay the estimated cost of repairs; provided, however, that when assignee has made a payment based on an estimate, assignee shall be billed or credited for any variance between the estimated cost and actual cost. Assignee agrees that damage to any part of the wharf or wharf fender system, fixed or floating, shall be considered as damage to the premises.
3. Assignee shall at all times keep and maintain the premises in a safe, clean, wholesome, sanitary and slightly condition and in conformance with all applicable Federal, state, regional, municipal and other laws, ordinances, rules and regulations. The appearance of the premises shall be maintained to the satisfaction of the General Manager.
4. Assignee shall, at its own cost and expense, provide all tackle, gear and labor for the berthing and mooring of vessels at the premises, and shall provide, at its own cost and expense, such appliances and employ such persons as it may require for the handling of passengers, goods, wares and merchandise thereat; provided, however, that nothing contained herein shall prevent assignee from using such appliances as may be installed by City at the premises upon the payment to City of the charges fixed therefor. Assignee shall pay all license and excise fees and occupation taxes covering the business conducted on the premises and all taxes on all property, or interests therein, of assignee in or on the premises. THE PROPERTY INTEREST, IF ANY, WHICH MAY BE CREATED BY THIS ASSIGNMENT MAY BE SUBJECT TO PROPERTY TAXATION AND ASSIGNEE MAY BE SUBJECT TO THE PAYMENT OF PROPERTY TAXES LEVIED ON SUCH INTEREST.
5. Assignee agrees to furnish all statements, manifests, reports and other supporting documents and to pay the total amount of all charges accruing at the premises pursuant to and at or before the time provided in Tariff No. 3.



REA-2 YANG MING

If assignee has been placed on the credit list in accordance with Tariff No. 3, assignee shall file with the General Manager, on forms provided by the Los Angeles Harbor Department, a statement, verified by the oath of assignee, its manager or duly authorized representative, showing all charges which shall have accrued at the premises for dockage and wharfage (including passenger fees) with reference to each vessel berthing or mooring at the premises. Such statement shall be filed on or before the tenth day following the departure of each vessel.

A similar statement showing all charges which shall have accrued at the premises for wharfage where the departure of a vessel is not involved, and for all wharf demurrage, storage and other charges, if any, during the preceding calendar month shall be filed on or before the tenth day of each month.

6. All books, accounts and other records showing the affairs of assignee with respect to its business transacted at, upon or over the premises shall be maintained locally during the life of this assignment and for twelve (12) months thereafter, and shall be subject to examination, audit and transcription by the General Manager or any person designated by him; and in the event it becomes necessary to make such examination, audit or transcription at any place other than within fifty (50) miles of the premises, then all costs and expenses necessary, or incident to such examination, audit or transcription shall be paid by assignee. Upon request in writing by the General Manager, assignee shall furnish a statement of the total cost and unit cost of performing stevedoring, handling, car loading and car unloading, and any other services rendered in connection with the transportation of goods, wares and merchandise over, through and upon the premises. The statement shall be submitted within thirty (30) days of the request and shall contain such detail and cover such period of time as may be specified in any such request.

7. No assignment, transfer, sublease, gift, hypothecation or grant of control of this assignment, or any of the rights or privileges granted hereunder, in whole or in part, whether voluntary or by operation of law, shall be valid for any purpose without the prior written consent of the General Manager first had and obtained; and any such assignment, transfer, sublease, gift, hypothecation or grant of control or other disposition of this assignment shall be evidenced by a duly executed instrument in writing, a copy of which shall be filed in the office of the General Manager.

For purposes of this section, the term "by operation of law" includes the placement of all or substantially all of assignee's assets in the hands of a receiver or trustee, an assignment by assignee for the benefit of creditors, the adjudication of assignee as a bankrupt, the institution of any proceedings (by assignee or against assignee) under the Bankruptcy Act as the same now exists or under any amendment thereof which may hereafter be enacted or under any other act relating to the subject of bankruptcy wherein assignee seeks to be adjudicated a bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition or reorganization.

8. This assignment is and shall be revocable at any time by the General Manager upon at least thirty (30) days' written notice to assignee, which notice shall specify the date upon which this assignment shall terminate, provided, however, that if this assignment is designated hereinabove as a temporary assignment, it shall be revocable upon five (5) days' written notice to assignee which notice shall specify the date upon which this assignment shall terminate. Within the time so specified, the assignee shall cease the use of the premises and shall quit and surrender possession of the premises to City. The right of the General Manager to revoke this assignment is and shall remain unconditional and unrestricted. Neither City, nor any of its boards, officers, agents or employees, shall be liable in damages to the assignee or in any other manner, because of any such revocation.

