

# City Dock No. 1 Redevelopment Site



Santa Monica

Downtown LA

The Palos Verdes  
Peninsula

The Port  
of  
Los Angeles

The Port of  
Long Beach

City Dock No. 1

**ADDENDUM TO THE  
ENVIRONMENTAL IMPACT REPORT**

**CITY DOCK NO. 1  
MARINE RESEARCH CENTER PROJECT**

**SCH# 2010121013 / ADP# 100114-003**

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September 2013

TRANSMITTAL 2

ICF. 2013. Addendum to the EIR: City Dock No.1 Marine Research Center Project. September. (ICF 211.11) San Diego, CA. Prepared for: Los Angeles Harbor Department.

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# EXECUTIVE SUMMARY

2 The Environmental Impact Report (EIR) for the City Dock No.1 Marine Research Center Project  
3 (Project) was certified by the Los Angeles Board of Harbor Commissioners (Board) on October 18, 2012.  
4 At the time of, and prior to certification, the lease timeframe for the Project was not yet known and  
5 therefore the Project EIR evaluated a 30-year operational horizon starting in 2012 and ending in 2042.  
6 Subsequent lease negotiations have resulted in a proposed 50-year lease, extending operations from 2042  
7 to 2064 (proposed modified project). This addendum to the Project EIR serves to update the project  
8 description with the proposed 50-year lease timeframe, and provides an analysis of any corresponding  
9 changes in impacts that were previously described in the Project EIR.

10 Based on the analysis provided within this addendum, extending the Project's operational period by 22  
11 years (i.e. 2042 to 2064) would not result in any new significant impacts or cause significant impacts  
12 identified in the Project EIR to be more severe than previously disclosed. Moreover, there has not been a  
13 substantial change in the circumstances under which the project is undertaken and no new information of  
14 substantial importance that was not known and could not have been known at the time the Project EIR  
15 was certified has been identified. Therefore, neither a subsequent EIR nor a supplemental EIR, as defined  
16 under California Environmental Quality Act (CEQA) Sections 15162 and 15163, respectively, is required  
17 and an addendum to the Project EIR, as permitted under Section 15164, is appropriate.

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# 1.0

## INTRODUCTION

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### 3 **1.1 Overview**

4 This addendum to the Project EIR serves two primary purposes. First, it updates the  
5 project description contained with the Project EIR to include an additional 22-year  
6 operational timeframe of the Project provided under the proposed 50-year lease term.  
7 This project description information was not known at the time of the Project EIR's  
8 preparation and at the time of its October 18, 2012 certification.

9 Second, this addendum provides an analysis of the new Project information to  
10 determine if any of the conditions listed in CEQA Guidelines Section 15162 would  
11 occur. The specific conditions are provided in Section 1.2 below.

### 12 **1.2 CEQA and the Purpose of an Addendum**

13 The Los Angeles Harbor Department (LAHD) has prepared this addendum to the  
14 Project EIR to assess the impacts associated with a proposed 22-year operational  
15 extension of the Project associated with the proposed 50-year lease term. According  
16 to Section 15164(a) of the State CEQA Guidelines, the lead agency or the responsible  
17 agency will prepare an addendum to a previously certified EIR if changes or  
18 additions are necessary, but none of the conditions described in Section 15162 calling  
19 for the preparation of a subsequent or supplemental EIR have occurred. An  
20 addendum need not be circulated for public review but can be included in or attached  
21 to the EIR. The decision-making body must consider the addendum with the EIR  
22 prior to making a decision on the project.

23 Section 15162 of the State CEQA Guidelines states that, for a project covered by a  
24 certified EIR, preparation of a subsequent or supplemental EIR rather than an  
25 addendum is required only if one or more of the following conditions occur:

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- 1) Substantial changes are proposed in the project that will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
  - 2) Substantial changes occur with respect to the circumstances under which the project is undertaken that will require major revisions of the previous EIR

1 due to the involvement of new significant environmental effects or a  
2 substantial increase in the severity of previously identified significant effects.

- 3 3) New information of substantial importance, which was not known and could  
4 not have been known with the exercise of reasonable diligence at the time the  
5 previous EIR was certified as complete, shows any of the following:
- 6 a) The project will have one or more significant effects not discussed in the  
7 previous EIR;
  - 8 b) Significant effects previously examined will be substantially more severe  
9 than shown in the previous EIR;
  - 10 c) Mitigation measures or alternatives previously found not to be feasible  
11 would in fact be feasible and would substantially reduce one or more  
12 significant effects of the project, but the project proponents decline to  
13 adopt the mitigation measure or alternative; or
  - 14 d) Mitigation measures or alternatives that are considerably different from  
15 those analyzed in the previous EIR would substantially reduce one or  
16 more significant effects on the environment, but the project proponents  
17 decline to adopt the mitigation measure or alternative.

## 18 **1.3 Scope and Content of the Addendum**

19 This addendum has been prepared in accordance with the requirements of CEQA  
20 (Public Resources Code [PRC] 21000 et seq.), and the State CEQA Guidelines  
21 (California Code of Regulations [CCR] 1500 et seq.). This addendum describes the  
22 affected environmental resources and evaluates the potential changes in the impacts  
23 that were previously described in the Project EIR with respect to the additional 22  
24 years the Project would operate.

25 The criteria for determining the significance of environmental impacts in this  
26 addendum analysis are the same as those contained within the certified Project EIR.  
27 The threshold of significance for a given environmental effect is the level at which  
28 LAHD finds a potential effect of a proposed project to be significant. A threshold of  
29 significance can be defined as a “quantitative or qualitative standard, or set of  
30 criteria, pursuant to which significance of a given environmental effect may be  
31 determined” (State CEQA Guidelines, Section 15064.7 [a]). Except as noted in  
32 particular sections of the Project EIR, LAHD has adopted the City of Los Angeles  
33 CEQA Thresholds for purposes of this addendum.

34 The analysis in this addendum focuses on the changes to the impacts that would  
35 potentially occur as a result of the addition of a 22-year operating timeline. (i.e. 2042  
36 to 2064). The scope of analysis contained within this addendum addresses each of  
37 the environmental resource areas that were previously analyzed in the certified  
38 Project EIR. The following issues are therefore evaluated in this addendum:

- 39 ■ Aesthetics
- 40 ■ Air Quality and Greenhouse Gases

- 1 ■ Biological Resources
- 2 ■ Cultural Resources
- 3 ■ Geology
- 4 ■ Groundwater and Soils
- 5 ■ Hazards and Hazardous Materials
- 6 ■ Land Use and Planning
- 7 ■ Noise and Vibration
- 8 ■ Public Services
- 9 ■ Transportation and Circulation (Ground)
- 10 ■ Transportation and Circulation (Marine)
- 11 ■ Utilities
- 12 ■ Water Quality, Sediments, and Oceanography

## 13 **1.4 Previous Environmental Documents**

### 14 **Incorporated by Reference**

15 Consistent with Section 15150 of the State CEQA Guidelines, the following  
16 documents were used in preparation of this addendum and are incorporated herein by  
17 reference:

- 18 ■ Port of Los Angeles. 2012, September. City Dock No.1 Marine Research  
19 Center Final EIR (SCH No. 2010121013) .
- 20 ■ Port of Los Angeles. 2012, September. City Dock No.1 Marine Research  
21 Center Mitigation Monitoring Report and Program.
- 22 ■ Port of Los Angeles. 2012, September. City Dock No.1 Marine Research  
23 Center Findings of Fact and Statement of Overriding Considerations.
- 24 ■ Port of Los Angeles. 2012, May. City Dock No.1 Marine Research Center  
25 Draft EIR (SCH No. 2010121013).

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# 2.0

## PROPOSED PROJECT MODIFICATIONS

### 2.1 Project Location

The Project site consists of approximately 28 acres of land within the Port near the San Pedro Community, and includes Berths 56 through 60 and Berths 70 and 71 within the San Pedro Waterfront area. The site also includes a 4.5-acre parking lot adjacent to the 28-acre site across 22<sup>nd</sup> Street and a 1.3-acre site at Berth 260, the current location of the Southern California Marine Institute (SCMI), for a total of 33.8 acres of land. At the local level, the proposed project site is bounded by the East Channel to the west, the Main Channel to the east, 22<sup>nd</sup> Street to the north, and the open water of the San Pedro Bay to the south. Local access to the site is provided by 22<sup>nd</sup> Street and Sampson Way. Figure 2-2 of the Draft EIR shows the Project site location.

### 2.2 Proposed Modifications

The proposed 50-year lease would not include any construction changes to the Project, nor would it include any physical changes from the project description provided in the Project EIR. It would, however, effectively extend the potential operational period of the Project from 2042 to 2064 (i.e. the proposed modified project). The same level of construction and operational buildout is anticipated, though it is possible that because the Project EIR only analyzed impacts of operations out to 2042, new impacts or impacts more severe than those previously disclosed could result from a change in the future Project area conditions by 2064. Therefore, the analysis contained within Section 3.0 below focuses on the potential change in conditions between 2042 and 2064, a time period that was not explicitly addressed in the Project EIR.

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# 3.0

## IMPACT DISCUSSION

### 3.1 Analysis of Impacts

This section provides an impact assessment of the project description provided in the Project EIR and updated with the current proposed 50-year lease term extending through approximately 2064. Potential impacts are limited to changes between 2042 (as assessed in the Project EIR) and 2064.

#### 3.1.1 Aesthetics

The Project EIR determined that under both project-only and cumulative conditions there would be no impact related to the Project’s potential to damage scenic resources within a state scenic highway from its construction and operation and no impact related to the Project’s potential for light and glare during construction. The Project EIR determined that under both project-only and cumulative conditions there would be less-than-significant impacts on scenic vistas, existing visual character and quality, and shading during construction and operation and a less-than-significant impact from light and glare during operation. No mitigation measures were required for these less-than-significant impacts.

The proposed modified project does not change or alter any of the findings of the Project EIR’s aesthetics impact assessment. The proposed modified project would not result in increases in construction or operational activity, nor would it result in any physical changes as compared to what was analyzed in the Project EIR. Therefore, the proposed modified project would not cause either a project-only or cumulatively considerable adverse aesthetics impact beyond what was already disclosed in the Project EIR. New significant environmental impacts or a substantial increase in the severity of previously identified significant effects would not occur as a result of the proposed project modification.

#### 3.1.2 Air Quality and Greenhouse Gases

The Project EIR determined that under both project-only and cumulative conditions there would be significant and unavoidable impacts related to the Project exceeding a South Coast Air Quality Management District (SCAQMD) threshold of significance

1 and its production of a substantial amount of greenhouse gas (GHG) emissions  
2 during both the construction- and operation-related phases, as well as project-only  
3 significant offsite ambient air pollutant concentrations from its construction-related  
4 emissions and cumulative-related impacts from toxic air contaminants (TACs).  
5 Mitigation Measures MM AQ-1 through MM AQ-7 and MM GHG-1 were required  
6 in the Project EIR to reduce the significance of these impacts; however, even after  
7 mitigation, the impacts were determined to remain significant. At this time, there are  
8 no known mitigation measures or alternatives that were previously considered  
9 infeasible but are now considered feasible that would substantially reduce one or  
10 more significant effects on the environment. Similarly, there are no known  
11 mitigation measures or alternatives that are considerably different than those required  
12 by the Project EIR that would substantially reduce one or more significant effects on  
13 the environment.

14 The Project EIR determined that there would be less-than-significant operational  
15 impacts under the project-only and cumulative conditions related to offsite ambient  
16 air pollutant concentrations, carbon monoxide (CO) emissions from road traffic, and  
17 objectionable odors, and less-than-significant operational impacts under the project-  
18 only condition related to TACs. Overall, the Project would not conflict with or  
19 obstruct implementation of an applicable air quality plan or any applicable plan,  
20 policy, or regulation adopted for the purpose of reducing GHG emissions in either the  
21 project-only condition or the cumulative condition. No mitigation measures were  
22 required for these less-than-significant impacts.

23 The proposed modified project does not change or alter any of the findings of the  
24 Project EIR's air quality and GHG impact assessment provided for both project-only  
25 impacts and cumulative-related impacts. Air quality impacts were analyzed in the  
26 Project EIR by evaluating the emissions associated with a peak day of activity. The  
27 Project's peak day emissions were determined to occur in 2024 when there would be  
28 an overlap of construction- and operation-related activities. Operational emissions  
29 between 2042 and 2064 would not be expected to reach these same levels because  
30 construction would be completed, and, as discussed in Section 311 of the Project  
31 EIR, cumulative traffic conditions would generally be unchanged over this period,  
32 resulting in a similar amount of vehicle emissions. Moreover, emissions within the  
33 air basin are anticipated to decrease with time as advancements in technology are  
34 implemented and future air quality standards become stricter. Thus, 2024 would still  
35 represent the worst year in terms of emissions for the proposed modified project.  
36 Therefore, air and GHG emissions associated with the extended operational period  
37 (i.e., 2042 to 2064) that would be provided by the proposed 50-year lease term would  
38 be similar to or slightly decrease when compared with the analysis contained within  
39 the Project EIR. Consequently, the proposed modified project would not result in  
40 new significant environmental impacts or a substantial increase in the severity of  
41 previously identified significant effects under either the project-only condition or the  
42 cumulative condition.

### 43 **3.1.3 Biological Resources**

44 The Project EIR determined that under both project-only and cumulative conditions  
45 there would be less-than-significant impacts after mitigation is incorporated related to

1 noise from pile driving (on marine life), nesting birds, and marine mammals during  
2 construction activities. Mitigation Measures MM BIO-1 through MM BIO-3 were  
3 required in the Project EIR to reduce the significance of these impacts to less-than-  
4 significant levels.

5 The Project EIR determined that there would be less-than-significant impacts, under  
6 both project-only and cumulative conditions, from construction- and operation-  
7 related activities related to the reduction or alteration of a state-, federally, or locally  
8 designated natural habitat, special aquatic site, or plant community, including  
9 wetlands; interference with wildlife movement/migration corridors that may diminish  
10 the chances for long-term survival of a species; disruption of local biological  
11 communities; and the permanent loss of marine habitat (during operation this is  
12 considered to result in no impact). No mitigation measures were required for these  
13 less-than-significant impacts.

14 The proposed modified project does not change or alter any of the findings of the  
15 Project EIR's biological resources impact assessment provided for both project-only  
16 impacts and cumulative-related impacts. The proposed modified project would not  
17 result in increases in construction or operational activity, nor would it result in any  
18 physical changes as compared to what was analyzed in the Project EIR. Moreover,  
19 the biological condition between 2042 and 2064 is anticipated to be similar to the  
20 future condition described in the Project EIR as water quality improves with  
21 continued implementation of the Water Resources Action Plan (WRAP) and future  
22 projects subject to environmental review continue to require mitigation to improve  
23 the biological resources conditions at the Port and within the harbor. Therefore, the  
24 proposed modified project would not cause either a project-only or cumulatively  
25 considerable adverse biological resources impact beyond what was already disclosed  
26 in the Project EIR. New significant environmental impacts or a substantial increase in  
27 the severity of previously identified significant effects would not occur as a result of  
28 the proposed modified project.

### 29 **3.1.4 Cultural Resources**

30 The Project EIR determined that construction and operation of the Project would  
31 result in both a significant project-only and cumulatively considerable impact on an  
32 historical resource. Mitigation Measure MM CR-1 (which has been completed) was  
33 required in the Project EIR to reduce the significance of this impact; however, even  
34 after mitigation, the impact remains significant. At this time, there are no known  
35 mitigation measures or alternatives that were previously considered infeasible but are  
36 now considered feasible that would substantially reduce one or more significant  
37 effects on the environment. Similarly, there are no known mitigation measures or  
38 alternatives that are considerably different than those required by the Project EIR that  
39 would substantially reduce one or more significant effects on the environment.

40 The Project EIR determined that under both project-only and cumulative conditions  
41 there would be less-than-significant impacts or no impacts on known or unknown  
42 prehistoric and historical archaeological resources, human remains, and  
43 paleontological resources. No mitigation measures were required for these less-than-  
44 significant impacts.

1 The proposed modified project does not change or alter any of the findings of the  
2 EIR's cultural resources impact assessment provided for both project-only impacts  
3 and cumulative-related impacts. The proposed modified project would not result in  
4 increases in construction or operational activity, nor would it result in any physical  
5 changes as compared to what was analyzed in the Project EIR. Therefore, the  
6 modified project would not cause either a Project-only or cumulatively considerable  
7 adverse cultural resources impact beyond what was already disclosed in the Project  
8 EIR. New significant environmental impacts or a substantial increase in the severity  
9 of previously identified significant effects would not occur as a result of the proposed  
10 modified project.

### 11 **3.1.5 Geology**

12 All construction- and operation-related geology impacts, under both project-only and  
13 cumulative conditions, were determined to be less than significant or to have no  
14 impact in the Project EIR. Specifically, the Project EIR determined that construction  
15 and operation of the Project would result in less-than-significant impacts or no  
16 impacts related to: fault rupture, seismic ground shaking, liquefaction, or other  
17 seismically induced ground failure; tsunamis or seiches; land subsidence/ settlement;  
18 expansive soils; landslides or mudslides; and unstable soil conditions. Also, the  
19 Project would not destroy, permanently cover, or materially and adversely modify  
20 one or more distinct and prominent geologic or topographic features. No mitigation  
21 measures were required for these less-than-significant impacts.

22 The proposed modified project does not change or alter any of the findings of the  
23 Project EIR's geology impact assessment provided for both project-only impacts and  
24 cumulative-related impacts. The modified project would not result in any increases  
25 in construction or operational activity, nor would it result in any physical changes as  
26 compared to what was analyzed in the Project EIR. Therefore, the proposed  
27 modified project would not cause either a project-only or cumulatively considerable  
28 adverse geology impact beyond what was already disclosed in the Project EIR. New  
29 significant environmental impacts or a substantial increase in the severity of  
30 previously identified significant effects would not occur as a result of the proposed  
31 modified project.

### 32 **3.1.6 Groundwater and Soils**

33 The Project EIR determined that under both project-only and cumulative conditions  
34 construction and operation of the Project would result in less-than-significant impacts  
35 or no impacts related to: toxic substances or other contaminants; changes in the rate  
36 or direction of movement of existing contaminants, expansion of the area affected by  
37 contaminants, or increased level of groundwater contamination; a reduction in  
38 potable groundwater recharge capacity and potable water levels; or a violation of  
39 regulatory water quality standards at an existing production. No mitigation measures  
40 were required for these less-than-significant impacts.

41 The proposed modified project does not change or alter any of the findings of the  
42 Project EIR's groundwater and soils impact assessment provided for both project-

1 only impacts and cumulative-related impacts. The proposed modified project would  
2 not result in increases in construction or operational activity nor would it result in any  
3 physical changes as compared to what was analyzed in the Project EIR. Therefore,  
4 the proposed modified project would not cause either a project-only or cumulatively  
5 considerable adverse groundwater and soils impact beyond what was already  
6 disclosed in the Project EIR. New significant environmental impacts or a substantial  
7 increase in the severity of previously identified significant effects would not occur as  
8 a result of the proposed modified project.

### 9 **3.1.7 Hazards and Hazardous Materials**

10 The Project EIR determined that under both project-only and cumulative conditions  
11 there would be less-than-significant impacts with mitigation incorporated related to  
12 the construction- and operation-related phases of the Project introducing the general  
13 public to a hazard associated with offsite facilities (i.e., Mike's Marine Fueling Station).  
14 Mitigation Measure MM RISK-1 was required in the Project EIR to reduce the  
15 significance of this impact to a less-than-significant level.

16 The Project EIR determined that under both project-only and cumulative conditions  
17 construction and operation of the Project would result in less-than-significant impacts  
18 or no impacts related to: compliance with applicable federal, state, regional, and local  
19 security and safety regulations, and Port policies guiding Port development;  
20 interference with an existing emergency response or evacuation plan or requiring a  
21 new emergency or evacuation plan; and the accidental release, spill, or explosion of  
22 hazardous materials due to a tsunami, terrorist action, or Project-related  
23 modifications. No mitigation measures were required for these less-than-significant  
24 impacts.

25 The proposed modified project does not change or alter any of the findings of the  
26 Project EIR's hazards and hazardous materials impact assessment provided for both  
27 project-only impacts and cumulative-related impacts. The proposed modified project  
28 would not result in increases in construction or operational activity, nor would it  
29 result in any physical changes as compared to what was analyzed in the Project EIR.  
30 Therefore, the proposed modified project would not cause either a project-only or  
31 cumulatively considerable adverse impact related to hazards and hazardous materials  
32 beyond what was already disclosed in the Project EIR. New significant  
33 environmental impacts or a substantial increase in the severity of previously  
34 identified significant effects would not occur as a result of the proposed modified  
35 project.

### 36 **3.1.8 Land Use and Planning**

37 The Project EIR determined that under both project-only and cumulative conditions  
38 there would be less-than-significant impacts with mitigation incorporated related to  
39 the operational phase of Project introducing the general public to a hazard associated with  
40 offsite facilities (i.e., Mike's Marine Fueling Station). Mitigation Measures MM RISK-  
41 1 (same as discussed in Section 3.1.7) was required in the Project EIR to reduce the  
42 significance of this impact to a less-than-significant level.

1 The Project EIR determined that under both project-only and cumulative conditions  
2 construction and operation of the Project would result in less-than-significant land  
3 use and planning impacts related to: consistency with the adopted land use/density  
4 designation in the Community Plan, redevelopment plan, or specific plan for the site;  
5 and consistency with the General Plan or adopted environmental goals or policies  
6 contained in other applicable plans (construction only). No mitigation measures were  
7 required for these less-than-significant impacts.