9. If assignee shall abandon or fail to use the premises for a period of sixty (60) consecutive days, this assignment shall cease and terminate unless assignee has, prior to the expiration of any such period of sixty (60) consecutive days, notified the General Manager in writing that such nonuse is only temporary and shall have obtained the consent in writing of the General Manager to such temporary nonuse. The period during which failure to use the premises is occasioned by war, bona fide strikes not caused by assignee or to which assignee is not a party, riots, civil commotion, acts of public enemies, earthquake, other natural disaster or action of the elements shall be excluded in computing the sixty (60) day period set forth herein.

10. Assignee shall signify its acceptance of this assignment in writing, agreeing to abide and be bound by each and every of its terms and conditions. This assignment shall not be or become effective for any purpose until such written acceptance is filed with the General Manager.

11. Upon the neglect, failure or refusal by assignee to comply with any of the terms or conditions of this assignment, the General Manager may, by written notice to assignee, declare this assignment forfeited, and may thereupon exclude assignee and all other persons, firms or corporations from any further use of the premises, and other facilities and appliances, under this assignment.

12. Assignee shall at all times relieve, indemnify, protect and save harmless City and any and all of its boards, officers, agents and employees, from any and all claims and demands, actions, proceedings, losses, liens,

costs and judgments of any kind and nature whatsoever, including expenses incurred in defending against legal actions, for death of or injury to persons or damage to property, including property owned by or under the care and custody of City, and for civil fines and penalties, that may, in whole or in part, arise from or be caused, directly or indirectly, by:

- (a) Any dangerous, hazardous, unsafe or defective condition of, in or on the premises, of any nature whatsoever, which may exist by reason of any act, omission, or neglect of, or by any use or occupation of the premises by, assignee, its officers, agents, employees, licensees, permittees, or invitees;
- (b) Any operation conducted upon or any use or occupation of the premises by assignee, its officers, agents, employees, licensees, permittees, or invitees, under or pursuant to the provisions of this assignment or otherwise;
- (c) Any act, omission or negligence of assignee, its agents, officers, employees, licensees, permittees, or invitees, regardless of whether any act, omission or negligence of City, its officers, agents or employees, contributed thereto;
- (d) Any failure of assignee, its officers, agents or employees, to comply with any of the terms or conditions of this assignment or any applicable Federal, state, regional or municipal law, ordinance, rule or regulation; or
- (e) The conditions, operations, uses, occupations, acts, omissions, or negligence referred to in (a), (b), (c) and (d) above, existing or conducted upon or arising from the use or occupation by assignee, its agents, officers, employees, licensees, permittees or invitees, of any other area within the Harbor District, as defined in the Charter of City, including the approaches, channels, turning basins and other waters.

The term "person", as used in this paragraph 12 and paragraph 13 shall include, but not be limited to, officers and employees of assignee.

Assignee hereby waives any right to limit its liability by abandonment of a wreck or otherwise under any Wreck Act or Limitation of Liability Act.

13. Assignee shall procure and maintain at all times during the life of this assignment at its expense the following insurance:

(a) Broad form comprehensive public liability and property damage insurance written by an insurance company authorized to do business in the State of California and rated AAA or better in Best's Insurance Guide, with assignee's normal limits of liability but not less than five hundred thousand dollars (\$500,000) for injury or death to one person and one million dollars (\$1,000,000) for injury or death to more than one person arising out of each accident or occurrence and five hundred thousand dollars (\$500,000) for property damage for each accident or occurrence. Said limits shall be without deduction, provided that the General Manager may permit a deductible amount in those cases where, in his judgment, such a deductible is justified by the net worth of assignee. Such policy shall contain an endorsement substantially as follows:

"(i) Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that the City of Los Angeles, its Board of Harbor Commissioners, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all operations, uses, occupations, acts and activities of the insured under Berth Assignment No. \_\_\_\_\_, and under any amendments, modifications, extensions or renewals of said berth assignment regardless of whether such operations, uses, occupations, acts and activities occur on the premises or elsewhere within the Harbor District, and regardless of whether liability is attributable to the insured, or a combination of the insured and additional insured.

"(ii) The policy to which this endorsement is attached shall not be cancelled or reduced in coverage until after the Board and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to P.O. Box 151, San Pedro, California 90733;

"(iii) The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by City is excess coverage;

"(iv) The inclusion of more than one named insured under this policy shall not operate to impair the rights of one insured against another insured and the coverages afforded by this policy shall apply as though separate policies had been issued to each insured. The inclusion of more than one insured shall not, however, operate to increase the limit of liability;

"(v) Notice of occurrences of claims under the policy shall be made to [the name and address of the person to be notified]."