8 The proposed modified project does not change or alter any of the findings of the  
9 Project EIR's land use and planning impact assessment provided for both project-  
10 only impacts and cumulative-related impacts. The proposed modified project would  
11 not result in increases in construction or operational activity, nor would it result in  
12 any physical changes as compared to what was analyzed in the Project EIR.  
13 Therefore, the proposed modified project would not cause either a project-only or  
14 cumulatively considerable adverse land use and planning impact beyond what was  
15 already disclosed in the Project EIR. New significant environmental impacts or a  
16 substantial increase in the severity of previously identified significant effects would  
17 not occur as a result of the proposed modified project.

### 18 **3.1.9 Noise and Vibration**

19 The Project EIR determined that under both project-only and cumulative conditions  
20 Project construction noise levels would exceed existing ambient exterior noise levels  
21 by 10 dBA (A-weighted decibels), resulting in a significant impact. Mitigation  
22 Measures MM NOI-1 through MM NOI-4 were required in the Project EIR to reduce  
23 the significance of these impacts; however, even after mitigation, the project-only  
24 impact and cumulative contribution were determined to remain significant. At this  
25 time, there are no known mitigation measures or alternatives that were previously  
26 considered infeasible but are now considered feasible that would substantially reduce  
27 one or more significant effects on the environment. Similarly, there are no known  
28 mitigation measures or alternatives that are considerably different than those required  
29 by the Project EIR that would substantially reduce one or more significant effects on  
30 the environment.

31 The Project EIR determined that under both project-only and cumulative conditions  
32 Project construction noise levels would not exceed the ambient noise level by 5 dBA  
33 at a noise-sensitive use between the hours of 9 p.m. and 7 a.m. Monday through  
34 Friday, before 8 a.m. or after 6 p.m. on Saturday, or at any time on Sunday. The  
35 Project EIR also determined that under project-only and cumulative conditions the  
36 Project would not expose persons to, or generate, excessive groundborne vibration or  
37 groundborne noise levels. Finally, the Project EIR determined that Project-related  
38 operations under project-only and cumulative conditions would not result in ambient  
39 noise levels measured at the property line of affected uses increasing by 3 dBA in  
40 Community Noise Equivalent Level (CNEL) to or within the "normally  
41 unacceptable" or "clearly unacceptable category," or increasing in any way by 5 dBA  
42 or more. No mitigation measures were required for these less-than-significant  
43 impacts.

1 The proposed modified project does not change or alter any of the findings of the  
2 Project EIR's noise and vibration impact assessment provided for both project-only  
3 impacts and cumulative-related impacts. The proposed modified project would not  
4 result in increases in construction or operational activity, nor would it result in any  
5 physical changes as compared to what was analyzed in the Project EIR. No  
6 significant impacts would occur with the Project during operation, and because no  
7 changes to operations are proposed, only less-than-significant impacts would occur,  
8 as discussed in the Project EIR. Therefore, the proposed modified project would not  
9 cause either a project-only or cumulatively considerable adverse noise and vibration  
10 impact beyond what was already disclosed in the Project EIR. New significant  
11 environmental impacts or a substantial increase in the severity of previously  
12 identified significant effects would not occur as a result of the proposed modified  
13 project.

### 14 **3.1.10 Public Services**

15 All construction- and operation-related public services impacts were determined to be  
16 less than significant under both project-only and cumulative conditions in the Project  
17 EIR. Specifically, the Project EIR determined that construction and operation of the  
18 Project would not: substantially reduce public services such as law enforcement,  
19 emergency services, and park services; burden existing Los Angeles Police  
20 Department (LAPD) or Port Police staff levels and facilities such that the LAPD or  
21 Port Police would not be able to maintain an adequate level of service without  
22 constructing additional facilities that could cause significant environmental effects;  
23 require the addition of a new fire station or the expansion, consolidation, or  
24 relocation of an existing facility to maintain service; or increase the demand for  
25 recreation and park services and facilities resulting in the physical deterioration of  
26 these facilities. No mitigation measures were required for these less-than-significant  
27 impacts.

28 The proposed modified project does not change or alter any of the findings of the  
29 Project EIR's public services impact assessment provided for both project-only  
30 impacts and cumulative-related impacts. The proposed modified project would not  
31 result in increases in construction or operational activity, nor would it result in any  
32 physical changes as compared to what was analyzed in the Project EIR. Therefore,  
33 the proposed modified project would not cause either a project-only or cumulatively  
34 considerable adverse public services impact beyond what was already disclosed in  
35 the Project EIR. New significant environmental impacts or a substantial increase in  
36 the severity of previously identified significant effects would not occur as a result of  
37 the proposed modified project.

### 38 **3.1.11 Transportation and Circulation (Ground)**

39 The Project EIR determined that under both project-only and cumulative conditions  
40 the Project would result in significant, but mitigable, construction-related short-term  
41 increases in truck and auto traffic, decreases in roadway capacity, and disruption of  
42 vehicular and non-motorized travel. Mitigation Measure TC-1 was required in the  
43 Project EIR to reduce the significance of this impact to a less-than-significant level.

1 The Project EIR determined that operation of the Project would not substantially  
 2 increase traffic volumes and degrade level of service (LOS) at intersections within  
 3 the Project vicinity under any of the analyzed scenarios, including Existing plus  
 4 Project, Year 2016 (Phase 1), Year 2024 (full build-out Phases 1 and 2), and Year  
 5 2042 (cumulative conditions) or in regard to operations on Congestion Management  
 6 Plan (CMP) facilities. The Project EIR also determined that operation of the Project  
 7 would not cause increases in demand for transit service beyond the supply of such  
 8 services; result in a violation of the City's adopted parking policies; or include design  
 9 elements that would result in conditions that would increase the risk of accidents,  
 10 either for vehicular or non-motorized traffic. No mitigation measures were required  
 11 for these less-than-significant impacts.

12 The proposed modified project does not change or alter any of the findings of the  
 13 Project EIR's ground transportation and circulation impact assessment provided for  
 14 both project-only impacts and cumulative-related impacts. The proposed project  
 15 modification would not result in incremental traffic increases generated by the  
 16 Project and any *potential* impacts would necessarily be limited to cumulative impacts  
 17 that would occur from growth in ambient traffic conditions between 2042 and 2064.  
 18 However, cumulative traffic is not anticipated to worsen between 2042 and 2064, for  
 19 reasons described below.

20 The LOS results contained within the Project EIR indicate that only two intersections  
 21 were projected to operate at LOS D or worse under year 2042 cumulative conditions  
 22 (weekend peak hour only) with the Project traffic included and that would also result  
 23 in an incremental volume-to-capacity ratio (V/C) change greater than 0.010 due to  
 24 the Project. These two intersections are shown in the table below.

<i>Year 2042 LOS Analysis</i>			
<i>Intersection</i>	<i>Peak Hour</i>	<i>V/C (LOS)</i>	<i>Δ V/C</i>
Harbor Boulevard/7 <sup>th</sup> Street	Weekend	0.819 (D)	0.017
Harbor Boulevard/Sampson Way	Weekend	0.885 (D)	0.014

25  
 26 Cumulative traffic conditions between 2042 and 2064 are not anticipated to further  
 27 degrade these two intersections to LOS E or F because traffic conditions in 2042 (as  
 28 analyzed in the Project EIR) are projected to be similar to traffic conditions in 2064.  
 29 This finding stems from the fact that traffic projections provided for year 2042 in the  
 30 Project EIR are considered to be extremely conservative, for reasons described in the  
 31 bullets below.

- 32 ■ The year 2042 traffic projections were developed using the Southern  
 33 California Association of Government (SCAG) travel demand model  
 34 available at the time of preparation of the Draft Project EIR, which was  
 35 developed for the 2008 Regional Transportation Plan (RTP). The 2008 RTP  
 36 model horizon year was 2035. SCAG, working with the State and all of the  
 37 region's cities, counties, and transportation planning agencies, chose not to  
 38 forecast socioeconomic growth beyond 2035 due primarily to the speculative  
 39 nature of such long-term forecasting. In order to provide a conservative

1 estimate of 2042 conditions for the Project EIR analyses, traffic model trips  
2 generated outside the Ports of Los Angeles/Long Beach boundaries were  
3 increased slightly above the SCAG 2035 forecast.

- 4 ■ Compared to the 2008 RTP model, the current 2012 RTP model year 2035  
5 trip ends for the adjacent San Pedro and Wilmington areas are now projected  
6 to be slightly lower.
- 7 ■ The 2012 RTP model projections are also very conservative since they do not  
8 account for the projected year 2035 trip reductions as a result of the approved  
9 2012 RTP Sustainable Communities Strategy (SCS) element, which is a State  
10 mandate via Senate Bill 375, passed in 2008. The SCS is primarily directed  
11 at reducing vehicle miles of travel, but is also expected to reduce vehicle  
12 trips.
- 13 ■ Perhaps most critically, the cumulative 2042 traffic projections for the entire  
14 Ports of Los Angeles/Long Beach complex are based upon maximum  
15 capacity conditions for cargo terminals. In addition, the projections account  
16 for buildout of the high-density uses planned in the San Pedro Waterfront  
17 and Wilmington Waterfront areas, including the passenger cruise terminal  
18 and redeveloped Ports O' Call. The land use assumptions and corresponding  
19 trip generation rates contained in the San Pedro Waterfront Project EIR, and  
20 included in the Project EIR cumulative traffic assessment, are considered to  
21 be very conservative because traditional regional retail shopping center rates  
22 were applied, which likely overestimates the trips that would occur at the  
23 waterfront. Since the waterfront projects would be built out by 2042, it is not  
24 anticipated that additional traffic increases would occur between 2042 and  
25 2064.

26 Therefore, the traffic volumes for 2042 represent the saturation of land use and  
27 socioeconomic factors, and are anticipated to be similar in the 2064 condition.  
28 Consequently, the cumulative traffic conditions in 2064, both with and without the  
29 Project, are not anticipated to degrade the Harbor Boulevard/ 7<sup>th</sup> St and Harbor  
30 Boulevard/Sampson Way intersections to LOS E or F. Accordingly, the proposed  
31 modified project would not cause either a project-only or cumulatively considerable  
32 ground transportation and circulation impact beyond what was already disclosed in  
33 the Project EIR. New significant environmental impacts or a substantial increase in  
34 the severity of previously identified significant effects would not occur as a result of  
35 the proposed modified project.

### 36 **3.1.12 Transportation and Circulation (Marine)**

37 All construction- and operation-related marine transportation and circulation impacts  
38 were determined to be less than significant under both project-only and cumulative  
39 conditions in the Project EIR. The Project EIR determined that construction and  
40 operation of the Project would not interfere with operation of designated vessel  
41 traffic lanes and/or impair the level of safety for vessels navigating the Main  
42 Channel, West Basin area, East Basin area, or precautionary areas. No mitigation  
43 measures were required for this less-than-significant impact.

1 The proposed modified project does not change or alter any of the findings of the  
2 Project EIR's marine transportation and circulation impact assessment provided for  
3 both project-only impacts and cumulative-related impacts. The proposed modified  
4 project would not result in increases in construction or operational activity, nor would  
5 it result in any physical changes as compared to what was analyzed in the Project  
6 EIR. Therefore, the proposed modified project would not cause either a project-only  
7 or cumulatively considerable adverse marine transportation and circulation impact  
8 beyond what was already disclosed in the Project EIR. New significant  
9 environmental impacts or a substantial increase in the severity of previously  
10 identified significant effects would not occur as a result of the proposed modified  
11 project.

### 12 **3.1.13 Utilities**

13 All construction- and operation-related utility impacts were determined to be less  
14 than significant under both project-only and cumulative conditions in the Project  
15 EIR. Specifically, the Project EIR determined that the Project would not: exceed  
16 wastewater treatment requirements of the applicable Regional Water Quality Control  
17 Board; require or result in the construction of new water or wastewater treatment  
18 facilities or expansion of existing facilities, the construction of which could cause  
19 significant environmental effects; require new or expanded water entitlements; result  
20 in inadequate capacity to serve the project's projected wastewater demand; be served  
21 by a landfill with insufficient permitted capacity to accommodate the project's solid  
22 waste disposal needs; and require new, offsite energy supply and distribution  
23 infrastructure, or capacity-enhancing alterations to existing facilities that are not  
24 anticipated by adopted plans or programs. No mitigation measures were required for  
25 these less-than-significant impacts.

26 The proposed modified project does not change or alter any of the findings of the  
27 Project EIR's utilities impact assessment provided for both project-only impacts and  
28 cumulative-related impacts. The proposed modified project would not result in  
29 increases in construction or operational activity, nor would it result in any physical  
30 changes as compared to what was analyzed in the Project EIR. Therefore, the  
31 proposed modified project would not cause either a project-only or cumulatively  
32 considerable adverse utilities impact beyond what was already disclosed in the  
33 Project EIR. New significant environmental impacts or a substantial increase in the  
34 severity of previously identified significant effects would not occur as a result of the  
35 proposed modified project.

### 36 **3.1.14 Water Quality, Sediments, and Oceanography**

37 All construction- and operation-related water quality, sediments, and oceanography  
38 impacts were determined to be less than significant or to have no impact under both  
39 project-only and cumulative conditions in the Project EIR. Specifically, the Project  
40 EIR determined that the Project would not substantially reduce or increase the  
41 amount of surface water in a water body, nor would it result in discharges that create  
42 pollution, contamination, or nuisance as defined by the California Water Code or that

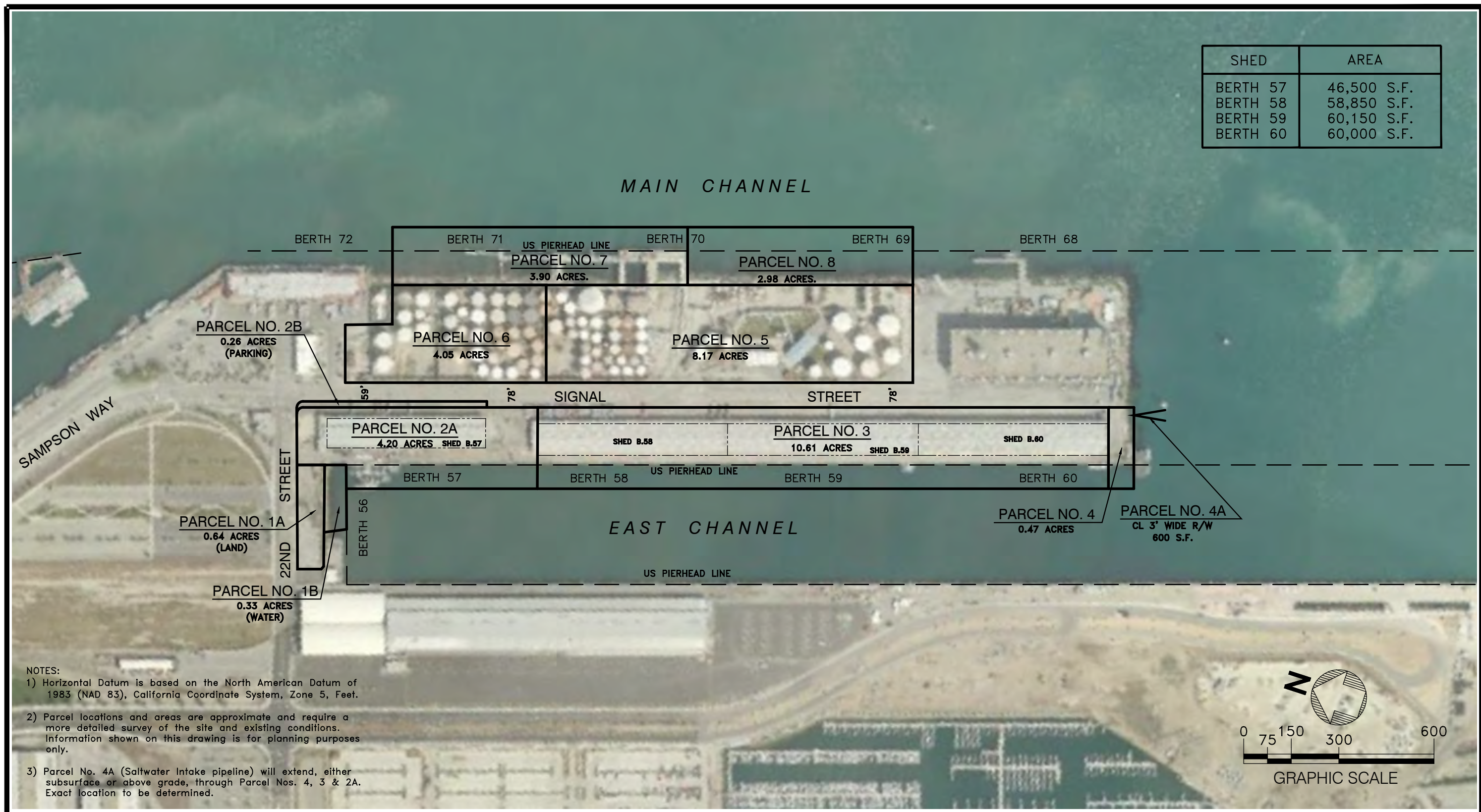
1 cause regulatory standards to be violated. No mitigation measures were required for  
2 these less-than-significant impacts.

3 The proposed modified project does not change or alter any of the findings of the  
4 Project EIR's water quality, sediments, and oceanography impact assessment  
5 provided for both project-only impacts and cumulative-related impacts. The  
6 proposed modified project would not result in increases in construction or operational  
7 activity, nor would it result in any physical changes as compared to what was  
8 analyzed in the Project EIR. Therefore, the proposed modified project would not  
9 cause either a project-only or cumulatively considerable adverse water quality,  
10 sediments, and oceanography impact beyond what was already disclosed in the  
11 Project EIR. New significant environmental impacts or a substantial increase in the  
12 severity of previously identified significant effects would not occur as a result of the  
13 proposed modified project.

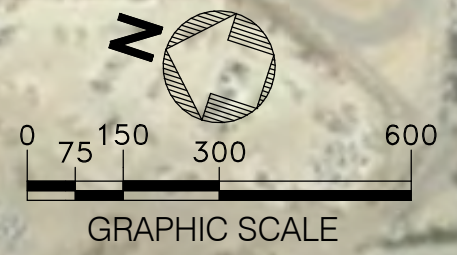
## 14 **3.2 Conclusions**

15 None of the conditions as described under Sections 15162 and 15163 of the State  
16 CEQA Guidelines requiring a subsequent or supplemental Project EIR have occurred.  
17 No new significant environmental effects and no substantial increase in the severity  
18 of previously identified significant effects would occur as a result of the proposed  
19 modified project. Furthermore, at this time there are no known mitigation measures  
20 or alternatives that were previously considered infeasible but are now considered  
21 feasible that would substantially reduce one or more significant effects on the  
22 environment identified in the Project EIR. Similarly, there are no known mitigation  
23 measures or alternatives that are considerably different than those required by the  
24 Project EIR that would substantially reduce one or more significant effects on the  
25 environment identified in the Project EIR.

SHED	AREA
BERTH 57	46,500 S.F.
BERTH 58	58,850 S.F.
BERTH 59	60,150 S.F.
BERTH 60	60,000 S.F.



- NOTES:
- 1) Horizontal Datum is based on the North American Datum of 1983 (NAD 83), California Coordinate System, Zone 5, Feet.
  - 2) Parcel locations and areas are approximate and require a more detailed survey of the site and existing conditions. Information shown on this drawing is for planning purposes only.
  - 3) Parcel No. 4A (Saltwater Intake pipeline) will extend, either subsurface or above grade, through Parcel Nos. 4, 3 & 2A. Exact location to be determined.



NO.	DATE	DRAWN	REVISIONS -	CH'KD	APP'D	SCALE: 1" = 300'	RECOMMENDED FOR APPROVAL	PERMIT MAP - AUTHORITY NO. L904	
						DRAWN: DRR 8/13	CHIEF OF DESIGN	<b>ALTASEA - MARINE RESEARCH CENTER</b>	
					CHECKED: C. GROSSI 8/13				
					DESIGNED: D. RAASCH 8/13 ENGR/ARCH				
							ASSISTANT CHIEF HARBOR ENGINEER	APPROVED	DRAWING NUMBER
								CHIEF HARBOR ENGINEER	45640



TRANSMITTAL 3

POLAPR04\_VER.1\_12/96

RPA/AltaSea Phasing - Proposed Lease No. 904

Lease Provision	Maximum Period for Action	Harbor Dept. Capital Development Responsibilities	Tenant Capital Development Responsibilities
RPA assignment of Lease to AltaSea	1 year; if not assigned either party can terminate the Lease.	No Harbor Dept. construction can proceed until Lease has been assigned to AltaSea.	
AltaSea must achieve formal non-profit status	1 year; if not achieved, Harbor Dept. can terminate the Lease.	No Harbor Dept. construction can proceed until AltaSea has achieved formal nonprofit status.	No Tenant construction can proceed until AltaSea has achieved formal nonprofit status.
Parcel 1A (Berth 56): May be developed concurrent with Parcel 2A (Berth 57).	5 years; if not accepted entire Lease is terminated.	Soil, groundwater, and building material contamination. Maximum liability for both Berths 56 and 57, capped at \$6 million.	Develop a signature, LEED gold, building with interpretive center free to the public. Minimum investment, including Parcel 1B if developed concurrently, \$34 million.
Parcel 1B (Berth 56 water area): Parcel 1 A (Berth 56) must be accepted by Tenant prior to or concurrently.	5 years		Develop to complement Parcels 1A development.
Parcel 2A (Berth 57): Parcel 1A (Berth 56) must be accepted prior to or concurrently.	5 years: if not accepted rights to all future parcels terminated.	Must complete design and construction within four years (estimated cost \$57 million, including \$6 million maximum contamination liability for Berths 56 & 57): 1) Berth 57 wharf/seismic upgrades and ground improvements (required, along with warehouse upgrades, for maximized use, and public promenade regardless of Lease); and 2) Upgrades to Signal Street	Redevelop historic warehouses 57 for use as academic, governmental, and non-profit marine research and educational facilities, and marine related business incubator/accelerator. Develop public promenade consistent with the Harbor Department LA Waterfront Design Standards along the entire length of Parcel 2 fronting 22nd Street, Signal Street and the wharf fronting the East Channel and public restrooms accessible to public promenade users. Minimum investment \$48 million.
Parcel 2B (Signal Street Parking): Tenant must have possession of Parcel 2A (Berth 57).	10 years	Street parking is part of Signal Street upgrades to be developed for Parcel 2A.	No capital improvements required.

RPA/AltaSea Phasing - Proposed Lease No. 904

Lease Provision	Maximum Period for Action	Harbor Dept. Capital Development Responsibilities	Tenant Capital Development Responsibilities
<p><u>Parcel 3 Interim Use "As-Is" Condition (Berths 58-60)</u>: Tenant must accept as is with load restrictions. At Port's option, a portion of Parcel 3 may be leased.</p>	<p>0-10 years maximum; sooner if Tenant does not accept Parcel 2A or Tenant accepts Parcels 3 &amp; 4</p>	<p>No capital improvements required.</p>	<p>No capital improvements required.</p>
<p><u>Parcels 3 &amp; 4 (Berths 58-60)</u>: Tenant must have possession of Parcels 1A and 2A (Berths 56-57). Parcels 3 &amp; 4 must be accepted concurrently.</p>	<p>10 years; if not accepted rights to all future parcels terminated. If funding for Harbor Dept. improvements are not approved by Board and Tenant does not waive such improvements, Tenant and City will work together to identify other strategies to move the project forward.</p>	<p>Board to considering funding the following improvements, but is not required to approve such funding (estimated cost \$152 million):                      1) Berths 58-60 wharf/seismic upgrades and ground improvements;                      2) Upgrades to Signal Street; and                      3) groundwater, and building material contamination; maximum liability capped at \$6 million.</p>	<p>Redevelop historic warehouses 58-60 for use as academic, governmental, and non-profit marine research and educational facilities, and marine related business incubator/accelerator. Develop a public promenade consistent with the Harbor Department LA Waterfront Design Standards along the entire length of Parcels 3 and 4 fronting Signal Street, including a public waterfront viewing area of the Outer Harbor at the southern boundary of Parcel 4 and a minimum of two access points from the Signal Street public promenade to the east channel through warehouses 58-60, with exhibit space. Minimum investment \$130 million. In the event the Harbor Dept. does not approve funding for Parcel 3 &amp; 4 development, Tenant has no obligation to accept or development Parcels 3 &amp; 4. However, Tenant at its sole discretion can take responsibility for those improvements.</p>
<p><u>Parcel 4A (Pipes at head of Berth 60)</u>: Parcel 1A (Berth 56) must be accepted by Tenant prior to or concurrently.</p>	<p>10 years</p>	<p>No capital improvements required.</p>	<p>Develop a saltwater intake system. No minimum investment requirement.</p>

RPA/AltaSea Phasing - Proposed Lease No. 904

Lease Provision	Maximum Period for Action	Harbor Dept. Capital Development Responsibilities	Tenant Capital Development Responsibilities
<p><u>Parcels 5 &amp; 7 (Berths 69-70)</u>: Tenant must have possession of Berths 56-60. Parcels 5 &amp; 7 must be accepted concurrently.</p>	<p>15 years or 5 years following completion of Harbor Department remediation activities, whichever is later.</p>	<p>No capital improvements required. Remediate land side contamination to commercial standards as required by law and to implement the San Pedro Waterfront Development Plan (required regardless of Lease) within an estimated ten-year timeframe.</p>	<p>Develop for use as academic, governmental, and non-profit marine research and educational facilities, and/or marine related business incubator/accelerator. Upgrade the existing approximately 700 linear feet of timber and concrete wharf fronting Parcels 5 and 6 along the Main Channel for vessel berthing related. Develop a public sidewalk fronting Signal Street. Redevelopment of pump house building, including the cost of remediation of hazardous building materials that maybe present in the building. Minimum investment \$67 million.</p>
<p><u>Parcel 6 (Berths 70-71)</u>: Tenant must have possession of Berths 56-60.</p>	<p>15 years or 5 years following completion of Harbor Department remediation activities, whichever is later; if not accepted rights to Parcel 8 are terminated.</p>	<p>No capital improvements required. Remediate land side contamination to commercial standards as required by law and to implement the San Pedro Waterfront Development Plan required regardless of Lease) within an estimated ten-year timeframe.</p>	<p>Develop for use as academic, governmental, and non-profit marine research and educational facilities, and/or marine related business incubator/accelerator. Develop a public sidewalk fronting Signal Street. Minimum investment \$129 million.</p>
<p><u>Parcel 8 (Berth 69-70 water area)</u>: Tenant must have possession of Parcels 5 &amp; 7.</p>	<p>30 years</p>	<p>No capital improvements required.</p>	<p>Develop new wharf structure for vessel berthing. No minimum investment requirement.</p>

**ROCKEFELLER PHILANTHROPY ADVISORS, INC/ALTASEA LEASE RENT**

Parcel/Use	Type	Area Square Feet	Value/Square Foot	Board ROR Policy	Discount	Discount Basis	Rental Rate/SF/Yr	Annual Market Rent	Proposed Rent Reduction	Purpose	Total Minimum Annual Rent
<b>Parcels 1A (Berth 56)</b>											
Promenade & Other Public Areas	Land	13,939	\$0.00	NA			\$0.00	\$0	NA	NA	\$0
Interpretive Center	Land	13,939	\$29.00	10%			\$2.90	\$40,423	100%	Free Public Access	\$0
<b>Total Parcel 1A</b>	0.64 acres land	<b>27,878</b>						<b>\$40,423</b>			<b>\$0</b>

<b>Parcel 1B (Berth 56 Water)</b>											
Complement to Public Interpretive Center	Water	14,375	\$0.00	10%			\$0.00	\$0	100%	Free Public Access	\$0
<b>Total Parcel 1B</b>	0.33 acres water	<b>14,375</b>						<b>\$0</b>			<b>\$0</b>

<b>Parcel 2A (Berth 57)</b>											
Public Promenade Wharf Area	Wharf	32,670	\$0.00	NA			\$0.00	\$0	NA	NA	\$0
Public Promenade Signal Street/Water Gardens	Land	16,770	\$0.00	NA			\$0.00	\$0	NA	NA	\$0
Head of Berth 57 Public Promenade/Plaza/Botanical	Land	17,483	\$0.00	NA			\$0.00	\$0	NA	NA	\$0
Public Picnic Area	Land	3,600	\$0.00	NA			\$0.00	\$0	NA	NA	\$0
Berth 57 Café/Food Truck area	Land	7,886	\$29.00	10%			\$2.90	\$22,869	90%	Economic Development	\$2,287
Warehouse 57 - Non-Public	Warehouse	39,252	\$4.20				\$4.20	\$164,858	90%	Economic Development	\$16,486
Warehouse 57 - Public Area	Warehouse	7,248	\$4.20				\$4.20	\$30,442	100%	Free Public Access	\$0
Berth 57 Outdoor Area - Non-Public	Land	12,846	\$0.00	included in whse rate 2:1			\$0.00	\$0	90%	Economic Development	\$0
Berth Water Area	Water	45,195	\$9.67	10%	50%	restricted access	\$0.48	\$21,844	90%	Economic Development	\$2,184
<b>Total Parcel 2A</b>	4.20 acres total 3.16 land/wharf/whse 1.04 acres water	<b>182,950</b>						<b>\$240,014</b>			<b>\$20,957</b>

**ROCKEFELLER PHILANTHROPY ADVISORS, INC/ALTASEA LEASE RENT**

Parcel/Use	Type	Area Square Feet	Value/Square Foot	Board ROR Policy	Discount	Discount Basis	Rental Rate/SF/Yr	Annual Market Rent	Proposed Rent Reduction	Purpose	Total Minimum Annual Rent
<b>Parcel 2B (Signal Street Parking)</b>											\$0
Signal Street Parking area	Land	11,326	\$29.00	10%			\$2.90	\$32,845	90%	Economic Development	\$3,285
<b>Total Parcel 2B</b>	0.26 acres land	<b>11,326</b>						<b>\$32,845</b>			<b>\$3,285</b>
<b>Parcels 3 &amp; 4 (Berths 58-60)</b>											
Public Promenade Signal Street/Water Gardens	Land	72,080	\$0.00	NA			\$0.00	\$0	NA	NA	\$0
Public Promenade Wharf Area (Parcel 4)	Wharf	14,473	\$0.00	NA			\$0.00	\$0	NA	NA	\$0
Warehouse 58-60 - Public	Warehouse	8,774	Interim Rent				\$4.20	\$36,851	100%	Free Public Access	\$0
Warehouse 58-60 - Non-Public	Warehouse	170,226	\$4.20				\$4.20	\$714,949	90%	Economic Development	\$71,495
Berth 58-60 Outdoor Area - Non-Public	Land	21,550	included in warehouse rate 2:1				\$0.00	\$0	90%	Economic Development	\$0
Berth 58-60 Wharf	Wharf	54,540		12%				\$13,300,000	90%	Economic Development	\$1,330,000
Berth 58-60 Water Area	Water	141,000	\$9.67	10%			\$0.97	\$136,300	90%	Economic Development	\$13,630
<b>Total Parcels 3 &amp; 4</b>	11.08 acres total 7.84 acres land/wharf/whse 3.24 acres water	<b>482,643</b>						<b>\$14,188,100</b>			<b>\$1,415,125</b>
<b>Parcel 4A (Pipes at Head of Berth 60)</b>											
Intake Pipes in Harbor	Water	600	\$9.67	10%	50%	subsurface	\$0.48	\$290	90%	Economic Development	\$29
<b>Total Parcel 4A</b>	0.01 acres water										<b>\$29</b>
<b>TOTAL RENT ASSUMING PARCELS 1A, 1B, 2A, 2B, 3, 4, &amp; 4A ARE IN TENANT POSSESSION</b>											<b>\$1,439,396</b>
16.52 acres total 11.9 acres land/wharf/warehouse 4.62 acres water											

**ROCKEFELLER PHILANTHROPY ADVISORS, INC/ALTASEA LEASE RENT**

Parcel/Use	Type	Area Square Feet	Value/Square Foot	Board ROR Policy	Discount	Discount Basis	Rental Rate/SF/Yr	Annual Market Rent	Proposed Rent Reduction	Purpose	Total Minimum Annual Rent
<b>Parcel 5 (Berth 69-70)</b>	4.05 acres land	176,420	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
<b>Parcel 6 (Berth 70-71)</b>	8.17 acres land	355,890	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
<b>Parcel 7 (Berth 70-71 wharf/water area)</b>	3.90 acres water	169,880	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
<b>Parcel 8 (Berth 69-70 water area)</b>	2.98 acres water	129,810	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
<b>TOTAL LEASE PREMISES AREA</b>	35.62 acres total 24.12 acres land/wharf/warehouse 11.5 acres water										

All square footages for specified uses are estimates based upon current Tenant conceptual Project designs. Actual square footages for each specified use will be revised based upon actual squared footages of facilities upon completion. Rent calculations will be adjusted accordingly.

No rent is required for public promenade areas that would otherwise be the responsibility of the Port, including the \$32 Million in Berth 57 wharf repair/upgrades. Denoted as "NA" in matrix.

Current Market Warehouse Rental Rate \$0.35/sf/mo= \$4.20/yr.

Current Market Land Value in Cabrillo/City Dock Area \$29.00/SF

Water Rental Rate 1/3 of Land Rate

Berth 58-60 wharf rent based upon Harbor Dept. development cost, with 12% ROR. Rent calculated to start in year 10 of the lease - including inflation.

90% discount from Market Rent for economic development. See Board Report.

100% discount from Market Rent for facilities accessible to the public free of charge, with associated public programming. See Board Report

Additional Compensation Required by Agreement includes:

50% of Equity or Royalty Income paid to Tenant

Reinvest all revenues into Project

Non-Monetary Services: Public Programming, development and maintenance of public areas, use of boat for water quality sampling, etc

# ALTA SEA

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## SUMMARY FISCAL BENEFIT ANALYSIS

Prepared For:

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**AUGUST 2013**

TRANSMITTAL 6

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## 1.0 Executive Summary

Rockefeller Philanthropy Advisors, Inc. ("RPA") and the Port of Los Angeles ("POLA") are in the process of evaluating the proposed development of a 28-acre marine research and interpretive center referred to as AltaSea ("Project") on a site formerly utilized for port warehouses and wharf space. As currently envisioned, the site would be redeveloped into an educational marine research campus with an approximately 20,700 square foot public interpretive center, promenade and tidal gardens (Berth 56), a state of the art sea water circulation and filtering system to support water dependent research uses, and approximately 230,100 square feet (Berths 57-60) of lab and related office space for students, scientists, researchers, and business incubators. Future development plans anticipate build out of an additional 150,500 square feet (Berths 70-71), which would support additional marine research related office, lab, and meeting spaces.

As part of RPA and POLA's evaluation of the proposed development Kosmont Companies ("Kosmont") was asked to evaluate the potential economic benefits of AltaSea. As a result of its analysis, Kosmont estimates that the Project will result in the following economic benefits:

- Total one time construction related economic benefits of approximately \$747.1 million for the initial phases, and over \$425.0 million for subsequent phases; a combined total of approximately \$1.17 billion
- Overall support of approximately 4,200 one time, one-year, full-time-equivalent construction related jobs for the initial phases, and more than 2,300 for the subsequent phases; a combined total of more than 6,500 jobs
- Ongoing annual economic activity of approximately \$169.2 million for the initial phases driven by more than 380 research related jobs for the initial phases (approximately 810 including indirect and induced employment), and \$121.0 million driven by almost 240 research related jobs for the subsequent phases (approximately 540 including indirect and induced employment); a combined total of \$290.3 million and more than 620 research related jobs (a combined total of approximately 1,350 including indirect and induced employment)
- Ongoing sales, utility user, and business license taxes generating annual general fund revenues for the City of approximately \$133,000 for the initial phases and \$146,000 for the subsequent phases; a combined total of more than \$279,000

These figures and additional indirect benefits are discussed in detail herein, and illustrate the significant positive benefits the proposed Project will have on the local community, City, and overall region.

*Note: Figures presented herein are expressed in 2013 dollars unless otherwise noted; construction figures include contingencies and escalation. Figures are estimates only, and are intended to provide relative order of magnitude of the elements evaluated.*

## 2.0 IMPLAN Modeling

Kosmont's analysis utilizes an econometric input/output model known as IMPLAN (IMppact analysis for PLANning) to quantify the economic impact of construction activity and permanent job wages and business expenditures within Los Angeles County ("County"). While the model utilizes the overall County as the functional region over which impacts are evaluated, much of the benefits are expected to occur proximate to the proposed development, and within the surrounding communities. The model estimates the economic impacts on various industries based on known economic inputs such as budgetary expenses or project cost estimates. The model estimates direct, indirect and induced impacts expressed in terms of increased economic activity ("output") and job creation.

Direct Impacts - Direct impacts refer to the change in total output and employment resulting from direct final demand changes in expenditures and/or production values. Direct benefits include expenditures made related to the AltaSea development for construction activities necessary to build the Project, as well as the jobs created to carry out these construction activities, and ultimately impacts from ongoing Project related expenditures and employment.

Indirect Benefits - Indirect benefits refer to the impacts resulting from changes in inter-industry purchases as they respond to demands of the industries directly affected by the Project's construction activities. Indirect benefits include industries affected by the ongoing operations and building of a Project such as wholesale trade, architectural, and engineering services.

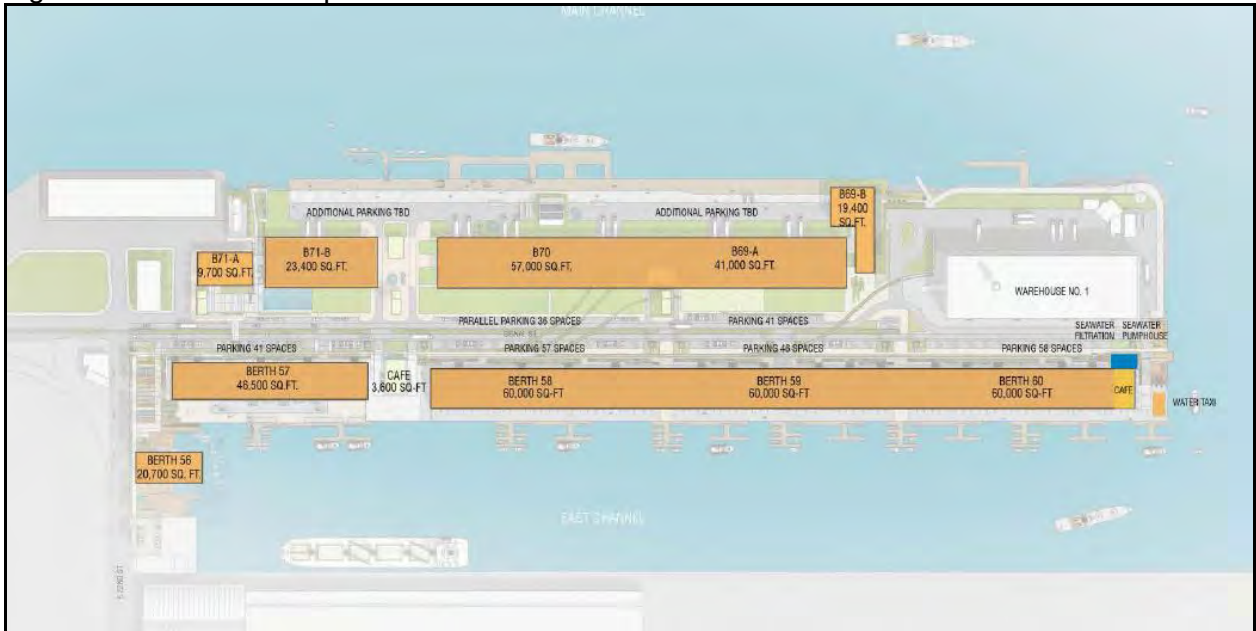
Induced Impacts - Induced benefits are the changes in local spending resulting from household income increases (i.e., for those households employed directly or indirectly in affected sectors). Individuals who are directly or indirectly employed as related to ongoing operation and construction activities will generate additional economic activity based on their personal expenditures proximate to the Project.

Projection of Permanent On-Site Jobs and Wage Related Impacts - Permanent jobs are estimated by utilizing industry and user type-specific employment ratios which typically estimate the number of employees per square foot of building area. Using the IMPLAN model, the analysis additionally estimates the wages created by these jobs measured by direct, indirect and induced impacts.

### 3.0 AltaSea Development Program

As introduced above, the preliminary development program consists of the construction and operation of an educational marine research campus including an approximately 20,700 square foot interpretive center, and approximately 230,100 square feet of educational water dependant research space and ancillary support facilities including a cafe and boat moorage. It is expected that these facilities will be built out in phases beginning in 2015 through roughly 2023. Approximately 150,500 square feet of space with similar uses is contemplated to be constructed subsequently as market conditions permit, and as the underlying land is remediated and prepared for construction. For reference, the analysis contained herein includes figures for both the initial approximately 250,800 square foot program (Berths 56-60) as well as subsequent phases that result in a total built area of 401,300 square feet (Berths 56-60 and 70-71 combined). A detailed conceptual site plan and summary of the proposed building program follow in Figure 1: AltaSea Conceptual Site Plan, and Table 1: Development Program below.

Figure 1: AltaSea Conceptual Site Plan



Source: AltaSea, 2013

Table 1: Development Program

<b>Initial Phases</b>					
Berth	Improvement	SF	Project Cost	POLA Investment	Total Investment
56	Learning Center	20,700			
	New Entrance	-			
<b>Total - Berth 56</b>		<b>20,700</b>	<b>\$ 46,222,359</b>	<b>\$ -</b>	<b>\$ 46,222,359</b>
57	Office Related Space	12,000			
	Laboratory Related Space	34,500			
	Café	3,600			
	12 Boat / Vessel Slips				
<b>Total - Berth 57</b>		<b>50,100</b>	<b>\$ 64,963,053</b>	<b>\$ 32,000,000</b>	<b>\$ 96,963,053</b>
58-60	Marine Office Research Center	50,000			
	Marine Research Laboratory Space	70,000			
	Marine Business Office Space	20,000			
	Marine Business Laboratory Space	40,000			
<b>Total - Berths 58-60</b>		<b>180,000</b>	<b>\$ 174,198,199</b>	<b>\$ 146,000,000</b>	<b>\$ 320,198,199</b>
<b>Total - Initial Development Program</b>		<b>250,800</b>	<b>\$ 285,383,611</b>	<b>\$ 178,000,000</b>	<b>\$ 463,383,611</b>
<b>Subsequent Phases</b>					
Berth	Improvement	SF	Project Cost	POLA Investment	Total Investment
70	General Marine Research Space	57,000			
	General Marine Research Space	41,000			
	Conference Center & Café	19,400			
<b>Total - Berth 70</b>		<b>117,400</b>	<b>\$ 90,434,514</b>	<b>\$ -</b>	<b>\$ 90,434,514</b>
71	General Marine Research Space	23,400			
	General Marine Research Space	9,700			
<b>Total - Berth 71</b>		<b>33,100</b>	<b>\$ 173,191,748</b>	<b>\$ -</b>	<b>\$ 173,191,748</b>
<b>Total - Subsequent Development Program</b>		<b>150,500</b>	<b>\$ 263,626,262</b>	<b>\$ -</b>	<b>\$ 263,626,262</b>
<b>Total - Complete Development Program</b>		<b>401,300</b>	<b>\$ 549,009,873</b>	<b>\$ 178,000,000</b>	<b>\$ 727,009,873</b>

Source: AltaSea; Kosmont Companies, 2013

## 4.0 Construction Related Benefits

Construction expenditures related to the AltaSea development are currently estimated to be approximately \$463.4 million (including an approximately \$178 million investment in improvements by POLA) for the initial 250,800 square feet of the Project (Berths 56-60), and an additional \$263.6 million for the remaining 150,500 square feet (Berths 70-71). As shown in the tables that follow, these construction expenditures are currently projected to result in the direct, indirect, and induced expenditures of approximately \$747.1 million, supporting approximately 4,200 one-year full-time-equivalent jobs ("FTE") for the initial phases, and over \$425.0 million, supporting more than 2,300 one-year FTE jobs for the subsequent phases. A summary of these figures are provided in Table 2: One-Time Construction Expenditure Benefits and Table 3: One-Time Construction Employment Benefits below.