(b) In addition to and concurrently with the aforesaid insurance coverage, assignee shall also secure and maintain, either by an endorsement thereto or by a separate policy, fire legal liability insurance with a minimum limit of one hundred thousand dollars (\$100,000) covering legal liability of assignee for damage or destruction to the works, structures and improvements owned by City; provided, that said minimum limit of liability shall be subject to adjustments by General Manager to conform with the deductible amount of the fire insurance policy maintained by Board, with waiver of subrogation in favor of assignee so long as permitted by Board's fire insurance policy, upon thirty (30) days' prior written notice thereof to assignee at any time during the term of this berth assignment. The provisions of subparagraph (a) of this paragraph 13 relating to the insurer and endorsement shall apply to the fire legal liability coverage, except that City shall not be an additional named insured with respect to such coverage.

(c) Two certified copies of each policy shall be furnished to Board and the form of such policy shall be subject to the approval of the City Attorney of City. The City Attorney may accept certificates evidencing the required insurance coverage in lieu of the policies.

(d) At least sixty (60) days prior to the expiration of each policy, assignee shall furnish to Board a certificate or certificates showing that the policy has been renewed or extended or, if new insurance has been obtained, assignee shall comply with subsection (c) hereof. If assignee neglects or fails to submit copies thereof or certificates as required above, Board may, at its option and at the expense of assignee, obtain such insurance for assignee.

(e) The General Manager, at his discretion, based upon recommendation of independent insurance consultants to City, may require an increase or decrease in the amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to assignee.

14. Assignee shall report in writing to the General Manager, within fifteen (15) days after assignee, its officers or managing agents, have knowledge thereof, any and all accidents or occurrences involving death of or injury to persons or damage in excess of one thousand dollars (\$1,000) to property occurring on said premises or other premises in the Harbor District used or occupied by it without express written authorization of Board or General Manager, which may arise from or be caused by (a) the condition of structures or facilities owned by City on the premises or (b) conditions or occurrences which may give rise to claims against, or liability to others on the part of City referred to in the provisions of clauses (b), (c), (d), or (e) of paragraph 12 hereof. The report shall contain: (1) The name and address of each person involved, (2) a general statement as to the nature and extent of the injuries or damage, (3) the date and hour of the accident or occurrence, (4) the names and addresses of known witnesses, and (5) such other information relative to such accident or occurrence as may be in the possession of or known to assignee, its officers or managing agents.

15. No additions, alterations or repairs shall be made by assignee, its officers, agents or employees, to the premises or to any of the buildings, structures or improvements located thereon and owned by City. No facilities, equipment or appliances, including space heaters, shall be installed or located on the premises or in or about any building, structure or improvement located thereon, until and unless a permit has first been obtained from the Chief Harbor Engineer. When so installed or located, such facilities, equipment or appliances must conform in all respects to all applicable Federal, state or municipal building, fire safety, environmental and other laws, ordinances, rules and regulations. The provisions of this paragraph requiring that a permit be obtained from the Chief Harbor Engineer shall not apply to office equipment and furniture. A permit from the Chief Harbor Engineer shall not be required for cargo, cargo-handling equipment or rolling equipment of assignee if assignee has a valid cargo-handling permit issued by the General Manager.

16. Upon acceptance of this assignment assignee shall file with the General Manager a statement in writing containing the names of all vessels represented by assignee which it anticipates will be berthing or mooring at the premises, together with the names and addresses of the persons, firms or corporations owning or operating said vessels, and shall annually file with the General Manager supplemental statements in writing showing any deletions from or additions to such statement.

17. Unless otherwise provided for herein, assignee shall pay all charges for services furnished to the premises or used in connection with its occupancy, including but not limited to heat, gas, power, telephone, water, light and janitorial services, and pay all deposits, connection fees, charges and meter rentals required by the supplier of any such service, including City.

18. The General Manager and any duly authorized representatives shall have the right to enter upon the premises and improvements constructed by assignee at any and all reasonable times during the term of this assignment for the purpose of determining compliance with its terms and conditions or for any other purpose incidental to the rights of City. The right of inspection reserved hereunder shall impose no obligation upon City to make inspections to ascertain the condition of the premises and shall impose no liability upon City for failure to make such inspections. By reserving the right of inspection, City assumes no responsibility or liability for loss or damage to the property of assignee or property under the control of assignee whether caused by fire, water or other causes, nor does City assume responsibility for any shortages of cargo handled by assignee at the premises.

19. Assignee shall not erect or display, or permit to be erected or displayed, on the premises, or upon works, structures and improvements made by assignee, any advertising matter of any kind, including signs, without the prior written consent of General Manager. Assignee shall post, erect and maintain on the premises such signs as General Manager may direct.