Table 2: One-Time Construction Expenditure Benefits

	Initial Phases	Subsequent Phases	Total
<b>Direct Effect</b>	\$ 463,383,595	\$ 263,626,253	\$ 727,009,847
<b>Indirect Effect</b>	141,662,572	80,594,077	222,256,648
<b>Induced Effect</b>	142,033,912	80,805,338	222,839,250
<b>Total Effects</b>	<b>\$ 747,080,078</b>	<b>\$ 425,025,667</b>	<b>\$ 1,172,105,746</b>

Source: Kosmont Companies; IMPLAN, 2013

Table 3: One-Time Construction Employment Benefits

	Initial Phases	Subsequent Phases	Total
<b>Direct Jobs</b>	2,575	1,465	4,040
<b>Indirect Jobs</b>	709	404	1,113
<b>Induced Jobs</b>	906	515	1,421
<b>Total Jobs</b>	<b>4,190</b>	<b>2,384</b>	<b>6,574</b>

Source: Kosmont Companies; IMPLAN, 2013

(One-year FTE's)

## 5.0 Ongoing Employment and Expenditure Benefits

In addition to employment and expenditures related to the ongoing operation of the interpretive center, the Project is expected to provide incubator and research space to support a number of water dependent, marine related educational research initiatives, business acceleration programs, and related employment and expenditures. Similar to construction expenditures, this results in direct, indirect, and induced employment and economic activity. Based on preliminary figures, the initial phases of the Project (Berths 56-60) are projected to supporting more than 380 ongoing research related FTE jobs, and approximately \$97.7 million in direct annual expenditures. Including additional indirect and induced effects brings this total to more than 800 total jobs, and approximately \$169.2 million in annual economic activity.

The subsequent phases (Berths 70-71) are preliminarily projected to directly support more than 230 additional ongoing FTE jobs, and approximately \$70.1 million in annual expenditures. Including additional indirect and induced effects brings this total to approximately 540 total jobs, and approximately \$121.0 million in annual economic activity. Summary details follow in Table 4: Ongoing Expenditures and Table 5: Ongoing Employment Benefits.

Table 4: Ongoing Expenditures

	Initial Phases	Subsequent Phases	Total
<b>Direct Effect</b>	\$ 97,662,498	\$ 70,089,999	\$ 167,752,497
<b>Indirect Effect</b>	34,340,115	24,509,991	58,850,107
<b>Induced Effect</b>	37,221,203	26,436,229	63,657,431
<b>Total Effects</b>	<b>\$ 169,223,816</b>	<b>\$ 121,036,219</b>	<b>\$ 290,260,035</b>

Source: Kosmont Companies; IMPLAN, 2013

Table 5: Ongoing Employment Benefits

	Initial Phases	Subsequent Phases	Total
<b>Direct Jobs</b>	386	238	624
<b>Indirect Jobs</b>	185	132	317
<b>Induced Jobs</b>	237	169	406
<b>Total Jobs</b>	<b>809</b>	<b>538</b>	<b>1,348</b>

Source: Kosmont Companies; IMPLAN, 2013

(FTE's)

Table 6: Detailed Employment Summary

<b>Initial Phases</b>						
Berth	Improvement	SF	Employment Density	Stabilized Employment	Additional Interns/Students	Total (w/Interns, Students)
56	Learning Center	20,700	1 Per 1,725 SF	12	1	13
	New Entrance	-	n/a	-	-	-
<b>Total - Berth 56</b>		<b>20,700</b>	<b>1 Per 1,725 SF</b>	<b>12</b>	<b>1</b>	<b>13</b>
57	Office Related Space	12,000	1 Per 333 SF	36	4	40
	Laboratory Related Space	34,500	1 Per 1,200 SF	29	3	32
	Café	3,600	1 Per 450 SF	8	1	9
	12 Boat / Vessel Slips	-	-	-	-	-
<b>Total - Berth 57</b>		<b>50,100</b>	<b>1 Per 689 SF</b>	<b>73</b>	<b>7</b>	<b>80</b>
58-60	Marine Office Research Center	50,000	1 Per 333 SF	150	15	165
	Marine Research Laboratory Space	70,000	1 Per 1,200 SF	58	6	64
	Marine Business Office Space	20,000	1 Per 333 SF	60	6	66
	Marine Business Laboratory Space	40,000	1 Per 1,200 SF	33	3	37
<b>Total - Berths 58-60</b>		<b>180,000</b>	<b>1 Per 597 SF</b>	<b>302</b>	<b>30</b>	<b>332</b>
<b>Total - Initial Development Program</b>		<b>250,800</b>	<b>1 Per 649 SF</b>	<b>386</b>	<b>39</b>	<b>425</b>
<b>Subsequent Phases</b>						
Berth	Improvement	SF	Employment Density	Stabilized Employment	Additional Interns/Students	Total (w/Interns, Students)
70	General Marine Research Space	57,000	1 Per 600 SF	95	10	105
	General Marine Research Space	41,000	1 Per 600 SF	68	7	75
	Conference Center & Café	19,400	1 Per 1,000 SF	19	2	21
	<b>Total - Berth 70</b>		<b>117,400</b>	<b>1 Per 642 SF</b>	<b>183</b>	<b>18</b>
71	General Marine Research Space	23,400	1 Per 600 SF	39	4	43
	General Marine Research Space	9,700	1 Per 600 SF	16	2	18
	<b>Total - Berth 71</b>		<b>33,100</b>	<b>1 Per 600 SF</b>	<b>55</b>	<b>6</b>
<b>Total - Subsequent Development Program</b>		<b>150,500</b>	<b>1 Per 633 SF</b>	<b>238</b>	<b>24</b>	<b>262</b>
<b>Total - Complete Development Program</b>		<b>401,300</b>	<b>1 Per 643 SF</b>	<b>624</b>	<b>62</b>	<b>687</b>

Source: AltaSea; SCMI; PortTech Los Angeles; Kosmont Companies; IMPLAN, 2013

Table 7: Projected Annual Expenditures and Revenues Summary

<b>Initial Phases</b>					
Berth	Improvement	SF	Annual Expenditures	Annual Revenues	
56	Learning Center	20,700	\$ 1,700,000	\$ 2,000,000	
	New Entrance	-	-	-	
<b>Total - Berth 56</b>		<b>20,700</b>	<b>\$ 1,700,000</b>	<b>\$ 2,000,000</b>	
57	Office Related Space	12,000	\$ 1,260,000	\$ 1,500,000	
	Laboratory Related Space	34,500	3,622,500	4,312,500	
	Café	3,600	1,080,000	1,200,000	
	12 Boat / Vessel Slips		-	-	
<b>Total - Berth 57</b>		<b>50,100</b>	<b>\$ 5,962,500</b>	<b>\$ 7,012,500</b>	
58-60	Marine Office Research Center	50,000	\$ 25,000,000	\$ 16,666,667	
	Marine Research Laboratory Space	70,000	35,000,000	23,333,333	
	Marine Business Office Space	20,000	10,000,000	6,666,667	
	Marine Business Laboratory Space	40,000	20,000,000	13,333,333	
<b>Total - Berths 58-60</b>		<b>180,000</b>	<b>\$ 90,000,000</b>	<b>\$ 60,000,000</b>	
<b>Total - Initial Development Program</b>		<b>250,800</b>	<b>\$ 97,662,500</b>	<b>\$ 69,012,500</b>	
<b>Subsequent Phases</b>					
Berth	Improvement	SF	Annual Expenditures	Annual Revenues	
70	General Marine Research Space	57,000	\$ 28,500,000	\$ 19,000,000	
	General Marine Research Space	41,000	20,500,000	13,666,667	
	Conference Center & Café	19,400	4,540,000	4,940,000	
<b>Total - Berth 70</b>		<b>117,400</b>	<b>\$ 53,540,000</b>	<b>\$ 37,606,667</b>	
71	General Marine Research Space	23,400	\$ 11,700,000	\$ 7,800,000	
	General Marine Research Space	9,700	4,850,000	3,233,333	
<b>Total - Berth 71</b>		<b>33,100</b>	<b>\$ 16,550,000</b>	<b>\$ 11,033,333</b>	
<b>Total - Subsequent Development Program</b>		<b>150,500</b>	<b>\$ 70,090,000</b>	<b>\$ 48,640,000</b>	
<b>Total - Complete Development Program</b>		<b>401,300</b>	<b>\$ 167,752,500</b>	<b>\$ 117,652,500</b>	

Source: AltaSea; SCMI; PortTech Los Angeles; Kosmont Companies, 2013

## 5.1 Vessel Related Expenditures

The Project as proposed includes a number of end-ties and slips to accommodate vessels of various sizes. While crew and support expenditures for many of the vessels are assumed to be included in the figures above, additional vessels not directly accounted for in the figures above are contemplated. The initial phases include end ties that can accommodate fairly large vessels (i.e. greater than 100' in length), and the subsequent phases include a wharf approximately 700 feet in length, that could conceptually accommodate ships of much greater size. It is Kosmont's understanding that AltaSea is interested in attracting large research vessels that could be utilized during what would otherwise be vessel downtime by existing operators. The attraction of even one such vessel is expected to drive more the \$5 million in annual expenditures related to vessel maintenance, inspection and staffing.

## 6.0 City Tax Revenues

In addition to the benefits described above, the Project is expected to directly generate sales, business license, and utility user taxes for the City. Given the non-profit status of AltaSea, it was assumed that the Project would be exempt from property taxes, and associated property tax in-lieu of vehicle license fees. Further, business license taxes were only assumed to be generated by potential for profit research entities active on the site, and utility user taxes were assumed to be greatly reduced relative to projects of similar size given the planned incorporation of green-technologies into the Project.

### 6.1 Sales Tax Revenues

The Project is expected to directly generate sales tax through on-site taxable transactions (i.e. cafe and gift shop sales), as well as through taxable expenditures off-site by employees of the Project. As shown in Table 8: On-Site Sales Tax Generation below, Kosmont estimates that the Project will yield more than \$5.8 million in annual taxable sales, directly generating approximately \$58,000 in annual sales tax revenue for the City. Additionally, based on employee salary projections and consumer expenditure patterns as shown in Table 9: Taxable Expenditures by Income Level, and Table 10: Estimated Off-Site Sales Tax Capture, spending by Project employees is estimated to result in an additional \$39,300 in annual Project wide sales tax revenue to the City.

Table 8: On-Site Sales Tax Generation

Initial Phases								
Berth	Improvement	Total SF	Retail SF	Sales / SF	% Taxable	Gross Annual Sales	Annual Sales Tax	
56	Learning Center	20,700	1,800	\$ 400	100%	\$ 720,000	\$ 7,200	
	New Entrance	-	-	-	-	-	-	-
<b>Total - Berth 56</b>		<b>20,700</b>	<b>1,800</b>	<b>\$ 400</b>	<b>100%</b>	<b>\$ 720,000</b>	<b>\$ 7,200</b>	
57	Office Related Space	12,000	-	\$ -	-	\$ -	\$ -	
	Laboratory Related Space	34,500	-	-	-	-	-	
	Café	3,600	3,600	300	100%	1,080,000	10,800	
	12 Boat / Vessel Slips	-	-	-	-	-	-	-
<b>Total - Berth 57</b>		<b>50,100</b>	<b>3,600</b>	<b>\$ 300</b>	<b>100%</b>	<b>\$ 1,080,000</b>	<b>\$ 10,800</b>	
58-60	Marine Office Research Center	50,000	-	\$ -	-	\$ -	\$ -	
	Marine Research Laboratory Space	70,000	-	-	-	-	-	
	Marine Business Office Space	20,000	-	-	-	-	-	
	Marine Business Laboratory Space	40,000	-	-	-	-	-	
<b>Total - Berths 58-60</b>		<b>180,000</b>	<b>-</b>	<b>\$ -</b>	<b>-</b>	<b>\$ -</b>	<b>\$ -</b>	
<b>Total - Initial Development Program</b>		<b>250,800</b>	<b>5,400</b>	<b>\$ 333</b>	<b>100%</b>	<b>\$ 1,800,000</b>	<b>\$ 18,000</b>	
Subsequent Phases								
Berth	Improvement	SQ FT	Retail SF	Sales / SF	% Taxable	Gross Annual Sales	Annual Sales Tax	
70	General Marine Research Space	57,000	-	\$ -	-	\$ -	\$ -	
	General Marine Research Space	41,000	-	-	-	-	-	
	Conference Center & Café	19,400	10,000	400	100%	4,000,000	40,000	
<b>Total - Berth 70</b>		<b>117,400</b>	<b>10,000</b>	<b>\$ 400</b>	<b>100%</b>	<b>\$ 4,000,000</b>	<b>\$ 40,000</b>	
71	General Marine Research Space	23,400	-	\$ -	-	\$ -	\$ -	
	General Marine Research Space	9,700	-	-	-	-	-	
<b>Total - Berth 71</b>		<b>33,100</b>	<b>-</b>	<b>\$ -</b>	<b>-</b>	<b>\$ -</b>	<b>\$ -</b>	
<b>Total - Subsequent Development Program</b>		<b>150,500</b>	<b>10,000</b>	<b>\$ 400</b>	<b>100%</b>	<b>\$ 4,000,000</b>	<b>\$ 40,000</b>	
<b>Total - Complete Development Program</b>		<b>401,300</b>	<b>15,400</b>	<b>\$ 377</b>	<b>100%</b>	<b>\$ 5,800,000</b>	<b>\$ 58,000</b>	

Source: Kosmont Companies; 2013

Table 9: Taxable Expenditures by Income Level

	<u>Tier I</u>		<u>Tier II</u>		<u>Tier III</u>	
<b>Est. Average HH Income (pre-tax):</b>	\$85,000		\$55,000		\$45,000	
<b>Annual Expenditures</b>	<b>Percent</b>	<b>Amount</b>	<b>Percent</b>	<b>Amount</b>	<b>Percent</b>	<b>Amount</b>
Food Away from Home	4.0%	\$ 3,424	4.3%	\$ 2,379	4.4%	\$1,981
Alcoholic Beverages	0.8%	639	0.7%	362	0.7%	311
Other household expenses	1.6%	1,380	1.6%	905	1.9%	839
Housekeeping Supplies	0.9%	734	1.1%	598	1.2%	532
Household Furn & Equip	2.3%	1,992	2.8%	1,524	2.5%	1,112
Apparel & Services	2.5%	2,153	2.9%	1,592	2.6%	1,187
Vehicle Purchases	4.8%	4,066	4.7%	2,607	4.4%	1,976
Gasoline & Oil	4.2%	3,536	5.2%	2,878	6.0%	2,685
Other, Maintenance & Repairs (Partial)	1.9%	1,655	2.3%	1,291	2.4%	1,081
Entertainment	3.9%	3,298	4.6%	2,549	4.2%	1,896
Personal care products & services	1.0%	828	1.1%	590	1.2%	521
Reading	0.2%	143	0.2%	119	0.2%	90
Tobacco related	0.5%	401	0.7%	399	0.9%	416
Miscellaneous	1.1%	913	1.2%	674	1.5%	657
<b>Total Taxable Spending</b>	<b>29.6%</b>	<b>\$25,162</b>	<b>33.6%</b>	<b>\$18,468</b>	<b>34.0%</b>	<b>\$15,283</b>

Source: US BLS Consumer Expenditure Survey; Kosmont Companies, 2013

Table 10: Estimated Off-Site Sales Tax Capture

		Initial Phases	Subsequent Phases	Total
<i>Tier I</i>				
Estimated Number of FTE (% of Total)	25.0%	97	59	156
Estimated Annual Taxable Spending	\$	25,162	\$ 25,162	\$ 25,162
Estimated Capture within City (Off-Site)	32.5%	8,178	8,178	8,178
Total Taxable Sales Captured	\$	789,987	\$ 486,361	\$ 1,276,347
<i>Tier II</i>				
Estimated Number of FTE (% of Total)	50.0%	193	119	119
Estimated Annual Taxable Spending	\$	18,468	\$ 18,468	\$ 36,937
Estimated Capture within City (Off-Site)	32.5%	6,002	6,002	12,004
Total Taxable Sales Captured	\$	1,159,674	\$ 713,961	\$ 1,873,635
<i>Tier III</i>				
Estimated Number of FTE (% of Total)	25.0%	97	59	156
Estimated Annual Taxable Spending	\$	15,283	\$ 15,283	\$ 15,283
Estimated Capture within City (Off-Site)	32.5%	4,967	4,967	4,967
Total Taxable Sales Captured	\$	479,821	\$ 295,405	\$ 775,226
Average Salary	\$	60,000	\$ 60,000	\$ 60,000
<b>Total Off-Site Taxable Sales</b>	<b>\$</b>	<b>2,429,482</b>	<b>\$ 1,495,727</b>	<b>\$ 3,925,209</b>
<b>Total Annual Sales Tax to City</b>	1.00% <b>\$</b>	<b>24,300</b>	<b>\$ 15,000</b>	<b>\$ 39,300</b>

Source: Kosmont Companies, 2013

Note: estimated sales tax capture is based on an equivalent of 25% of employees living within and completing roughly 70% of spending within the City (anywhere in Los Angeles), 50% residing outside the City, but completing 25% of taxable spending proximate to the Project and/or within the City, and the remaining 25% residing outside the City, and completing 10% of taxable spending proximate to the Project and/or within the City.

## 6.2 Business License Taxes

The City levies a business license tax on for-profit businesses based on the type of establishment and the amount of annual gross receipts generated. As shown in Table 11: Estimated Business License Tax Revenues below, estimated annual business license taxes are \$69,924 for the initial phases of the Project, \$56,092 for subsequent phases, resulting in an estimated total of \$126,016 Project wide, annually.

Table 11: Estimated Business License Tax Revenues

<b>Initial Phases</b>						
Berth	Improvement	SF	Annual Revenues	Assumed Rate per \$1,000*	Annual Total	
56	Learning Center	20,700	\$ 2,000,000	\$ -	\$ -	-
	New Entrance	-	-	-	-	-
<b>Total - Berth 56</b>		<b>20,700</b>	<b>\$ 2,000,000</b>			<b>\$ -</b>
57	Office Related Space	12,000	\$ 1,500,000	\$ -	\$ -	-
	Laboratory Related Space	34,500	4,312,500	-	-	-
	Café	3,600	1,200,000	1.270	-	1,524
	12 Boat / Vessel Slips	-	-	-	-	-
<b>Total - Berth 57</b>		<b>50,100</b>	<b>\$ 7,012,500</b>			<b>\$ 1,524</b>
58-60	Marine Office Research Center	50,000	\$ 16,666,667	\$ 1.140	\$ -	19,000
	Marine Research Laboratory Space	70,000	23,333,333	1.140	-	26,600
	Marine Business Office Space	20,000	6,666,667	1.140	-	7,600
	Marine Business Laboratory Space	40,000	13,333,333	1.140	-	15,200
<b>Total - Berths 58-60</b>		<b>180,000</b>	<b>\$ 60,000,000</b>			<b>\$ 68,400</b>
<b>Total - Initial Development Program</b>		<b>250,800</b>	<b>\$ 69,012,500</b>			<b>\$ 69,924</b>
<b>Subsequent Phases</b>						
Berth	Improvement	SF	Annual Revenues			
70	General Marine Research Space	57,000	\$ 19,000,000	\$ 1.140	\$ -	21,660
	General Marine Research Space	41,000	13,666,667	1.140	-	15,580
	Conference Center & Café	19,400	4,940,000	1.270	-	6,274
	<b>Total - Berth 70</b>		<b>117,400</b>	<b>\$ 37,606,667</b>		
71	General Marine Research Space	23,400	\$ 7,800,000	\$ 1.140	\$ -	8,892
	General Marine Research Space	9,700	3,233,333	1.140	-	3,686
<b>Total - Berth 71</b>		<b>33,100</b>	<b>\$ 11,033,333</b>			<b>\$ 12,578</b>
<b>Total - Subsequent Development Program</b>		<b>150,500</b>	<b>\$ 48,640,000</b>			<b>\$ 56,092</b>
<b>Total - Complete Development Program</b>		<b>401,300</b>	<b>\$ 117,652,500</b>			<b>\$ 126,016</b>

\*\$1.14 per \$1,000 assumes blended rate of \$1.01 and 1.27 per \$1,000

Source: AltaSea; SCMI; PortTech Los Angeles; City of Los Angeles; Kosmont Companies, 2013

### 6.3 Utility User Taxes

Municipally supplied electricity, gas, and most phone usage is subject to City utility user taxes ("UUT"). Rates for commercial users are 12.5% for electricity, 10% for gas, and 9% for phone usage, and taxes are levied on both for profit, and non-profit usage. While the Project's goal is to utilize green energy design features and on-site power generation to eliminate the need for grid supplied electricity and gas, completely eliminating such needs at all times is often elusive. As such typical usage factors for both electricity and gas were reduced by 75% (rather than 100%). As shown in Table 12: Estimated Utility User Taxes, estimated annual UUT is approximately \$20,705 for the initial development program, and \$14,369 for subsequent phases; a total of \$35,074 Project wide.

Table 12: Estimated Utility User Taxes

Commercial Utility User Tax Rates			Electricity 12.5%	Gas 10%	Phone 9%		
<b>Initial Phases</b>							
Berth	Improvement	SF	\$/SF Electricity	\$/SF Gas	\$/SF Phone	Reduction Factor*	Total
56	Learning Center New Entrance	20,700	\$ 1.50	\$ 0.50	\$ 0.25	75%	\$ 1,695
<b>Total - Berth 56</b>		<b>20,700</b>					<b>\$ 1,695</b>
57	Office Related Space	12,000	\$ 1.25	\$ 0.50	\$ 0.50	75%	\$ 1,159
	Laboratory Related Space	34,500	1.25	0.50	0.25	75%	2,555
	Café	3,600	1.75	1.25	0.25	75%	390
	12 Boat / Vessel Slips	-	-	-	-	-	-
<b>Total - Berth 57</b>		<b>50,100</b>					<b>\$ 4,104</b>
58-60	Marine Office Research Center	50,000	\$ 1.25	\$ 0.50	\$ 0.50	75%	\$ 4,828
	Marine Research Laboratory Space	70,000	1.25	0.50	0.25	75%	5,184
	Marine Business Office Space	20,000	1.25	0.50	0.50	75%	1,931
	Marine Business Laboratory Space	40,000	1.25	0.50	0.25	75%	2,963
<b>Total - Berths 58-60</b>		<b>180,000</b>					<b>\$ 14,906</b>
<b>Total - Initial Development Program</b>		<b>250,800</b>					<b>\$ 20,705</b>
<b>Subsequent Phases</b>							
Berth	Improvement	SF	\$/SF Electricity	\$/SF Gas	\$/SF Phone	Reduction Factor*	Total
70	General Marine Research Space	57,000	\$ 1.25	\$ 0.50	\$ 0.50	75%	\$ 5,504
	General Marine Research Space	41,000	1.25	0.50	0.50	75%	3,959
	Conference Center & Café	19,400	1.50	0.75	0.25	75%	1,710
<b>Total - Berth 70</b>		<b>117,400</b>					<b>\$ 11,173</b>
71	General Marine Research Space	23,400	\$ 1.25	\$ 0.50	\$ 0.50	75%	\$ 2,260
	General Marine Research Space	9,700	1.25	0.50	0.50	75%	937
<b>Total - Berth 71</b>		<b>33,100</b>					<b>\$ 3,196</b>
<b>Total - Subsequent Development Program</b>		<b>150,500</b>					<b>\$ 14,369</b>
<b>Total - Complete Development Program</b>		<b>401,300</b>					<b>\$ 35,074</b>

\*Reduction factor applied to electricity and gas usage based on use of on-site green technologies

Source: City of Los Angeles; Kosmont Companies, 2013

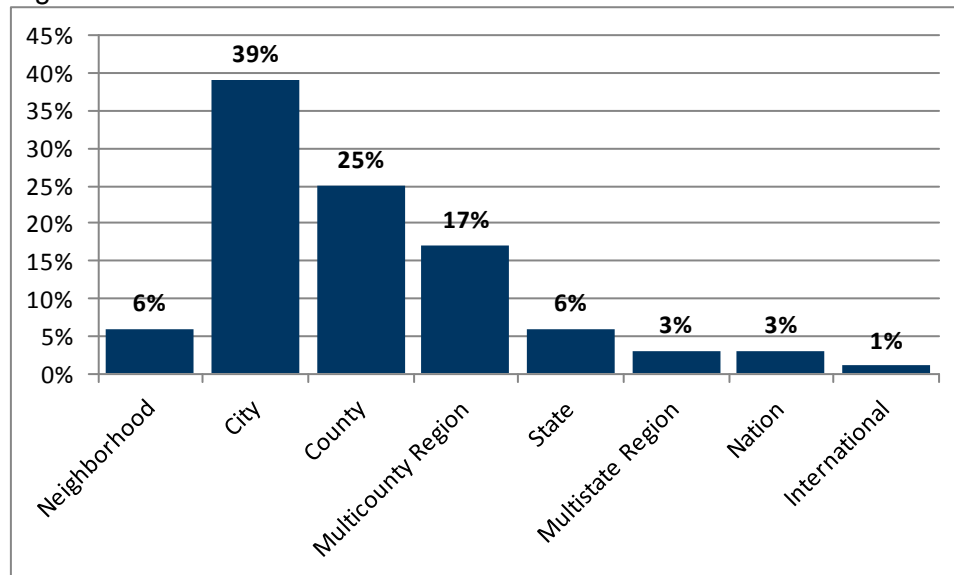
## 7.0 Additional Indirect Benefits

In addition to the benefits directly related to the Project discussed above, the Project is expected to generate indirect benefits that while potentially elusive to fully document and quantify, can result in significant benefits to the local community. These benefits include area economic growth through business attraction, growth in tourism and visitor spending, and an increase in residential demand, occupancy, and resident spending by employees who choose to reside in the City and surrounding communities, proximate to the Project. A discussion of these additional benefits, including metrics on overall order of magnitude follows.

### 7.1 Business Attraction and Co-location

Given the unique research facilities to be provided in AltaSea, marine research related businesses may desire to locate proximate to the Site in the City as well as proximate communities. While it is difficult to project the level of such activity, it is nonetheless reasonable to expect such business attraction. Further, components of the Project that incubate research entities, can be expected to help drive proximate business co-location. Figures from business incubators in operation across the United States indicate that a high percentage of graduating entities choose to locate proximate to incubator facilities. As shown in Figure 2: Incubator Graduate Location Trends below, roughly 45% of graduating entities tend to locate within the same neighborhood or city as an incubator facility, and an additional 25% locate within the same county. Given the water dependent nature Project marine research entities, Kosmont expects that neighborhood location trends will be stronger than national trends for AltaSea graduates.

Figure 2: Incubator Graduate Location Trends



Source: National Business Incubation Association - "2012 State of the Business Incubation Industry"

To estimate an order of magnitude of potential benefits to the City, Kosmont evaluated incubator trends in the United States. On average more than roughly 80% of entities successfully maintained ongoing operations after graduation, and while typical graduate entity revenue proved difficult to track, average entity revenues while in incubators was approximately \$170,000 per year. Assuming a 40% graduation rate, and 80% success rate after graduation, 45% relocation rate within the City (6% Neighborhood and 39% City) and no increase in entity revenues, this represents an estimated potential increase in economic activity of approximately \$3.9 million annually within the City. *Note: this level of projected economic impact will likely be accretive in subsequent years as additional businesses graduate, and prior graduates continue operations.*

## 7.2 Visitor Spending

The interpretive center included in the initial phases, as well as the conference center in the subsequent phases have to the potential to be notable attractors of visitors to the area. In addition, the unique nature of the proposed facility and collaborative opportunities for guest researchers may also drive visitor demand. While it is somewhat speculative to project potential visitor demand for a new attraction, AltaSea estimates that the interpretive center will attract 300,000 visitors in its opening year, and 500,000 visitors annually by the fifth year of operation / stabilization. The interpretive center starts with the advantage of co-location, as upon completion it will represent one of multiple tourist and educational amenities in the local area (i.e. USS Iowa, Ports O' Call, etc.), thus benefiting from the dual potential of direct visitor attraction to the venue, as well as visitation prompted by and in conjunction with other amenities that inevitably attract visitors to the area.

In order to provide an order of magnitude of potential economic benefits from visitor spending, Kosmont evaluated average visitor spending within Los Angeles County, and found that on average (domestic overnight, domestic day, and international overnight), each visitor spent \$308 (\$2012). Based on these figures, each 1% of projected visitor demand (3,000 opening year, 5,000 in year five) driven by or contributed by the interpretive center alone, is projected to yield an estimated gross annual benefit in area spending of \$924,144 and \$1,540,240 respectively. *Note: some minor visitor spending is accounted for in the revenue and sales tax projections related to interpretive center operations as illustrated in Table 8.*

Further, based on an average room night (hotel/lodging) cost of \$145 for area hotels, and assuming an average occupancy of two persons per room, each 1% of overnight visitor demand driven by or contributed by the interpretive center alone conceptually supports 1,500 - 2,500 room nights, or \$217,500 - \$362,500 in hotel revenues. Based on the City's Transient Occupancy Tax ("TOT") rate of 15.5% for hotels over 50 rooms, this would result in approximately \$33,700 - \$56,000 in City TOT revenues annually for each 1% of interpretive center attendance that results in overnight visitor demand. A summary of estimated increases in annual spending and City TOT revenues assuming a 1%, 5%, and 10% increase in visitor demand driven by or contributed by the interpretive center follows in Table 13: Increase in Visitor Spending, TOT Revenues.

Table 13: Increase in Visitor Spending, TOT Revenues

Contribution %	Annual Visitors		Annual Spending		City TOT	
	300,000	500,000	Initial	Stabilized	Initial	Stabilized
1%	3,000	5,000	\$ 924,000	\$ 1,540,000	\$ 33,713	\$ 56,188
5%	15,000	25,000	4,620,000	7,700,000	168,563	280,938
10%	30,000	50,000	9,240,000	15,400,000	337,125	561,875

Source: Micromomics - "2012 Economic Impact of Los Angeles County Visitor Spending"; AltaSea; City of Los Angeles; Kosmont Companies, 2013

### 7.3 Employee and Student Residency

In Section 6 above the potential benefits from employee spending and sales tax generation within the City were discussed. In addition to the benefits of employee expenditures and City sales tax revenue generation, the likelihood of employee residency in the City and communities surrounding the Project can help drive additional economic activity, residential occupancy, and other intangible benefits to the community. Kosmont anticipates that over time, given the attractive and reasonably affordable housing options available in the area, an increasing share of longer term employees on the site will choose to reside proximate to the project, increasing benefits to the community. Additionally, AltaSea contemplates that future programming may include fixed-length coursework for students, potentially including accommodations within San Pedro in dorm-like housing. Such programming would be expected to yield further economic and social benefits to the community.

## 8.0 Conclusion

In conclusion, the proposed AltaSea educational marine research development is anticipated to generate substantial benefits to POLA and the surrounding communities related to construction spending, and ongoing water dependent research employment and spending. The Project is expected to be a driver of significant ongoing economic activity primarily from tourism and technology development for the community, City, and region, which will result in increased levels of employment and tax revenues. Highlights of notable project benefits are:

- Total one time construction related economic benefits of approximately \$747.1 million for the initial phases, and over \$425.0 million for subsequent phases; a combined total of approximately \$1.17 billion
- Overall support of approximately 4,200 one time, one-year, full-time-equivalent construction related jobs for the initial phases, and more than 2,300 for the subsequent phases; a combined total of more than 6,500 jobs
- Ongoing annual economic activity of approximately \$169.2 million for the initial phases driven by more than 380 research related jobs for the initial phases (approximately 810 including indirect and induced employment), and \$121.0 million driven by almost 240 research related jobs for the subsequent phases (approximately 540 including indirect and induced employment); a combined total of \$290.3 million and more than 620 research related jobs (a combined total of approximately 1,350 including indirect and induced employment)
- Ongoing sales, utility user, and business license taxes generating annual general fund revenues for the City of approximately \$133,000 for the initial phases and \$146,000 for the subsequent phases; a combined total of more than \$279,000

Additional impacts include increases in visitor and tourism spending, and an increase in residential demand, occupancy, and resident spending. The combined benefits of the AltaSea project will result in significant positive impacts and economic activity in the region for years to come.

**THE CITY OF LOS ANGELES**

**HARBOR DEPARTMENT,**

*Landlord*

and

**ROCKEFELLER PHILANTHROPY ADVISORS, INC.,**

*Tenant*

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**LEASE NO. 904**

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Dated as of \_\_\_\_\_

**AltaSea at the Port of Los Angeles**

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## EXHIBITS

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Exhibit B	Demised Premises
Exhibit C	Improvements
Exhibit D	Load Limits
Exhibit E	Wilmington Truck Route
Exhibit F	Non-Monetary Compensation Services and Public Benefits to be Provided by Tenant
Exhibit G	Appraisal Standards
Exhibit H	Appraiser Qualifications
Exhibit I	Baseline
Exhibit J	Assignment and Assumption of Agreement
Exhibit K	Format and Content Requirements for Tenant’s Environmental Compliance Program (“ECP”)
Exhibit K-A	Applicable Environmental Policies, Rules and Directives of City’s Harbor Department (Port Environmental Policies)
Exhibit K-B	Mitigation Monitoring and Reporting Program
Exhibit L	New City Improvements
Exhibit M	Tenant Improvements
Exhibit N	Sublease Template and Business Incubator Plan
Exhibit O	Affirmative Action Program Provisions
Exhibit P	Business Tax Registration Certificate (BTRC) Number

LEASE NO. 904  
GRANTED BY THE CITY OF LOS ANGELES  
TO  
ROCKEFELLER PHILANTHROPY ADVISORS, INC.

THIS LEASE ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between THE CITY OF LOS ANGELES, a municipal corporation ("City") acting by and through its Board of Harbor Commissioners ("Board"), and Rockefeller Philanthropy Advisors, Inc., a Delaware corporation, 6 West 48<sup>th</sup> Street, 10<sup>th</sup> Floor, New York, New York 10036, for future assignment to AltaSea at the Port of Los Angeles ("AltaSea") a California nonprofit public benefit corporation ("Tenant"), (referred to herein singularly as "Party" or collectively as "Parties") .

**Section 1. Grants and Findings.**

1.1 WHEREAS, the Board programmatically approved the use of the property known as City Dock No.1 for institutional, research and commercial purposes as part of the San Pedro Waterfront Project on September 29, 2009; and

1.2 WHEREAS, the Board approved the City Dock No. 1 Urban Marine Research Center Project and certified a Final Environmental Impact Report SCH#2010121013 for the Project on October 18, 2012 ("Project"); and

1.3 WHEREAS, on June 17, 2013, Tenant announced that it would name the Project "AltaSea at the Port of Los Angeles"; and

1.4 WHEREAS, the Project will diversify the economic base of the Port of Los Angeles; create new job opportunities through a world class urban marine research facility for Southern California universities and draw researchers from around the world; and provide opportunities for new business enterprises to commercialize technologies and discoveries made at the Project; and

1.5 WHEREAS, the Project will include an interpretive center to educate the general public regarding oceanic science and the marine research being undertaken at the Project, along with other public amenities such as a café and viewing areas; and

1.6 WHEREAS, the Project will provide shared infrastructure, such as a saltwater system, storage areas, and vessel berthing facilities, which will benefit all users by avoiding duplicative expenses and minimizing on-going operational and maintenance costs; and

1.7 WHEREAS, the long-term coordination and administration of the Project's joint use marine research infrastructure by academic institutions and business interests, as well as public facilities, will require special expertise and dedicated resources; and

1.8 WHEREAS, the Project's development and operational costs are substantial and therefore require a significant outside philanthropic fundraising effort and identification of other outside funding sources such as grants; and

1.9 WHEREAS, in January 2013, Phillips & Associates completed a study of the institutional and organizational needs of a multi-user/tenant urban marine research center, which recommended that an independent nonprofit be established to fund, develop, operate, and manage the Project; and

1.10 WHEREAS, on May 3, 2012, the Board supported the development of an independent California nonprofit corporation by a third party or parties, with the capabilities to implement, operate, and maintain the Project in collaboration with potential Project users and tenants, in order to enter into a lease with the City to develop, operate and maintain the Project; and

1.11 WHEREAS, AltaSea has been formed as a California public benefit corporation, and the AltaSea Advisory Cabinet has contracted with Rockefeller Philanthropy Advisors, Inc. to act as its fiscal agent until such time as assignment and transfer of this Agreement from Rockefeller Philanthropy Advisors, Inc. to AltaSea may be implemented; and

1.12 WHEREAS, through and in accordance with and subject to the terms of this Agreement Tenant shall commit to significant financial investment in an amount of at least \$408 million for the development of the Premises, including but not limited to the redevelopment of the historic warehouses at City Dock No. 1; construction and maintenance of an urban marine research interpretive center; construction and maintenance of a public promenade; and various other public-serving facilities, all of which will provide substantial benefits to the City, the Port of Los Angeles, its surrounding communities, the region, and the general public; and

1.13 WHEREAS, Tenant agrees that the Premises under this Agreement are approximately 35.62 acres, the possession and occupancy of which shall be contingent upon Tenant fulfilling certain development requirements, along with operational and funding obligations, all to be met within specific time periods, the terms of which are specified herein;

1.14 WHEREAS, this Agreement and the uses permitted thereby are in compliance with, in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby as referenced in Section 16.24 of this Agreement;

1.15 WHEREAS, as of the Effective Date of the Agreement (as defined below), and for the years in which rent will be paid by Tenant under this Agreement, the rent charged will be reduced from market rent and Board and City Council find that this is reasonable and justifiable in exchange for the economic development and public benefits that are expected to be derived from the Project over the term of the Agreement;

1.16 WHEREAS, City desires to issue to Tenant and Tenant desires to accept from City this Agreement, granting Tenant use and possession of the Premises pursuant to the terms of this Agreement, which Agreement shall become effective pursuant to the terms of Section 2.1 of this Agreement;

NOW, THEREFORE, based on the grants and findings listed above and the terms, conditions and restrictions contained below, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, City hereby grants and Tenant hereby accepts this Agreement granting Tenant use and occupancy of the Premises, on which it shall undertake the Permitted Uses for the Term (all as hereinafter defined) pursuant to the terms and conditions described herein.

**Section 2. Effective Date; Term and Holdover.**

**2.1 Effective Date.** This Agreement shall become effective on the date of execution by the Executive Director of the Harbor Department (“Executive Director”), or her or his designee, which shall follow Tenant approval and execution, approval as to form and legality by the City Attorney of the City of Los Angeles, approval by the Board, and approval by the City Council of City (“Council”) pursuant to Sections 606, 607 and 654 of the City’s Charter (“Effective Date”).

**2.2 Term.** The term of this Agreement shall be for a maximum of fifty (50) years (“Term”) unless sooner terminated in accordance with the terms of this Agreement. The term shall commence on the Effective Date defined above.

**2.3 Holdover After Expiration Date.** Should Tenant remain in possession of all or any part of the Demised Premises after the expiration of this Agreement as provided herein, with or without the express or implied consent of City, such occupancy shall be considered to be as “holdover” from month to month only, and not a renewal of this Agreement nor an extension for any further term, and in such case, Rent or other monetary sums due hereunder for such expired or terminated Agreement shall be payable in the amount of: (i) one hundred fifty percent (150%) of the Rent (as defined in Section 5) payable for the last month of the Term, plus (ii) other charges and non-monetary compensation payable hereunder at the time specified in this Agreement, and such month to month occupancy shall be subject to every other provision, covenant and agreement contained herein, including any applicable adjustment of Rent set forth in Section 5. Nothing contained in this subsection shall be construed as consent by City to any holding over by Tenant, and City expressly reserves the right to require Tenant to surrender possession of the Demised Premises to City as provided in this Agreement, and to the extent permissible by Applicable Law, upon the expiration or other termination of this Agreement. The foregoing provisions of this Subsection are in addition to and do not affect the right of re-entry or any right of City hereunder or as otherwise provided by Applicable Law, and in no way shall such provisions affect any right which City may otherwise have to recover damages to the extent permitted by

Applicable Law from Tenant for loss or liability incurred by City resulting from such failure by Tenant to surrender the Demised Premises.

### **Section 3. Premises.**

**3.1 Description.** The premises subject to this Agreement consist of Parcel Nos. 1A through 8 (each a “Parcel”), as delineated and more particularly described on Drawing No. 45640 (“Premises”) that is on file in the office of the Chief Harbor Engineer of the Harbor Department (“Harbor Engineer”) and is attached hereto as Exhibit A. The list of Existing City Improvements is attached hereto as Exhibit C. The total acreage of the Premises is 35.62: 24.12 acres of land/wharf/warehouse and 11.5 acres of water. The Premises encompass the total property and improvements subject to this Agreement. However, Tenant shall be entitled to accept and take possession of individual Parcels within the Premises pursuant to the process for Tenant acceptance and possession of individual Parcels described in Section 3.2 below (“Demised Premises”). Exhibit B identifies the Demised Premises. Upon incorporating an individual Parcel into the Demised Premises, the Executive Director shall issue an updated Exhibit B, then Exhibit B-1 and so forth numerically as Tenant accepts and takes possession of Parcels over the Term of the Agreement. Said revised Exhibit shall be transmitted to Tenant and shall list all of the Parcels that Tenant has accepted or is in possession of as permitted in Section 3.2 of this Agreement. Upon City’s transmittal to Tenant, each such issued Exhibit B-# shall be deemed to: (i) be incorporated into this Agreement without further action of the Board or Council; and (ii) supersede any earlier iterations of Exhibit B-#.

3.1.1 Memorandum of Lease. Upon request by Tenant from time to time, the Harbor Department shall execute and deliver to the Tenant a memorandum of lease, provided such memorandum is based solely upon information that exists within the Harbor Department. Tenant, at its sole cost and expense, shall be responsible for development of any information necessary but not existing within the Harbor Department, including but not limited to, legal description(s) of the Premises or Demised Premises, that may be necessary for the Tenant’s intended purpose and for the City to complete the Tenant requested Memorandum of Lease. All information generated by the Tenant related to the Premises and Demised Premises shall be subject to review and approval by the City.