20. This assignment is granted pursuant to an application filed by assignee with the General Manager. If the application or any of the attachments thereto contain any material misstatement of fact, the General Manager may cancel this assignment.

21. Assignee agrees not to discriminate in its employment practices against any employee or applicant for employment because of the applicant's race, religion, national origin, ancestry, sex, age or physical handicap. All subcontracts awarded under or pursuant to this assignment shall contain this provision.

22. It is hereby understood and agreed that the parties to this assignment have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of the Harbor Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this assignment. Notwithstanding any other provision of this assignment, it is further understood and agreed that if such a financial interest does exist at the inception of this assignment, the General Manager may immediately terminate it by giving written notice thereof.

23. If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of or based upon this assignment, including but not limited to the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to recovery of its costs and reasonable attorneys' fees, including the reasonable value of the services rendered by the Office of the City Attorney or house counsel of assignee, if any.

24. In all cases where written notice is to be given under this assignment, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to City shall be addressed to General Manager, Los Angeles Harbor Department, P. O. Box 151, San Pedro, California 90733, and notice to assignee shall be addressed to it at the address set forth hereinabove. Nothing herein contained shall preclude or render inoperative service of such notice in the manner prescribed by law.

25. Assignee hereby irrevocably appoints The Prentice-Hall Corporation System, Inc., at 5225 Wilshire Boulevard, Los Angeles, California 90036, as its agent for the purpose of service of process in any suit or proceeding which may be instituted in any court of the State of California or in any Federal court in said State by the City which arises out of or is based upon this assignment, and delivery to such agent of a copy of any process in any such action shall constitute valid service upon assignee. It is further expressly agreed, covenanted and stipulated that if for any reason service of such process upon such agent is not possible, then in such event assignee may be served with such process in or out of this State in any manner authorized by the California Code of Civil Procedure. It is further expressly agreed that assignee is amenable to the process so served, submits to the jurisdiction of the court so acquired, and waives any and all objection and protest thereto. All costs in connection with such appointment shall be borne by City.

26. No waiver by either party at any time of any of the terms, conditions, covenants of this assignment shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the proper party.

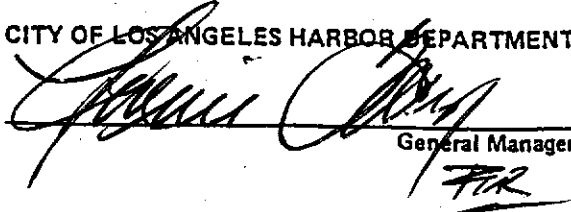
27. Any default in assignee's obligation to make payments to City under the terms of any other berth assignment, lease, permit or other agreement, when such default involves the sum of five hundred dollars (\$500) or more, shall constitute a default on the part of assignee with respect to this assignment.

28. The following numbered paragraphs, to wit: \_\_\_\_\_ are deleted and are not to be considered as constituting a part of this assignment, and they are so marked.

29. There is attached to this assignment an addendum consisting of numbered paragraphs 30 to 31, inclusive, the provisions of which paragraphs are made a part of this assignment as though set forth herein in full. [If no addendum is attached, this paragraph 29 shall be deleted, and so marked.]

Effective \_\_\_\_\_, 19\_\_\_\_.


CITY OF LOS ANGELES HARBOR DEPARTMENT

  
General Manager  
FR

ACCEPTANCE

The undersigned assignee hereby accepts the foregoing assignment and agrees to abide and be bound by and to observe each and every of the terms and conditions thereof, including those set forth in the addendum, if any, and excluding those marked as being deleted. Assignee acknowledges that it has received a copy of Tariff No. 3, has read it, and agrees to be bound by all of its terms and conditions.

Dated: \_\_\_\_\_, 19\_\_.

  
\_\_\_\_\_  
Assignee

(SEAL)

By \_\_\_\_\_  
President

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

Approved as to Form

\_\_\_\_\_, 19\_\_  
JAMES K. HAHN, City Attorney

By \_\_\_\_\_

MUTUAL TERMINATION

It is mutually agreed that this assignment is revoked and shall no longer have any force or effect from and after \_\_\_\_\_, 19\_\_.

CITY OF LOS ANGELES HARBOR DEPARTMENT

\_\_\_\_\_  
General Manager

\_\_\_\_\_  
Assignee

By \_\_\_\_\_  
President

Addendum to Temporary Berth Assignment No. 04-02  
Between the City and West Basin Container Terminal LLC

30. Assignee understands that City has adopted Tariff No. 4 which supercedes Tariff No. 3 and that all references in this temporary assignment to Tariff No. 3 shall be deemed to refer to Tariff No. 4.