**3.2 Acceptance, Possession and Surrender.** Tenant may, at Tenant’s sole option, accept Parcels on the Premises over a period of time after the Effective Date, upon the satisfaction of the obligations, conditions and timelines set forth in Section 3.2.1 and pursuant to all other terms and conditions of this Agreement. Upon Tenant’s acceptance of a Parcel, Tenant shall be obligated to: (i) possess and occupy the Parcel on the timeframe established in Section 3.2.1.3; (ii) design, construct, and complete Tenant Improvements on the Parcel as set forth in Section 7.2.1 and Exhibit N; (iii) provide the benefits and services enumerated in Exhibit F for the Parcel; and (iv) perform all other obligations and comply with all other terms and conditions of this Agreement related to Tenant acceptance and possession of such Parcel. Tenant agrees

to surrender the Demised Premises and forfeit any and all rights to any Parcels provided for herein upon the expiration or earlier termination of this Agreement. Notwithstanding anything to the contrary, Tenant is not obligated to accept any Parcel or satisfy any condition or requirement of Section 3.2.1 for those parcels Tenant does not accept.

### 3.2.1 Parcel Acceptance and Possession Process.

3.2.1.1 Tenant Requirements for Accepting Individual Parcels. Other than Parcel 3 Interim Use, which shall require only item (a) below, Tenant's exercise of its rights to accept any Parcel(s) and add such Parcel(s) to the Demised Premises, is conditioned upon Tenant's being in current compliance with this Agreement and Tenant's completion and submission to the Executive Director, for review, the following information for such Parcel(s) to be accepted by Tenant:

- (a) For each Parcel, including Parcel 3 for Interim Use, deliver a written notice of Tenant's intent to exercise its right to accept such Parcel. The date the City receives such written notice shall be the "Tenant Acceptance Date."
- (b) Development schedule, not to exceed six (6) years in duration for City and Tenant Improvements, for such Parcel(s) to be accepted by Tenant.
- (c) Five (5) year business plan for such Parcel(s) to be accepted by Tenant.
- (d) For Parcels 1A, 2A, 3, 5 and 6, an updated economic analyses for the Demised Premises and the Parcel(s) to be accepted by Tenant.
- (e) Harbor Department Application for Development (ADP), with such Parcel(s) development cost estimates, in compliance with Section 4.14 of this Agreement.
- (f) Capital Campaign Plan for such Parcel(s) to be accepted by Tenant.
- (g) Evidence of committed capital in the amount established below for development of such Parcel(s) to be accepted by Tenant.
  - i. Fifty percent (50%) of such Parcel(s) development cost estimates provided pursuant to Section 3.2.1.1(e) for each such Parcel that does not require City Improvement's pursuant to Section 7.1 or
  - ii. Seventy-five percent (75%) of such Parcel(s) development cost estimates provided pursuant to Section 3.2.1.1(e) for each such Parcel that requires City Improvement's pursuant to Section 7.1.
- (h) Demonstration of completion of prior Demised Premises Tenant Improvements in Section 7.2.1 and compliance with prior Demised Premises

Non-Monetary Compensation requirements established in Section 5.2.2 and Exhibit F. The Board, at its sole discretion, may waive the requirement that Tenant Improvements be completed prior to accepting a subsequent Parcel, but only if Tenant requests a waiver in writing a minimum of six (6) months prior to the acceptance deadline established in Section 3.2.1.3.

- (i) For each of Parcels 5, 6, 7, and 8, submit a proposal for Non-Monetary Compensation, if any.

3.2.1.2 Executive Director Determination of Compliance. The Executive Director shall review the submittal and determine if Tenant is in compliance with the terms and conditions of this Agreement, including satisfaction of the requirements listed in (a) through (i) above, and the Parcel acceptance order, timelines, and requirements established in Section 3.2.1.3. The Executive Director shall notify the Tenant in writing of the determination. If the Executive Director finds compliance, the Executive Director shall issue an updated Exhibit B as set forth in Section 3.1, with those Parcels accepted by Tenant that require immediate Tenant possession pursuant to Section 3.2.1.3 added to the Demised Premises and with those Parcels accepted by Tenant that require Tenant possession after completion of New City Improvements pursuant to Section 3.2.1.3 added as accepted parcels, with the Tenant Acceptance Date and the date the City determined Tenant compliance with the procedures established in Section 3.2.1. If the Executive Director finds non-compliance, the Executive Director's written determination shall identify the deficiencies that resulted in non-compliance and the Parties shall meet to resolve the outstanding issues or concerns of the Executive Director. If the Parties are unable to agree on compliance, the matter shall be presented to the Board for their determination, in their sole and final judgment.

If Tenant does not satisfy the conditions for acceptance of any Parcel in accordance with the requirements established in Section 3.2.1, as reasonably determined by the Board, then the Parcel shall not be included in the Demised Premises or otherwise deemed accepted by the Tenant.

3.2.1.3 Timeline and Process for Acceptance and Possession of Individual Parcels.

- (a) Parcel 1A: Tenant shall have a maximum of five (5) years from the Effective Date of this Agreement to accept Parcel 1A. Tenant must take possession of Parcel 1A immediately upon Executive Director's determination that (i) with respect to Parcel 1A, Tenant has satisfied the conditions in, and is in compliance with Section 3.2.1.1 and (ii) as required in Section 6.2.3 Exhibit I has been updated.
- (b) Parcel 1B: Tenant shall have a maximum of five (5) years from the Effective Date of this Agreement to accept Parcel 1B. Tenant must have

accepted Parcel 1A prior to or concurrent with accepting Parcel 1B. Tenant must take possession of Parcel 1B immediately upon Executive Director's determination that (i) Tenant has previously or concurrently accepted Parcel 1A, (ii) with respect to Parcel 1B, Tenant has satisfied the conditions in, and is in compliance with, Section 3.2.1.1 and (iii) as required in Section 6.2.3 Exhibit I has been updated.

- (c) Parcel 2A: Tenant shall have a maximum of five (5) years from the Effective Date of this Agreement to option Parcel 2A. Tenant must have accepted Parcel 1A prior to or concurrent with accepting Parcel 2A. Upon Executive Director's determination that (i) Tenant has previously or concurrently accepted Parcel 1A, (ii) with respect to Parcel 2A, Tenant has satisfied the conditions in, and is in compliance with Section 3.2.1.1, and (iii) this the Agreement has been transferred from Rockefeller Philanthropy Advisors, Inc. to AltaSea at the Port of Los Angeles City shall initiate design of the New City Improvements for Parcel 2A as set forth in Section 7.1 and Exhibit L of this Agreement. City shall subsequently construct and complete the New City Improvements for Parcel 2A as set forth in Section 7.1 and Exhibit L of this Agreement. Tenant must take possession of Parcel 2A immediately upon City's completion of such New City Improvements and as required in Section 6.2.3 Exhibit I has been updated.
- (d) Parcel 2B: Tenant shall have a maximum of ten (10) years from the Effective Date of this Agreement to accept Parcel 2B. Prior to accepting Parcel 2B, Tenant must be in possession of Parcel 2A and City Signal Street Improvements required pursuant to Section 7.1 for Parcel 2A must be complete by the City as set forth in Exhibit L. Tenant must take possession of Parcel 2B immediately upon Executive Director's determination that (i) Tenant is in possession of Parcel 2A, (ii) the City Signal Street Improvements for Parcel 2A are complete, (iii) with respect to Parcel 2B, Tenant has satisfied the conditions in and Tenant is in compliance with Section 3.2.1.1 and (iv) as required in Section 6.2.3 Exhibit I has been updated.
- (e) Parcels 3 and 4: Tenant shall have a maximum of ten (10) years from the Effective Date of this Agreement to accept Parcels 3 and 4. If Tenant accepts Parcels 3 and 4, the Tenant shall accept Parcels 3 and 4 concurrently. Prior to accepting Parcels 3 and 4, Tenant must have possession of Parcels 1A and 2A. Upon Executive Director's determination that: (i) Tenant has possession of Parcels 1A and 2A; (ii) with respect to Parcels 3 and 4, Tenant has satisfied the conditions in and is in compliance with Section 3.2.1.1, and (iii) City funding has been approved pursuant to Section 7.1.1 and Exhibit L, City shall design, construct, and complete New City Improvements as set forth in Section 7.1 and Exhibit L for Parcels 3 and 4. Tenant must take possession of

Parcels 3 and 4 immediately upon City's completion of New City Improvements for Parcels 3 and 4 and as required in Section 6.2.3 Exhibit I has been updated. Tenant at its sole option, may waive the New City Improvements for Parcels 3 and 4 set forth in Section 7.1 and directly take possession of Parcels 3 and 4 if Tenant meets the requirements of (i) and (ii) above. Upon taking possession of Parcels 3 and 4, Tenant shall comply with the requirements of Section 3.2.4 of this Agreement. If the City does not complete the New City Improvements for Parcels 3 and 4 set forth in Section 7.1, and the Tenant does not waive such New City Improvements, the Tenant may rescind Tenant's acceptance of Parcel 3 and 4 by written notice to the City and Tenant shall have no obligation to (i) possess and occupy the Parcel; (ii) design, construct, or complete Tenant Improvements on the Parcel as set forth in Section 7.2.1 and Exhibit N; (iii) provide the benefits and services enumerated in Exhibit F for Parcels 3 and 4.

- (f) Parcel 3 Interim Use: Tenant shall have the right to have interim possession of Parcel 3, or upon agreement of City portions of Parcel 3, for the Permitted Uses and in its "as is, where-is, with all faults and limitations" condition, for interim use from the Effective Date of this Agreement until: (i) the right to accept Parcel 2A expires pursuant to Section 3.2.1.3(c); (ii) Tenant accepts Parcels 3 and 4 pursuant to Section 3.2.1.3(e) or (iii) the right to accept Parcels 3 and 4 expires pursuant to Section 3.2.1.3(e), whichever occurs first ("Interim Use"). Tenant shall deliver a written notice of Tenant's intent to exercise its right to accept Parcel 3, or portions thereof, for Interim Use to the Executive Director as set forth in Section 3.2.1.1 (a). After Executive Director's determination that Tenant is in compliance with the requirements established in Section 3.2.1.1 and as required in Section 6.2.3 Exhibit I has been updated, Tenant shall take temporary possession of Parcel 3, or portions thereof, for Interim Use no less than ninety (90) days from Executive Director's finding of compliance pursuant to Section 3.2.1.2, or longer upon mutual written agreement of the Executive Director and Tenant. Tenant shall surrender to City those portions of Parcel 3 that Tenant has taken possession of for Interim Use and restore Parcel 3 pursuant to Section 11.2 of this Agreement at least sixty (60) days prior to: (i) the right to accept Parcel 2A expires pursuant to Section 3.2.1.3(c); (ii) Tenant accepts Parcels 3 and 4 pursuant to Section 3.2.1.3(e); or (iii) the right to accept Parcels 3 and 4 expires pursuant to Section 3.2.1.3(e), whichever occurs first.
- (g) Parcel 4A: Tenant shall have a maximum of ten (10) years from the Effective Date of this Agreement to accept Parcel 4A. Tenant must have accepted Parcel 1A prior to or concurrent with accepting Parcel 4A. The Tenant must take possession of Parcel 4A immediately upon Executive Director's determination that: (i) Tenant has previously or concurrently

accepted Parcel 1A; (ii) with respect to Parcel 4A, Tenant is in compliance with the requirements established in Section 3.2.1.1; and (iii) as required in Section 6.2.3 Exhibit I has been updated.

- (h) Parcels 5 and 7: Tenant shall have a maximum of fifteen (15) years from the Effective Date of this Agreement or five (5) years following the City's completion of remediation activities on Parcels 5 and 7, whichever is longer, to accept Parcels 5 and 7. If Tenant accepts Parcels 5 and 7, then, Tenant must accept Parcels 5 and 7 concurrently and prior to accepting Parcels 5 and 7 Tenant must be in possession of Parcels 3 and 4. Tenant must take possession of Parcels 5 and 7 immediately upon Executive Director's determination that Tenant: (i) has possession of Parcels 3 and 4; (ii) with respect to Parcels 5 and 7, Tenant has satisfied the conditions in and is in compliance with Section 3.2.1.1; (iii) City has completed remediation activities on Parcel 5 and 7 as set forth in Exhibit L; (iv) Compensation, including, but not limited to Minimum Annual Rent for Parcels 5 and 7 have been established pursuant to Section 5 of this Agreement; and (v) as required in Section 6.2.3 Exhibit I has been updated.
- (i) Parcel 6: Tenant shall have a maximum of fifteen (15) years from the Effective Date of this Agreement or five (5) years following the City's completion of remediation activities on Parcel 6, whichever is longer, to accept Parcel 6. Prior to accepting Parcel 6, Tenant must be in possession of Parcels 3 and 4. Tenant must take possession of Parcel 6 immediately upon Executive Director's determination that Tenant: (i) has possession of Parcels 3 and 4; (ii) with respect to Parcel 6, Tenant has satisfied the conditions and is in compliance with Section 3.2.1.1; (iii) City has completed remediation activities on Parcel 6 as set forth in Exhibit L; (iv) Compensation, including, but not limited to Minimum Annual Rent for Parcel 6 has been established pursuant to Section 5 of this Agreement; and (v) as required in Section 6.2.3 Exhibit I has been updated.
- (j) Parcel 8: Tenant shall have a maximum of thirty (30) years from the Effective Date of this Agreement to accept Parcel 8. Prior to accepting Parcels 8, Tenant must be in possession of Parcel 5 and Parcel 7. Tenant must take possession of Parcel 8 immediately upon Executive Director's determination that Tenant: (i) has possession of Parcels 5 and 7; (ii) with respect to Parcel 8, Tenant has satisfied the conditions and is in compliance Section 3.2.1.1; (iii) City has completed remediation activities on Parcel 8 as set forth in Exhibit L; (iv) Compensation, including, but not limited to Minimum Annual Rent for Parcel 8 has been established pursuant to Section 5 of this Agreement; and (v) as required in Section 6.2.3 Exhibit I has been updated.

3.2.2 Failure of Tenant to Accept Parcel. If Tenant fails to accept any individual Parcel within the timeframe established in Section 3.2.1, rights to that individual Parcel and all Parcels contingent upon acceptance of that individual Parcel shall be terminated. The Executive Director shall revise Exhibit A, as necessary to remove said Parcel(s) from the Premises. The Executive Director shall issue an updated Exhibit A, then Exhibit A-1 and so forth numerically as Tenant fails to accept Parcels over the term of the Agreement. Said revised Exhibit shall be transmitted to Tenant. Upon City's transmittal to Tenant, each such issued Exhibit A-# shall be deemed to: (i) be incorporated into this Agreement without further action of the Board or Council; and (ii) supersede any earlier iterations of Exhibit A-#. If Parcel 1A has not been added to the Demised Premises in accordance with this Agreement within five (5) years after the Effective Date, and the timeline for Tenant acceptance of Parcel 1A has not been extended pursuant to Section 3.2.6, then this Agreement automatically terminates.

3.2.3 City Rights Pre-Possession of Parcels. City shall have unrestricted use of each Parcel within the Premises prior to Tenant taking possession of such Parcels pursuant to Section 3.2, provided, however, leases by the City to third parties shall be limited to 30-day Revocable Permits, or longer upon mutual written agreement between Executive Director and Tenant, or a temporary use agreement with a maximum 30-day termination provision, or longer upon mutual written agreement between Executive Director and Tenant. Tenant shall in no way interfere with the access to or use of such Parcels by City or such other third parties. Tenant shall not have rights of any kind, including but not limited to, right-of-entry, for any Parcels that are not within the Demised Premises.

3.2.4 Parcel 4 Existing Tenants. Tenant acknowledges that at the Effective Date of this Agreement, City has leased portions of Parcel 4 as identified on Exhibit A to U.S. Water Taxi, pursuant to Revocable Permit #1491 and to the United States Department of Commerce National Oceanographic and Atmospheric Administration ("NOAA"), pursuant to Revocable Permit #1406 (collectively, "Existing Tenants"). Tenant shall in no way interfere with the Existing Tenants' access to or use of Parcel 4, prior to Tenant taking possession of Parcel 4. Prior to taking possession of Parcel 4, Tenant shall cooperate with City to evaluate appropriate locations for NOAA within the Premises. Tenant shall be required to accommodate the NOAA operation of a tide survey and gauging station in a location that ensures long-term continuity of data collected at that station and consistent with the terms of Revocable Permit #1406.

3.2.5 Environmental Review. Tenant development proposals for each Parcel shall be subject to City environmental review for compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). The City has certified Final Environmental Impact Report SCH#2010121013 (certified FEIR) completed for the Project.

(a) Prior to Tenant acceptance of Parcel(s) pursuant Section 3.2.1, Tenant, subject to the requirements of Section 7.5.1, may request the City to review Tenant development proposal(s) for consistency with the certified FEIR, and any subsequent

environmental reviews performed for the Project. In the event the Tenant development proposal is inconsistent with the previously performed environmental analyses or documents, at the request of the Tenant and subject to Section 7.5.1, the City shall perform additional environmental analysis in accordance with CEQA and NEPA, as appropriate. Nothing in this Section 3.2.5 shall commit City or Board to approve the requested development proposal. The Board reserves the right to consider and act on Tenant development proposals that deviate from the certified FEIR, including, but not limited to, the requirement of mitigations measures.

(b) Upon Tenant's request for acceptance of a Parcel(s) pursuant to Section 3.2.1.1, City shall review the ADP submitted pursuant to Section 3.2.1.1 (e) for Tenant development proposal(s) for consistency with the certified FEIR, and any subsequent environmental reviews performed for the Project. In the event Tenant development proposal is inconsistent with the previously performed environmental analyses or documents, subject to Section 7.5.1, the City shall perform additional environmental analysis in accordance with CEQA and NEPA, as appropriate. Executive Director determination of compliance of Tenant meeting the requirements for Parcel acceptance pursuant to 3.2.1.2 shall be held in abeyance until the environmental consistency review process and any subsequent environmental review processes have been completed and, if required, Board approval of Tenant's development proposal. Nothing in this Section 3.2.5 shall commit City or Board to approve the requested development proposal. The Board reserves the right to consider and act on Tenant development proposals that deviate from the certified EIR, including, but not limited to, the requirement of mitigations measures.

3.2.6 Extension of Time. The Board, at its sole option, may extend any timeline established in Section 3.2.1.3 for Tenant to accept an individual Parcel, if such an extension is requested by Tenant in writing at least six (6) months prior to the expiration of the Tenant Parcel acceptance period. Tenant shall include with any such written request information and documentation detailing the status of compliance with the requirements set forth in Section 3.2.1.2 for the Parcel(s) for which the extension is being requested.

### **3.3 Improvements.**

3.3.1 Existing City Improvements. The improvements on the Premises as of the Effective Date, which improvements are owned by City ("Existing City Improvements") and subject to this Agreement, are identified in Exhibit C, Section 1.

3.3.2 New Improvements. City and Tenant acknowledge that improvements may be constructed on the Premises following the Effective Date by either City or Tenant (either "New City Improvements" or "Tenant Improvements", as applicable). If, following the Effective Date an improvement is added to the Premises, the Harbor Engineer shall: (i) revise Exhibit C to include both depiction of such additional improvement and a statement identifying such improvement's ownership; (ii) renumber the revised Exhibit C (such that, for example, after any such revision and renumbering,

Exhibit C becomes Exhibit C-1); and (iii) transmit such revised and renumbered Exhibit C to Tenant. Upon City's transmittal to Tenant, such revised and renumbered Exhibit C shall be deemed to: (i) be incorporated into this Agreement without further action of Board or Council; (ii) supersede any earlier issued iterations of Exhibit C; and (iii) with respect to improvements, depict all improvements on the Premises and ownership of such improvements.

3.3.3 Ownership of Improvements. City's Improvements are and shall remain City-owned improvements. New City Improvements shall also be City-owned improvements. Tenant Improvements shall be Tenant-owned improvements until the expiration or earlier termination of this Agreement at which time title to such improvements shall vest in City. Any improvements to or alterations of City-owned improvements made by Tenant, whether constructed pursuant to the requirements established in Section 4.14, or Section 7.2.1 of this Agreement, shall be City-owned improvements.

**3.4 Premises Subject to Tariff.** Tenant accepts this Agreement and shall undertake the Permitted Uses set forth in Section 4.1 on the Demised Premises subject to each and every of the terms and conditions provided in this Agreement, and to each and every of the rates, terms and conditions of Tariff No. 4 of City's Harbor Department as it now exists or may be amended or superseded ("Tariff"). Tenant represents and warrants that it has received, read and understands the rates, terms and conditions of Tariff and covenants that, at all times during the term of this Agreement, it shall maintain a complete and current Tariff at the address set forth in Section 16.9. Except as otherwise set forth in this Agreement, Tenant is contractually bound by all Tariff rates, terms and conditions as if the same were set forth in full herein. City in its sole and absolute discretion shall determine if a conflict exists between a provision of this Agreement and a Tariff provision. In the event of such conflict, this Agreement shall at all times prevail.

**3.5 Reservations.** This Agreement and the Premises are and shall be at all times subject to the reservations listed below and additional reservations City may reasonably require after the Effective Date, of which Tenant shall receive advance written notice, for which Tenant shall receive no compensation unless otherwise provided.

3.5.1 Utility or other Rights-of-Way. Rights-of-way for sewers, pipelines (public or private), conduits for telecommunications, electric, gas, and power lines, as may from time to time be determined to be necessary by the 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 and with as minimal interference with the Permitted Uses as possible. If the Board makes such determination of necessity, City shall issue a written right of entry or other entitlement to the applicable third-party requiring it and/or its parent to name Tenant as an additional insured on any insurance policies required by City and to

defend and indemnify Tenant from and against any claims, demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including expenses incurred in defending against legal action that arise from or are related to such third-party's entry onto the Premises.

3.5.2 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. At the time of the Effective Date of this Agreement, the Premises contain non-functional rail lines that will remain non-functional and may be removed by Tenant or City as part of Tenant's or City's Improvements. The City hereby reserves the right to construct and install passenger red car rail lines in the Signal Street right-of-way as generally depicted in Exhibit A.