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//// 31. This Agreement shall not affect the claims, rights, obligations or liabilities of either China Shipping Holding Company, Ltd. or the City of Los Angeles with respect to Permit No. 999. The parties agree that the execution of this Agreement has no legal bearing or effect upon the "Occupancy Date" defined in Permit No. 999.

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SUPPLEMENT NO. 1 TO  
NONEXCLUSIVE PREFERENTIAL BERTH ASSIGNMENT NO. 04-02

SPACE ASSIGNMENT

WEST BASIN CONTAINER TERMINAL LLC

assignee, is hereby granted a Space Assignment to use the following designated area on the premises described in the abovementioned Berth Assignment, to wit: 1,113,297.22 sq. ft. (25.56) acres of backland area at Berth 100 to be used as follows: 1,112,577.22 sq. ft. of uncovered, paved land @ \$0.16 per sq. ft. for the storage of containers; and 720 sq. ft. for a Gate Ops Building @ \$1.23 per sq. ft. for a Class A office space with air-conditioning.

WEST BASIN CONTAINER TERMINAL LLC WILL ONLY BE CHARGED FOR 9.43 ACRES OF UNCOVERED, PAVED BACKLAND AT BERTH 100 @ \$0.16 PER SQ. FT.

This Space Assignment shall begin on January 1, 2004 and continue for a minimum of twenty-nine (29) consecutive days thereafter, unless cancelled by the Executive Director upon five (5) days' prior notice in writing to assignee. Either the Executive Director or assignee may cancel this Space Assignment at any time after thirty (30) days from its effective date by giving to the other party five (5) days' prior written notice.

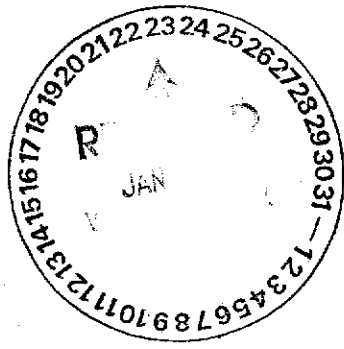
This Space Assignment is a supplement to and a part of the abovementioned Berth Assignment and shall be held by assignee subject to the provisions of Port of Los Angeles Tariff No. 4 as amended, and all of the terms, conditions and provisions contained in the abovementioned Berth Assignment.

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

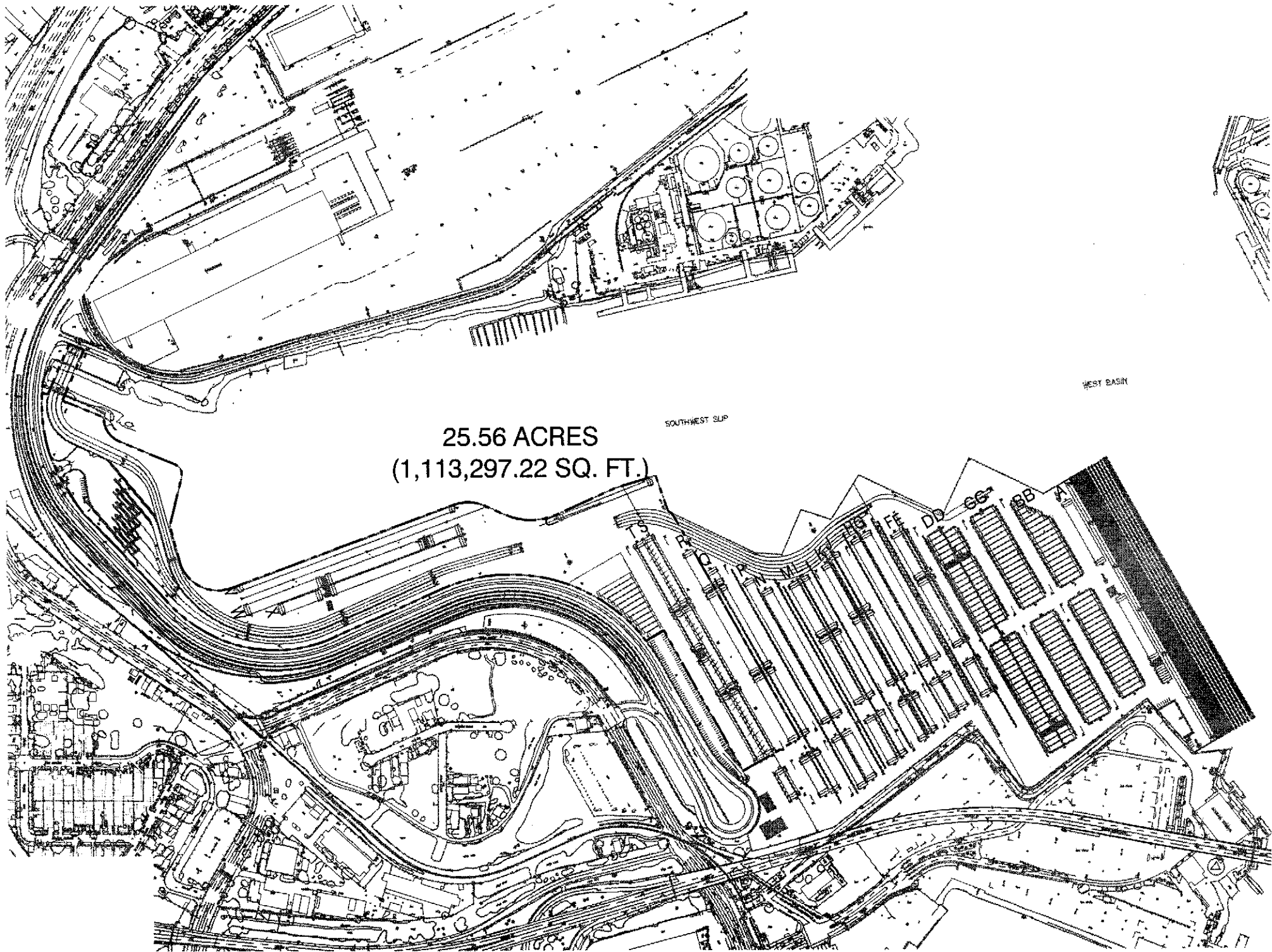
CITY OF LOS ANGELES HARBOR DEPARTMENT  
BY [Signature]  
Executive Director  
FOR

RECOMMENDED BY:  
[Signature]  
Chief Wharfinger

The undersigned assignee hereby accepts the foregoing Space Assignment and agrees to abide and be bound by and to observe each and every of the terms and conditions thereof.



[Signature]  
Assignee



25.56 ACRES  
(1,113,297.22 SQ. FT.)

SOUTHWEST SLIP

WEST BASIN

AA AB AC AD AE AF AG AH  
AA AB AC AD AE AF AG AH

SECTION EIGHT – Continued  
SPACE ASSIGNMENTS -- Continued

Item No.

(b) Space Assignment Outside an Assignee's Existing Premises

The Executive Director may grant a space assignment for areas outside premises held by an assignee under another agreement with City for purposes relating to the operation of the premises, including but not limited to cargo related purposes, storage of terminal related equipment or chassis, or for the purpose of operating a container freight station (CFS) if assignee in writing first requests the Executive Director to assign an additional area. The original request and each request for an extension shall state why existing premises held by assignee are insufficient and how long assignee expects to need the space assignment area. All charges due for use of space assignments granted pursuant to this section shall be paid in full and are not subject to the compensation provisions of other agreements assignee may have with City.

800  
(Cont.)

(c) Space Assignments Granted to Port Users Who are Not Current Assignees

Executive Director may grant space assignments to Port users who are not currently assignees for cargo related purposes or other purposes as permitted by the Charter of the City of Los Angeles so long as such other purposes are permitted by the tide and submerged land grants which regulate the use of lands within the Harbor District.

RATES FOR SPACE ASSIGNMENT

Rates for space assignment granted in accordance with the provisions of Item No. 800 shall be as follows (subject to Notes 1, 2 and 3):

<u>Type of Area</u>	<u>Cents per Sq. Ft. per 30-day Period</u>
Covered Area .....	34
Uncovered, paved land area .....	16
Uncovered, unpaved land area .....	14
Water area .....	6

[A]  
810

Minimum charge: \$474.00 per thirty (30) day period per space assignment.

- Note 1: Charges are due and payable in advance on the first day of each 30 day period.
- Note 2: If a space assignment exceeds thirty (30) days or is revoked by the Executive Director, charges will be prorated on a daily basis.
- Note 3: Water area shall be measured outboard from the waterfront edge of a wharf if a wharf location is involved or from the high tide line if a wharf is not located at the site.

See Item 10 for explanation of abbreviations and symbols.

Correction No.	Order No. Ordinance No.	Adopted Adopted	EFFECTIVE:
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SECTION ELEVEN  
 CHARGES FOR OCCUPANCY OF OFFICE SPACE, ETC.  
 IN TRANSIT SHEDS AND ON WHARVES AND WHARF PREMISES

Item No.