3.5.3 Prior Exceptions. All prior exceptions, reservations, grants, easements, leases or licenses of any kind whatsoever that 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.

3.5.4 Mineral Rights Excluded. All minerals and mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil, gas and water rights, together with the full, exclusive and perpetual rights to explore for, remove and dispose of said minerals, or any part thereof, from the Premises, without, however, the right of surface entry on the Premises, as long as such rights do not materially interfere with the Permitted Uses.

3.5.5 Homeland Security. Access, temporary occupancy and other rights reasonably necessary to comply with homeland security or related requirements of local, state and federal law enforcement agencies or City's Harbor Department. City reserves the right to install, maintain and operate on the Premises equipment related to homeland security and/or public safety with seventy-two (72) hours' prior written notice to Tenant.

3.5.6 Environmental Initiatives. Access, temporary occupancy and other rights reasonably necessary to comply with environmental initiatives and/or policies of City, local, state and federal agencies or the Harbor Department, provided that the exercise of such rights do not materially interfere with the Permitted Uses.

3.5.7 Telecommunication Equipment. Access, temporary occupancy and the right of City or third-parties selected by City in its sole and absolute discretion to install, operate, maintain and repair telecommunication equipment, without compensation to Tenant unless otherwise agreed to in writing by City. City shall minimize any interference with the Permitted Uses to the extent possible.

### **3.6 Inspection by Tenant.**

Tenant has inspected the Premises in contemplation of occupying them for the Permitted Uses set forth in Section 4.1 and acknowledges and agrees that:

(a) The Premises are suitable for the Permitted Uses. No individual of or affiliated with City has made any representation or warranty with respect to the Premises, or improvements existing or planned, unless the nature and extent of such representation or warranty is described in writing and attached hereto.

(b) With respect to the Demised Premises, including the City's Improvements delivered by City and in Tenant's possession, any modification, improvement, or addition to the Demised Premises and any equipment installation required by the City Fire Department, City Department of Building and Safety, Air Quality Management District, Regional Water Quality Control Board, United States Coast Guard, Environmental Protection Agency, Department of Homeland Security or any other local, regional, state or federal agency in connection with Tenant's undertaking of the Permitted Uses shall be constructed or installed at Tenant's sole cost and expense unless such modification, improvement or addition is part of the New City Improvements required to be constructed by City pursuant to this Agreement.

(c) If, prior to taking possession of any Parcel as contemplated in this Agreement, Tenant discovers any site condition that was previously unknown with respect to a particular Parcel that it disapproves, then Tenant shall promptly inform City in writing of such condition. City shall respond in writing to Tenant within ninety (90) days with either a proposed resolution of the site condition or notify Tenant that City will not correct such site condition. City and Tenant will negotiate in good faith to find mutually acceptable resolutions to any previously unknown unsatisfactory site condition identified by Tenant, however, failure to reach a resolution shall not result in a declaration of default of either Party by the other. Board approval of any resolution that requires a monetary contribution from the City in excess of the financial commitments required by this Agreement shall be required.

**3.7 Executive Director-Authorized Additions to Premises.** Addition or deletion of Premises for which Tenant is charged, not to exceed a cumulative total of ten percent (10%) of the originally designated Premises in Section 3.1, may be made by mutual agreement of the Executive Director and Tenant, so long as such change in area is not a temporary use of substitute premises as set forth in Tariff Item 1035 (or its successor) or not temporary as determined by City in its sole reasonable discretion. Such addition or deletion shall be by written amendment and shall specify appropriate adjustments in rent and shall not require approval by the Board or Council unless the modification involves an amount in excess of \$150,000 per year, in which case prior

Board approval shall be required. The Executive Director shall revise and replace Section 3, Premises, Exhibit A, Exhibit B and Section 5, Compensation, as necessary.

**3.8 Radio Equipment.** Tenant shall coordinate with City's Harbor Department prior to installing any radio or telecommunications equipment to ensure that frequencies do not interfere with public safety communications or radio frequencies.

**3.9 City Right of Inspection.** City's authorized representatives shall have access to the Premises at any and all reasonable times for fire and police/homeland security purposes, to investigate any incidents involving personal injury or property damage, and to investigate and delineate soil, water or sediment contamination, or for any other purpose incidental to the rights and/or duties of City. City's authorized representatives shall have access to the Premises at any and all reasonable times upon at least twenty-four (24) hours' prior written notice to determine whether or not Tenant is complying with the terms and conditions of this Agreement or to investigate and delineate soil, water or sediment contamination that does not pose an immediate threat to the health and safety of people or the Premises. The right of inspection hereby reserved to City shall impose no obligation on City to make inspections to ascertain the condition of the Premises, and shall impose no liability upon City for failure to make such inspection.

### **3.10 Parking.**

3.10.1 Exclusive Parking Rights. Tenant shall have exclusive parking rights within Parcel 2B of the Demised Premises. Any parking spaces otherwise located along streets adjacent to the Premises shall be open and available for use by the public at large. Tenant shall operate any parking areas within the Demised Premises' in a manner designed to efficiently utilize such parking areas for the use of Tenant and its invitees in order to minimize the number of Tenant's employees', subtenants' and invitees' use of off-site parking.

3.10.2 Non-Exclusive Parking Rights. Notwithstanding the foregoing paragraph, the City shall authorize Tenant, at no rental charge to Tenant, the shared, non-exclusive use of the improved parking lot located at 210 East 22<sup>nd</sup> Street which will be available to other tenants and the public at large; provided however, that Tenant use of this parking lot shall be subject to the same parking fees, if any, as may be charged to other tenants and the public at large.

3.10.3 Relocation of Parking Areas. City is developing a comprehensive San Pedro Waterfront Parking Management Plan ("SPWPMP"). Following the Board's approval of the SPWPMP, City, through written notice provided by the Executive Director and without further action of the Board or Council, has the right, but not the obligation, to substitute reasonable new parking requirements regarding the Demised Premises and surrounding off-Premises parking lots consistent with such SPWPMP. Upon the Executive Director's transmittal to Tenant of such new written parking requirements, such new requirements shall be incorporated in this Agreement.

Notwithstanding the foregoing, at all times during the term of this Agreement, Tenant agrees to ensure that parking on the Demised Premises remains consistent with the SPWPMP. City and Tenant shall work together in good faith to implement any measures or recommendations of the SPWPMP or its successor parking management plans.

**3.11 Cooperation.** City and Tenant agree to work cooperatively with one another to complete the proposed Project as set forth in this Agreement, to further the vision of the Project and fulfill their obligations under the Agreement. Such cooperation may include, but not be limited to: 1) cooperation and coordination regarding design, planning and construction of City and Tenant improvements, including assisting with permitting agencies as appropriate and collaborating in an effort to minimize overall City and Tenant construction costs and schedules; 2) cooperation and coordination regarding grant, tax credit and other similar applications for capital improvements; 3) collaboration and coordination to expeditiously resolve issues within each Party's purview; 4) cooperation and collaboration regarding design of, and public workshops for, the public promenade Tenant Improvements; and 5) cooperation and coordination regarding Tenant obtaining access to Parcel(s) to perform due diligence related activities prior to acceptance of a Parcel(s) pursuant to Section 3.2.1.

#### **Section 4. Uses.**

**4.1 Permitted Uses.** The Premises shall be used for construction, operation and maintenance of academic, governmental, non-profit and for-profit marine research and educational facilities; marine-related, water-dependent business incubator and/or accelerator(s); marine-related, water-dependent businesses testing or developing new technologies and products or performing ocean, weather and greenhouse gas monitoring and research activities; an interpretive center; and public promenade. Ancillary uses such as cafés, gift shops, fundraising and other events and activities directly related to the marine research facilities and educational activities and intermittent filming activities shall also be permitted. However, the only permitted uses for Parcel 2B shall be parking and water towers related to the seawater system. Collectively such uses shall be "Permitted Uses". All Permitted Uses shall be consistent with the State Tidelands Act as defined herein.

Tenant may enter into agreements for use of the Demised Premises, consistent with the terms of this Agreement, and as approved by the Board pursuant to Section 13.4.

**4.2 Limitations on Use.** Tenant shall not use or allow the Demised Premises or any part thereof to be used for purposes other than the Permitted Uses without the prior written approval of the Board (which approval may be withheld by the Board in its sole and absolute discretion), and subject to such restrictions, limitations and conditions as may be imposed by the Board. Tenant's personnel, volunteers, subtenants and their personnel and volunteers, invitees and other personnel shall not reside on the Demised Premises or use the Demised Premises for any type of overnight accommodations at

any time, except for personnel sleeping on vessels while they are temporarily berthed at the facility and youth sleepovers at the interpretive center.

**4.3 Compliance with Applicable Laws.** At all times in its use and occupancy of the Demised Premises and in its conduct of operations thereon, Tenant shall comply with all applicable federal, state, county, City or government agency laws, statutes, ordinances, standards, rules, requirements or orders in force on the Effective Date or thereafter enacted, promulgated or issued ("Applicable Laws"). In addition to the foregoing, Tenant shall comply immediately with any and all directives issued by the Executive Director or his or her authorized representative under authority of any such law, statute, ordinance, rule or regulation. City shall comply with Applicable Laws when entering the Premises or dealing with Tenant.

**4.4 Increased Insurance Risks.** Following the Effective Date, should an event occurring in or about the Demised Premises cause either cancellation or increased rates with respect to any insurance that City may have on the Demised Premises or on adjacent premises, or cause either cancellation or increased rates with respect to any other insurance coverage for the Demised Premises or adjacent premises, upon receipt of written notice from City that cancellation of insurance or increased insurance rates is threatened or has occurred, Tenant immediately shall take appropriate steps to ensure that City is not adversely affected. In City's sole reasonable discretion, such steps may include Tenant: correcting the condition; providing any necessary insurance; paying the increased cost of City's insurance; and/or indemnifying City against any uninsured or underinsured loss on a claim.

**4.5 Waste or Nuisance.** Tenant shall not use the Demised Premises in any manner that constitutes waste or nuisance.

**4.6 State Tidelands Act.** This Agreement, the Premises and Tenant's use and occupancy of the Demised Premises thereof 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 shall not undertake any use of the Demised Premises, even a Permitted Use, which is or will be inconsistent with such limitations, conditions, restrictions and reservations.

**4.7 Load Limits.** Tenant shall allow no loading in excess of load limits shown in Exhibit D without the prior written consent of the Harbor Department, which consent may be provided by a Harbor Engineer's Permit or a Heavy Lift Permit. Upon receipt of a notice from City that the load limits on Exhibit D have been exceeded, Tenant immediately shall take all appropriate steps to correct such condition and, irrespective of such notice, shall, as between City and Tenant, be solely responsible for any cost, expense or damage resulting therefrom. If, as a result of New City Improvements made during the Term of this Agreement, the load limits as shown in Exhibit D are modified,

Exhibit D shall be revised to Exhibit D-1 and so forth numerically as load limits are modified during the Term of the Agreement. Modified exhibits shall be transmitted to Tenant and shall list the new load limits. Upon City's transmittal to Tenant, each such issued Exhibit D-# shall be deemed to: (i) be incorporated into this Agreement without further action of the Board or Council; and (ii) supersede any earlier iterations of Exhibit D-#.

**4.8 Temporary Assignments.** By issuing this Agreement, City does not grant to Tenant the sole or exclusive right to use the Premises. Any portion of the Demised Premises, excepting the interpretive center located at Parcels 1A and 1B and occupied by Tenant, not being used, in whole or in part, by Tenant or if City requires the Demised Premises on a project or emergency basis, the Executive Director shall have the right, subject to Tenant's consent (which consent shall not be unreasonably withheld), to make temporary assignments to other persons, firms and/or corporations to use the Demised Premises, or any part thereof, as provided in the Tariff. Any direct charges accruing against Tenant from the use of the Demised Premises by a temporary user, and the allocated costs of utilities which Tenant furnishes to such temporary user, shall be paid by such temporary user, directly or indirectly, to Tenant. City and Tenant agree to negotiate in good faith regarding any other terms and conditions of such temporary assignments.

**4.9 Wilmington Truck Route.** City and Tenant acknowledge that Tenant does not directly control the trucks serving the Premises. However, Tenant shall make its best efforts to notify truck drivers, truck brokers and trucking companies that trucks serving the Demised Premises must confine their route to the designated Wilmington Truck Route of Alameda Street and Harry Bridges Boulevard; Figueroa Street from Harry Bridges Boulevard to "C" Street; and Anaheim Street east of Alameda Street. Exhibit E hereto is a copy of the Wilmington Truck Route, and may be modified from time to time at the sole and absolute discretion of the Executive Director with written notice to Tenant.

**4.10 Tenant to Supply Necessary Labor and Equipment.** Tenant shall, at its sole cost and expense, provide all equipment and labor necessary for Tenant to undertake the Permitted Uses; provided, however, that nothing contained herein shall prevent Tenant from using such equipment as may be installed by City at the Premises upon the payment to City of all applicable charges.

**4.11 Maintenance Areas.** Tenant shall not conduct or permit any maintenance of mobile or portable equipment on the Demised Premises except in full compliance with all Environmental Laws, Port Environmental Policies, and Mitigation Measures as hereinafter defined.

**4.12 Liens.** Except where contested by Tenant in good faith in a court of competent jurisdiction, and except for nondelinquent liens arising from taxes or tax assessments, Tenant shall keep the Premises free from liens of any kind or nature arising out of its use and/or occupancy of the Demised Premises, including any liens

arising out of any labor performed for or materials furnished to or on behalf of Tenant on the Demised Premises. Tenant agrees that it will at all times defend and indemnify City from and against all claims for labor or materials in connection with the construction, erection or installation of improvements made by Tenant upon the Demised Premises, or from additions or alterations made thereto, or the repair of the same, by or at the direction of Tenant, and the costs of defending against any such claim, including reasonable attorneys' fees. If a mechanic's or other similar lien arising out of Tenant's rights to use and/or occupancy of the Demised Premises shall at any time be filed against City's interest in the Premises, which is not contested by Tenant in good faith in a court of competent jurisdiction, Tenant shall cause the same to be discharged of record within thirty (30) days after the date of filing the same or otherwise free the Premises from such claim or lien and any action brought to foreclose such lien or Tenant shall promptly furnish City with a bond in the amount of the lien plus twenty-five percent (25%) thereof issued by a surety company acceptable to the Executive Director, securing City against payment of such lien and against any and all loss or damage whatsoever in any way arising from the failure of Tenant to discharge such lien.

#### **4.13 Covenant to Open and Operate.**

4.13.1 Project Operations and Maintenance. Tenant covenants to develop and open for business or to the public each Parcel of the Demised Premises consistent with the procedures and schedule established in Section 7.2.1. Tenant further covenants that Tenant and its subtenants shall operate and maintain the Demised Premises in accordance with Exhibit F and other applicable provisions of this Agreement, and consistent with and in the manner of a premier world-class research and educational facility, and do so in a continuous and uninterrupted basis, recognizing that periodic and temporary vacancies may occur in subleased spaces.

4.13.2 Operation Hours. When Tenant deems it necessary for use of the Demised Premises as described herein, Tenant may operate the facilities on a twenty-four (24) hours per day, seven (7) days per week basis.

4.13.3 Covenant to Maintain Facility. Tenant further covenants that Tenant shall invest its project revenues for capital and other expenditures to operate, revitalize, update and/or reposition the Project as may be necessary from time to time to maximize the Project's goals and position as a premier world-class marine research and educational facility, as more fully set forth in Section 5.2.4.

**4.14 Required Minimum Investment.** Tenant shall spend at least the following amounts to develop, construct and/or improve the Demised Premises, consistent with the Tenant Improvements required pursuant to Section 7.2.1:

Parcels 1A, and if developed concurrently Parcel 1B: \$34 million for an interpretive center, public promenade and other public spaces.

Parcel 1B if developed separately from Parcel 1A: No minimum investment requirement.

Parcel 2A: \$48 million for redevelopment of transit shed Warehouse 57 and development of a public promenade and other public spaces.

Parcel 2B: No Tenant investment requirement.

Parcels 3 and 4: \$130 million for redevelopment of transit shed Warehouses 58, 59 and 60 and development of a public promenade, a public viewing area and other public spaces.

Parcel 4A: No minimum investment requirement.

Parcels 5 and 7: \$67 million for future Project development and a public sidewalk.

Parcel 6: \$129 million for future Project development and a public sidewalk.

Parcel 8: No minimum investment requirement.

Notwithstanding the foregoing, should Tenant fully complete the Tenant Improvements set forth in Exhibit M for a sum less than each aforementioned investment amount, Tenant may provide written notice thereof to the Executive Director, along with all necessary and appropriate supporting documentation. Should the Executive Director, in his or her sole and absolute discretion, find that all the Tenant Improvements have been completed as required by the Agreement, the Executive Director may waive the requirement that Tenant spend not less than each aforementioned investment amount and cap the required expenditures to the amounts Tenant has documented as having spent.

#### **4.15 Renovation Fund.**

4.15.1 Renovation Fund Creation and Use. No later than the tenth (10<sup>th</sup>) year after Effective Date of this Agreement, Tenant shall establish and maintain a reserve fund (the "Renovation Fund") to provide funding for the revitalization, renovation and upgrading to the Demised Premises as further described herein. Tenant and City agree and acknowledge that the Renovation Fund shall be used for capital or other expenditures to maximize the attractiveness and aesthetics of portions of the Demised Premises that are publicly accessible and viewable, including without limitation building exteriors, excluding, however, the saltwater system for which Tenant shall separately provide maintenance funds. The Renovation Fund shall not be utilized to fund the cost of periodic, recurring or ordinary expenditures, repairs or replacements that keep the Demised Premises in a good, operating condition, all of which costs shall be separately funded by Tenant and which are intended to be subject to Section 8. Tenant shall utilize the Renovation Fund to revitalize, renovate and upgrade the publicly accessible

and viewable areas and structures at a minimum interval of, and no later than 20, 30 and 40 years after the Effective Date of this Agreement.

4.15.2 Renovation Fund Investment Requirements. Initially upon creation of the Renovation Fund, the Tenant shall annually deposit into the Renovation Fund the lesser of: (i) two percent (2%) of its Gross Receipts for the Compensation Year (as defined in Section 5) for the year preceding that in which the deposit is due, or (ii) One Hundred Thousand Dollars (\$100,000). On the tenth year following completion of all Tenant Improvements on Parcel 5 or Parcel 6, as set forth in Section 7.2.1, issuance of a certificate of use or occupancy by City of Los Angeles Building and Safety Department, or Tenant otherwise places the property into use, other than for purposes of completing Tenant Improvements detailed in Section 7.2.1, whichever occurs first, the maximum annual deposit to Renovation Fund established in (ii) above shall be increased to \$150,000. On the tenth year following completion of all Tenant Improvements on both Parcels 5 and 6, as set forth in Section 7.2.1, issuance of the certificate of use or occupancy by City of Los Angeles Building and Safety Department for both Parcels 5 and 6, or Tenant otherwise places both Parcels 5 and 6 into use, other than for purposes of completing Tenant Improvements detailed in Section 7.2.1, whichever occurs first, the maximum annual deposit to the Renovation Fund established in (ii) above shall be increased to \$200,000. All interest and earnings on the Renovation Fund shall be added to the Renovation Fund. The Renovation Fund shall be an account established with a reputable financial institution acceptable to the Executive Director into which deposits shall be made by Tenant pursuant to this Section 4.15. Any monies remaining in the Renovation Fund at the end of a Compensation Year shall remain in the Renovation Fund for use in future years and shall not reduce the annual deposit requirement.

4.15.3 Renovation Fund Reporting Requirements. Starting at the fifth year after the creation of the Renovation Fund and no less than every five years thereafter, Tenant shall provide to the City a status report of the Renovation Fund which shall include but not be limited to reporting the fund investment location(s), the fund amount, prior application of funds for Demised Premises renovation and a forecast of future fund use.

#### **4.16 Supervision of Business Practices.**

4.16.1 Generally. The nature and manner of conducting any and all business activities on the Demised Premises shall be subject to reasonable regulation by the Board. In the event such business is not conducted in a reasonable manner as determined by the Board, it may direct that corrective action be taken by Tenant or its subtenants to remedy such practices and upon failure to comply therewith within thirty (30) days of Tenant receiving such written notice, or as otherwise reasonably agreed to by the Parties, the Board may declare this Agreement terminated pursuant to the procedures established in Section 9.1 of this Agreement.

4.16.2 Non-Discrimination. Pursuant to the provisions of Section 608 of the City Charter and the Tide and Submerged Land Grant referred to in Section 4.6 of this Agreement, Tenant, or its subtenants shall use the Demised Premises in such a manner so that there shall be no discrimination made, authorized or permitted in the rates, tolls or charges or in the facilities provided for any use or service in connection therewith.

4.16.3 Standards. Tenant shall conduct its business and cause the businesses of its subtenants upon the Demised Premises to be conducted in a first-class manner. Tenant shall furnish and maintain a standard of service at least equal to that of the better class of similar businesses providing similar services and facilities in the City of Los Angeles and adjacent communities during the entire term of this Agreement.

4.16.4 Board Review of Rates and Prices. The Board reserves the right to inspect the schedule of rates and prices for services performed and facilities provided upon the Demised Premises. The Executive Director shall inform Tenant in writing that a rate or price has been questioned as unreasonable and Tenant shall be given a reasonable opportunity to confer with the Executive Director to justify the rate or price. In the event that Tenant and Executive Director are unable to agree upon the reasonableness of the rate or price or a new rate or price, the matter shall be presented to the Board to determine the appropriate rate or price for the service performed or facility provided and such rates or prices shall be modified by Tenant as directed by the Board.

## **Section 5. Compensation.**

### **5.1 Definitions.**

5.1.1 Compensation Year. "Compensation Year" shall mean each twelve (12) month period, commencing on the Effective Date or an anniversary thereof during the Term on the Agreement.