MONTHLY CHARGES FOR OCCUPANCY OF OFFICE SPACE, ETC.

Monthly charges for the occupancy of all office space (excluding passenger waiting rooms), private rest rooms (excluding public passenger rest rooms), gear corrals, lockers and portable office structures in transit sheds and on wharves and wharf premises shall be at a rate as follows: (See Exception)

(1) Class A office space and private rest rooms shall be charged for at the rate of 105 cents per square foot per month, subject to a minimum charge of \$127.05 per month (subject to Notes 1 and 2).

(2) Class B office space and private rest rooms shall be charged for at the rate of 81 cents per square foot per month, subject to a minimum charge of \$98.18 per month (subject to Notes 1 and 2).

(3) Class C office space and private rest rooms shall be charged for at the rate of 69 cents per square foot per month, subject to a minimum charge of \$98.18 per month (subject to Notes 1 and 2).

(4) Gear corrals shall be charged for at the rate of 21 cents per square foot per month, subject to a minimum charge of \$69.30 per month.

(5) Lockers and portable office structures shall be charged for at the rate of 21 cents per square foot per month, subject to a minimum charge of \$69.30 per month.

Note 1. Offices which have been air-conditioned by the Los Angeles Harbor Department at its expense shall be charged an additional 18 cents per square foot per month.

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See Item 10 for explanation of abbreviations and symbols.

Correction No.	Order No. Ordinance No.	Adopted Adopted	EFFECTIVE:
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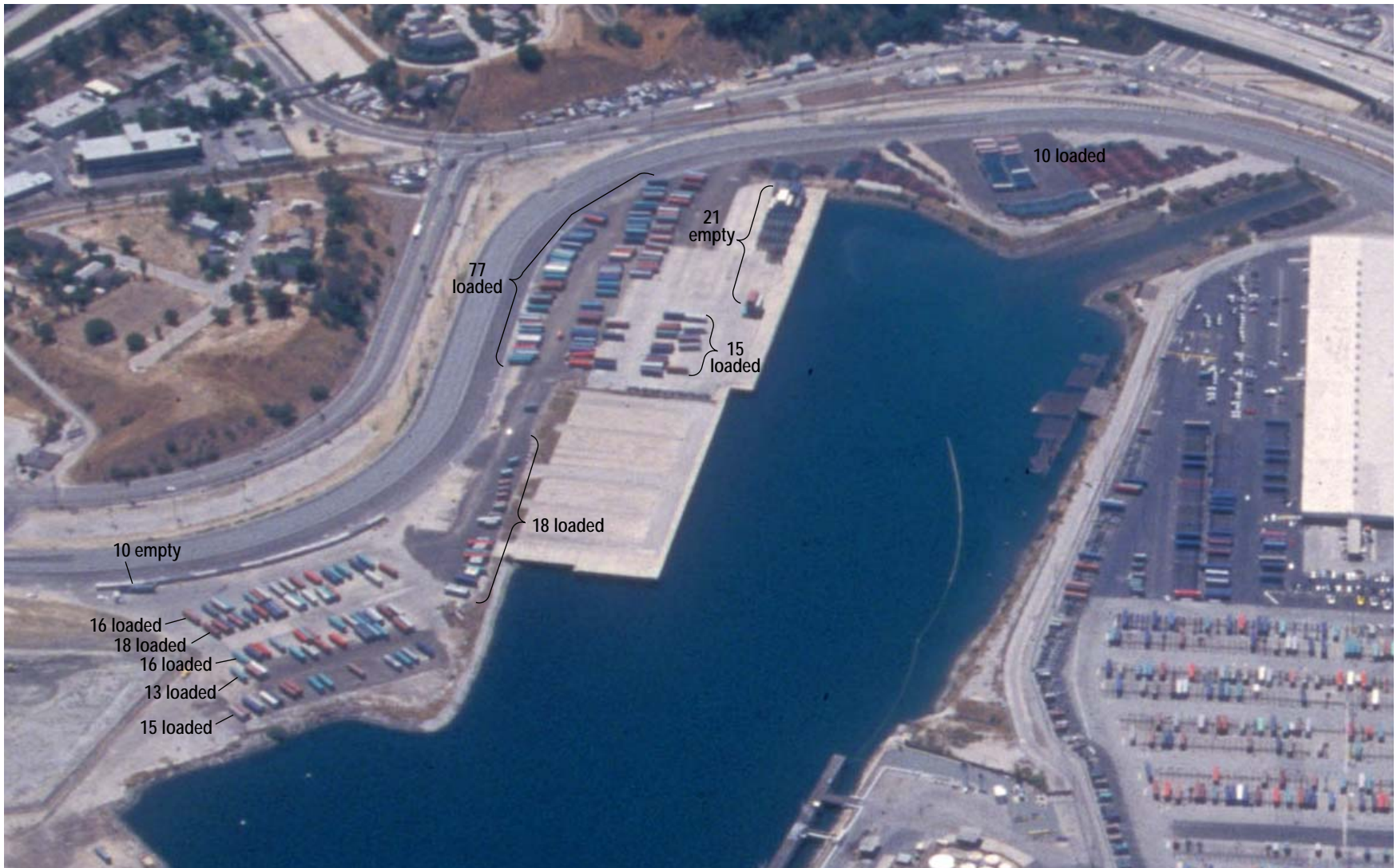


## **Attachments 3-9**



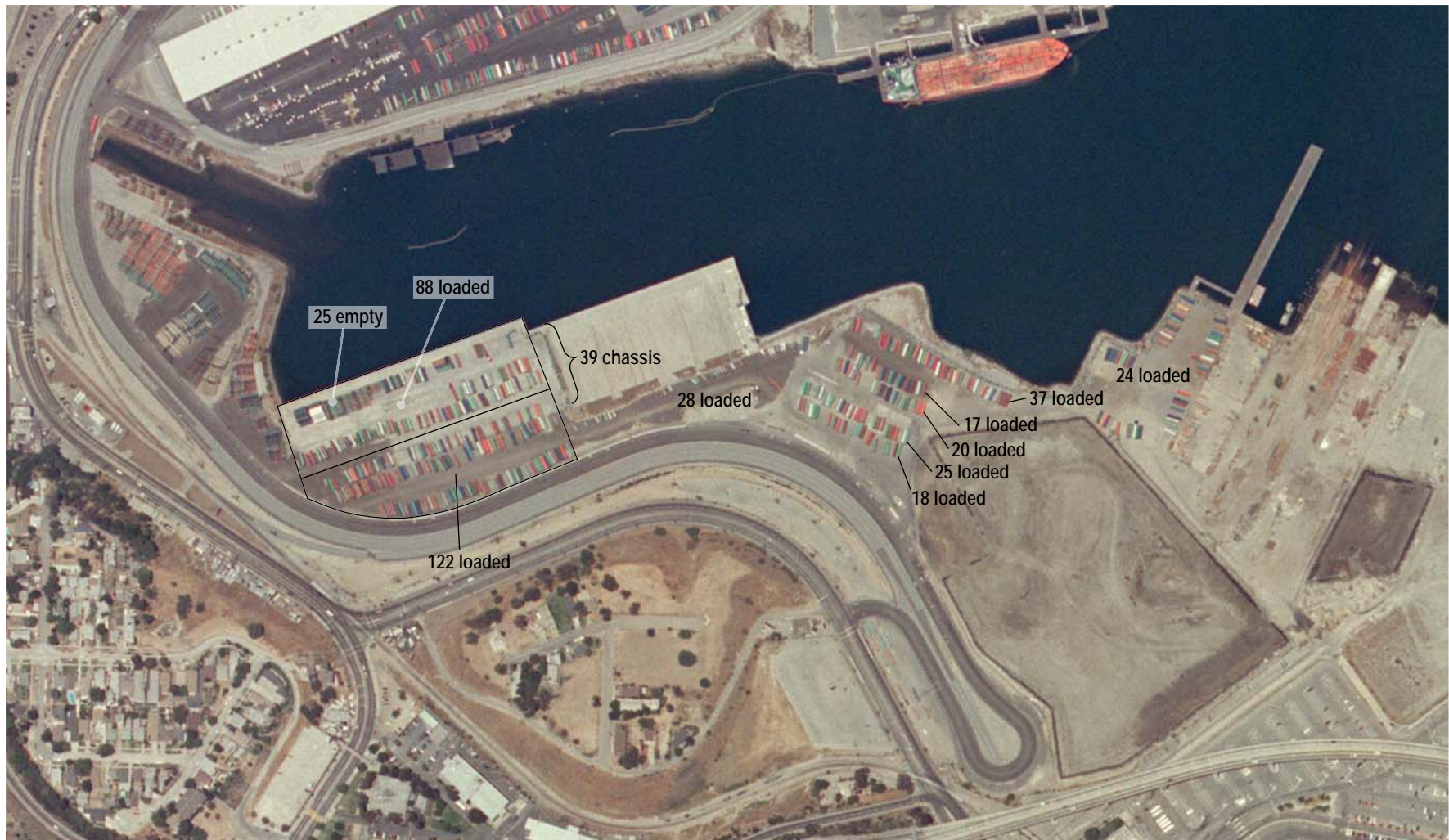
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