5.1.2 Tariff Charges. "Tariff Charges" shall mean all charges due and owing by Tenant under the Tariff on account of Tenant's use and occupancy of the Demised Premises.

5.1.3 Initial Compensation Period. "Initial Compensation Period" shall mean the period commencing on the Effective Date of this Agreement.

5.1.4 Interim Compensation Period: "Interim Compensation Period" shall mean the period commencing the date Tenant first takes possession of Parcel 3, or a portion thereof, as established in Exhibit B for Interim Use pursuant to Section 3.2.1.3(f) and ends on the earlier of: (i) initiation of the Final Compensation Period; (ii) Tenant surrenders Parcel 3, or portions thereof, in

Tenant's possession for Interim Use as set forth in Section 3.2.1.3(f); or (iii) Tenant's right to Parcel 3 Interim Use is terminated.

5.1.5 Final Compensation Period: "Final Compensation Period" shall mean the period commencing on earlier of (i) the anniversary of the sixth (6) year following the Tenant's Acceptance Date of any Parcel pursuant to Section 3.2.1.1 of this Agreement; (ii) a certificate of use or occupancy is issued by City of Los Angeles Building and Safety Department for any Tenant Improvement; or (iii) Tenant otherwise places the property into use, other than for purposes of completing Tenant Improvements detailed in Section 7.2.1.

5.1.6 CPI. "CPI" shall mean the Consumer Price Index for All Items, All Urban Consumers for the Los Angeles-Riverside-Orange County, California area, 1982-84=100 as published by the U.S. Department of Labor, Bureau of Labor Statistics, or a successor index selected by Executive Director in his or her sole reasonable discretion.

5.1.7 Gross Receipts. "Gross Receipts" as used in this Agreement means: (a) the gross amounts paid to Tenant by all occupiers of the Demised Premises, included but not limited to subtenants, licensees and concessionaires (but not the total gross income received by such occupiers); (b) Equity or Royalty Income paid to Tenant; (c) the gross selling price of all food and beverage, parking fees, film production revenues, admission fees, special event rental fees, and all sales from businesses operated directly by the Tenant and associated with on-site activities whether for cash or on credit; (d) membership fees from persons or entities that are not occupiers of the Demised Premises; (e) donations; and (f) grants; (g) tax credits; and (h) other financial sources, but exclusive of: (i) retail sales taxes, excise taxes and other direct taxes on consumers, or similar taxes imposed by governmental entities on the sale of merchandise or services; (ii) proceeds from the sales of fixtures, equipment, or other property that is not stock in trade; and (iii) cash or credit refunds to customers.

5.1.8 Equity or Royalty Income. "Equity or Royalty Income" shall mean monies paid to the Tenant based upon equity, royalty, or other similar agreements Tenant maintains with any entities that utilize the Demised Premises during the Term of this Agreement, including but not limited to subtenants, partners, researchers, businesses, and public or private academic institutions.

5.1.9 Minimum Annual Rent. "Minimum Annual Rent" shall mean the monetary sum, in U.S. Dollars, Tenant shall pay to City for its use and occupancy of the Demised Premises per Compensation Year, excluding Tariff Charges. Minimum Annual Rent shall automatically be modified to reflect Tenant taking possession of Parcels pursuant to Section 3.2.1 of this Agreement.

## **5.2 Compensation Required of Tenant.**

5.2.1 Compensation Obligation. On and after the Effective Date, and as consideration for the rights granted in this Agreement, Tenant shall pay compensation to City, in the manner herein described, without prior demand, abatement, deduction or setoff, as more particularly set forth in Sections 5.2.2, 5.2.3, 5.2.4, 5.3 and 5.4 of this Agreement. Notwithstanding the provisions of Section 3.4, Tenant's obligation to pay rent to City for the use of the Demised Premises shall be as prescribed in this Agreement. In the event of conflict between the provisions of this Section 5 and the provisions of the Tariff, this Agreement shall at all times prevail.

5.2.2 Non-Monetary Compensation. Tenant shall provide to the City the "Non-Monetary Compensation" services and public benefits established in Exhibit E, in general and as applicable to each Parcel possessed by the Tenant pursuant to Section 3.2.1 of this Agreement, beginning in the Initial Compensation Period. City and Tenant agree that modification to Exhibit E over the Term of this Agreement may result in adjustments up or down to the Minimum Annual Rent established in Section 5.4.

5.2.3 Percentage Rent. Tenant shall pay to City as "Percentage Rent" fifty percent (50%) of Equity or Royalty Income, as defined in Section 5.1, beginning in the Initial Compensation Period. Percentage Rent, if any, shall be due within thirty (30) days after the end of each Compensation Year based on the Equity or Royalty Income collected for that Compensation Year. Tenant shall not be allowed to utilize Rent Credits to pay Percentage Rent.

In the event that equity, royalty, or other similar agreements Tenant maintains with any entities that utilize the Demised Premises during the Term of this Agreement extend beyond the Term of this Agreement, this Section 5.2 and the Percentage Rent payments required herein shall survive expiration or earlier termination of this Agreement until such time as equity, royalty, or other similar agreements Tenant maintains expire or otherwise terminate.

5.2.3.1 Gross Receipts. Tenant shall maintain Gross Receipt records and report Gross Receipt's to the City annually.

(a) Tenant shall furnish or caused to be furnished to City a statement of the annual Gross Receipts of Tenant, with Equity or Royalty Income separately detailed for each equity or royalty income agreement held by the Tenant, whether or not any income was paid pursuant to such agreements, during the Compensation Year, within sixty (60) days after the close of each Compensation Year. Such statements shall be in a form acceptable to the City as well as a written statement signed and certified to be true and correct by Tenant's duly authorized officer or by Tenant's certified public accountant showing in reasonable detail the elements and

amount of Gross Receipts during the preceding year, together with the calculation(s) used by Tenant to determine the amount of Percentage Rent due to the City.

(b) Books and Records. For a period of five (5) years following the submittal of its certified annual statement for each Compensation Year, Tenant must keep and maintain full and accurate accounting books and records relative to transactions from the Demised Premises in accordance with generally accepted accounting principles consistently applied. The accounting books and records kept and maintained by Tenant for audit purposes must include all records, receipts, journals, ledgers and documents reasonably necessary to enable City or its auditors to perform a complete and accurate audit of Gross Receipts in accordance with generally accepted accounting principles.

(c) Audits. In addition to and not as a substitute for the audit rights provided by Section 14, City, at any time within five (5) years after receipt of any certified annual statement for each Compensation Year and on not less than thirty (30) days' prior written notice to Tenant, may cause an audit to be made of Gross Receipts and all of Tenant's records and accounting books necessary (in City's sole reasonable discretion) to audit such items. Tenant shall make such books and records available for the audit at the Demised Premises. If such audit discloses an underpayment by Tenant, Tenant shall immediately pay City the amount of such underpayment with interest (the amount of which shall be determined by Tariff Item No. 270) which shall accrue from the date the payment should have been made through and including the date of payment. If such audit discloses an overpayment of Percentage Rent, Tenant shall be entitled to a credit in the amount of the overpayment against the next payment(s) of Percentage Rent due, unless the audit was for the last year of the term of this Agreement or any holdover, in which event City shall refund to Tenant the overpayment within sixty (60) days following the date of the finalization of the audit.

5.2.4 Tenant Reinvestment of Gross Receipts. Beginning in the Initial Compensation Year, Tenant shall reinvest all Gross Receipts into the Project, consistent with the responsibilities and purposes established for AltaSea at the Port of Los Angeles in Section 13.9.1 of this Agreement. Tenant's compliance with this section shall be subject to audit by City pursuant to the terms of this Agreement, including Section 14.

5.2.5 Minimum Annual Rent. Tenant shall pay in advance to the City "Minimum Annual Rent" during the Interim and Final Compensation Periods in the amounts set forth in Sections 5.3 and 5.4, in equal quarterly installments on the first day of each calendar quarter.

### **5.3 Interim Compensation Period Minimum Annual Rent.**

5.3.1 Parcel 3 Interim Rent. Tenant shall pay the Minimum Annual Rent established below for Interim Use of Parcel 3, or portions thereof, accepted by Tenant pursuant to Section 3.2.1.3 (f). The Minimum Annual Rent shall be prorated for the remainder of the Compensation Year during which Minimum Annual Rent first becomes due.

5.3.2 Parcel 3 Interim Use. Upon the date of Tenant's interim possession of Parcel 3, or portions thereof, for Interim Use by Tenant pursuant to Section 3.2.1.3 (f), Tenant shall pay Minimum Annual Rent to the City as calculated by the City based upon a rental rate of \$0.10 per square foot for water area and \$0.42 per square foot per year for warehouse space. The warehouse rental rate includes the adjacent paved land and wharf area of Parcel 3. The square footage of the water and warehouse area in Tenant's possession shall be multiplied by the \$0.10 and \$0.42 per square foot per year rental rate, respectively, to establish the Interim Rent Minimum Annual Rent. Tenant shall concur with the City's calculation of the rental area square footage. Tenant shall not receive any additional rental discount for any public areas for Parcel 3 Interim Use areas.

### **5.4 Final Compensation Period Minimum Annual Rent.**

Minimum Annual Rent on Demised Premises, except for Parcel 3 Interim Uses, as detailed in Section 5.3 above, shall begin on the earlier of: (i) the date Tenant Improvements are required to be completed pursuant to Exhibit M; (ii) a certificate of use or occupancy is issued by City of Los Angeles Building and Safety Department for the Tenant Improvements; or (iii) Tenant otherwise places the property into use, other than for purposes of completing Tenant Improvements detailed in Section 7.2.1. During the Final Compensation Period, Minimum Annual Rent will be calculated at the beginning of each Compensation Year and will include the combined amount of Minimum Annual Rent for all Parcels required to pay Minimum Annual Rent in that Compensation Year. For those Parcels for which Minimum Annual Rent first becomes due in the Compensation Year, Minimum Annual Rent for such Parcels shall be prorated from the date due to the end of the Compensation Year.

5.4.1 Parcel 1A. No Minimum Annual Rent shall be charged for Parcel 1A provided the Tenant complies with Exhibit F.

5.4.2 Parcel 1B. No Minimum Annual Rent shall be charged for Parcel 1B provided the Tenant complies with Exhibit F.

5.4.3 Parcel 2A. Minimum Annual Rent for Parcel 2A shall be \$20,957, provided the Tenant complies with Exhibit F.

5.4.4 Parcel 2B. Minimum Annual Rent for Parcel 2B shall be \$3,285, provided the Tenant complies with Exhibit F.

5.4.5 Parcels 3 and 4. Minimum Annual Rent for Parcel 3 and 4 shall be \$1,415,125, provided the Tenant complies with Exhibit F.

5.4.6 Parcel 3 Interim Use. Minimum Annual Rent for Parcel 3 Interim Use shall be as established in Section 5.3.

5.4.7 Parcel 4A: Minimum Annual Rent for Parcel 4A shall be \$29.

5.4.8 Parcels 5 and 7. Minimum Annual Rent for Parcels 5 and 7 must be established and approved by the Board and City Council prior to Tenant taking possession of the Parcels pursuant to Section 3.2.1 for Parcels 5 and 7.

5.4.9 Parcel 6. Minimum Annual Rent for Parcels 6 must be established and approved by the Board and City Council prior to Tenant taking possession of the Parcels pursuant to Section 3.2.1 for Parcel 6.

5.4.10 Parcel 8. Minimum Annual Rent for Parcels 8 must be established and approved by the Board and City Council prior to Tenant taking possession of the Parcels pursuant to Section 3.2.1 for Parcel 8.

5.4.11 Parcels with Minimum Annual Rent Pending. Tenant agrees and recognizes that the location, condition, circumstances, and planned facilities at Parcels 5 through 8 differ significantly from those of Parcels 1A through 4A. Tenant agrees and recognizes that the basis of the Minimum Annual Rent established for Parcels 1A through 4A may not be applicable to establishing Minimum Annual Rent for Parcels 5 through 8 in the future.

5.4.12 Use of Rent Credits. Rent Credits established pursuant to Section 5.8 of this Agreement for specific Parcels may be used to pay Minimum Annual Rent, other than past due Minimum Annual Rent, for the Demised Premises upon Rent Credit effectiveness and until the Rent Credits are completely utilized or upon expiration or earlier termination of this of this Agreement.

## **5.5 Rent Adjustments.**

### **5.5.1 CPI Adjustments.**

5.5.1.1 Except as established for Interim Compensation Period Minimum Annual Rent in Section 5.5.1.1(a), on July 1 of the first Compensation Year following the Final Compensation Period (which date and subsequent anniversaries shall be referred to individually as "Adjustment Date"), and annually thereafter, the Minimum Annual Rent shall be adjusted (in no event downward) to yield an Adjusted Minimum

Annual Rent. Such Adjusted Minimum Annual Rent shall be equal to the product obtained by multiplying the Minimum Annual Rent (without regard to any temporary abatement or reduction of Compensation then or previously in effect pursuant to the provisions of this Agreement) by a fraction, the numerator of which is the CPI on the Adjustment Date and the denominator of which is the CPI in July of the Compensation Year preceding the Compensation Year in which the Adjustment Date occurs. CPI will have a three percent (3%) cap for each adjustment year.

5.5.1.1(a) Parcel 3 Interim Minimum Annual Rent. CPI adjustments as detailed in this Section 5.5.1.1 shall begin on the July 1 of the first Compensation Year following the interim Compensation Period (which date and subsequent anniversaries shall be referred to individually as “Interim Rent Adjustment Date”), and annually thereafter.

5.5.1.2 The formula illustrating the computation applicable to Section 5.5.1.1 is as follows:

$$\text{Adjusted Surface Land Rent} = \text{Current Surface Land Rent} \times \frac{\text{July CPI of current year}}{\text{July CPI of previous year}}$$

#### 5.5.2 Five-Year Rate Adjustments.

In addition to and not as a substitute for the CPI adjustments required by Section 5.5.1, on every fifth anniversary of the Effective Date, the then-applicable compensation established pursuant to Sections 5.2, 5.3 and 5.4 shall be adjusted (in no event downward), with such adjustments established by order of the Board. The five-year periods in which such adjusted rates shall apply shall be referred to as “Adjusted 5-Year Periods.”

Not fewer than nine (9) months before the commencement of each Adjusted 5-Year Period, Tenant and City shall undertake best efforts to negotiate and mutually agree upon the compensation that shall apply at the commencement of each such period. In establishing compensation, City and Tenant may consider, but shall but not be limited to, the following factors:

- (i) Basis of Annual Minimum Rent established for each Parcel in the previous compensation reset.
- (ii) Rent charged to other nonprofit entities located within the harbor district boundaries for buildings dedicated to public education and open to the public a minimum of 8-hours days per day, five (5) days a week.
- (iii) Tenant’s actual delivery and performance of the services and public benefits set forth in Exhibit E, as updated to reflect the Parcels in Tenant’s possession pursuant to Section 3.2.1.

(iv) The actual amount of Tenant reinvestment of Gross Receipts into the Project pursuant to Section 5.2.4.

(v) Review of Tenant's annual tax filings for the prior five (5) year period.

(vi) City and Tenant capital investments.

(vii) Tenant's utilization of the Demised Premises for business incubator purposes as measured by square footage allocated for such purposes and/or the amount of Equity or Royalty Income paid by Tenant to City during the prior five (5) year period.

(viii) Tenant's compliance with all provisions and conditions of this Agreement.

If, despite best efforts, City and Tenant are unable to mutually agree upon such compensation, the Compensation shall be adjusted in the following manner: (i) City may, upon written notice from the Executive Director, establish such value at amounts not to exceed one hundred fifty percent (150%) of the Minimum Rent in effect at the end of the fifth Compensation Year of the five-year period preceding the Adjusted 5-Year Period, which shall be paid in the same manner as provided herein until completion of the procedure set forth below or (ii) either City or Tenant upon written notice to the other may, no sooner than nine (9) months prior to the commencement of the upcoming Adjusted 5-Year Period, initiate commencement of the process set forth below ("Appraisal Process").

(a) City and Tenant shall utilize best efforts to agree upon, within ten (10) calendar days following the commencement of the Adjusted 5-Year Period, a single appraiser to determine the value of the as-is, fee simple interest of the Demised Premises (including total property, land and/or improvements) based upon the existing use as set forth in Exhibit G hereto ("Market Rent"), which appraiser shall possess the qualifications set forth on the attached Exhibit H. Such appraiser's determination shall be binding upon the Parties and shall be retroactive to the commencement of the applicable 5-year period. Fees and costs incurred for such appraisal shall be borne equally by City and Tenant. The appraiser will be retained by City and Tenant will reimburse City for half of the fees and costs within fifteen (15) days of submission of an invoice therefor.

(b) If, despite best efforts, City and Tenant cannot agree upon such single appraiser within such ten (10) calendar days, City and Tenant shall, within sixty (60) calendar days after the expiration of such ten (10) calendar day period, appoint one appraiser each to determine Market Rent pursuant to Exhibit G and shall provide written notice of such appointment to the other Party, which notice shall summarize or attach the retained appraiser's qualifications and certify that such appraiser has been retained to determine Market Rent pursuant to Exhibit G.

(i) If City and Tenant appoint appraisers within such sixty (60) day period, such two appraisers so appointed shall be directed to use good faith efforts to separately determine Market Rent pursuant to Exhibit G within ninety (90) calendar days of the expiration of the aforementioned sixty (60) day period. The appraisal generated on behalf of City shall be referred to as “City Appraisal,” and shall be generated at City’s sole cost and expense. The appraisal generated on behalf of Tenant shall be referred to as “Tenant Appraisal,” and shall be generated at Tenant’s sole cost and expense. City and Tenant thereafter shall exchange appraisals. If the determinations of the City Appraisal and the Tenant Appraisal are within ten percent (10%) of one another, the Market Rent shall be the average of the two and shall be binding upon the Parties.

(ii) If either Party fails to appoint an appraiser and provide the required written notice thereof within such sixty (60) calendar day period, the one appraiser appointed shall be directed to determine Market Rent pursuant to Exhibit G and such appraiser’s determination shall be binding upon the Parties and shall be retroactive to the commencement of the applicable 5-year period. The Party which fails to appoint an appraiser shall bear the fees and costs of the appraisal.

(c) If the determination of Market Rent of the two appraisers differs by more than ten percent (10%), then the two appraisers shall choose a third appraiser possessing the qualifications set forth on Exhibit H within thirty (30) calendar days thereafter who shall not make an independent determination of Market Rent, but rather shall determine only which, the City Appraisal or the Tenant Appraisal, is closest to that third appraiser’s estimate of Market Rent, and Market Rent shall be equal to the then-applicable amount so determined in the appraisal selected by such third appraiser. If the two appraisers fail to select a third appraiser within such time, the determination of Market Rent shall be submitted to final and binding arbitration at the request of either City or Tenant before one arbitrator appointed by the American Arbitration Association (“AAA”) at Los Angeles, California acting pursuant to AAA’s Arbitration Rules for the Real Estate Industry last in effect at the time a request for arbitration is filed. The arbitrator shall review at minimum Exhibit G, and copies of the City Appraisal and the Tenant Appraisal, but shall not make an independent determination of Market Rent, but rather shall determine only which, the City Appraisal or the Tenant Appraisal, is closest to the arbitrator’s estimate of Market Rent, and Market Rent shall be equal to the then-applicable amount so determined in the appraisal selected by such arbitrator. Such determination of the arbitrator shall be binding on the

Parties and shall be retroactive to the commencement of the applicable 5-year period. Fees and costs incurred by such arbitrator and/or AAA shall be borne equally by City and Tenant.

5.6 **Additional Rent.**

5.6.1 Definition of Additional Rent. In addition to any other consideration under this Agreement, including without limitation any Minimum Annual Rent, Tenant shall pay to City all Additional Rent, as listed below, when due. Minimum Annual Rent and Additional Rent shall collectively be referred to herein as "Rent". All Rent shall be paid to City at the address to which notices to City are given pursuant to Section 5.7.2, below, or at such other place as City may from time to time designate. Tenant shall not be allowed to utilize Rent Credits to pay Additional Rent.

5.6.2 Tariff. Tenant shall pay City for any applicable Tariff Charges as Additional Rent.

5.6.3 Taxes and Impositions.

(a) Tenant shall timely pay all Taxes imposed with respect to this Agreement, the use or the operation of the Demised Premises, including, without limitation, any documentary or other transfer or sales taxes, property or possessory interest taxes and any City of Los Angeles Business Tax applicable to the use and operation of the Demised Premises. City reserves the right, without being obligated to do so, to pay the amount of any such Taxes not timely paid by Tenant, and the amount so paid by City shall be deemed Additional Rent hereunder, due and payable by Tenant immediately upon demand by City.

(b) Tenant hereby agrees to pay as Additional Rent such assessments, fees and charges as shall be set by the Board in the Tariff and that shall be reasonable and not unjustly discriminatory.

(c) Notwithstanding this Section, 5.6.3, Tenant does not waive its right to seek relief from a court of competent jurisdiction to the extent that such Tax, assessment, fee or charges are contrary to Applicable Law.

5.6.4 Utilities and Services. Tenant shall be liable for and shall pay all charges for services furnished to the Demised Premises, including, without limitation, heat, power, telephone, water, light, janitorial services, security services and trash collection services, and any other services in connection with its occupancy of the Demised Premises, including, without limitation, deposits, connection fees or charges and meter rentals required by the supplier of any

such service. If any such services are not separately metered or billed to Tenant, Tenant shall pay a reasonable proportion, to be determined by City, of all charges jointly metered or billed. There shall be no abatement of rent and City shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond City's reasonable control or in cooperation with governmental request or directions. To the extent such utilities and services are provided by City, payment for same shall be Additional Rent.

5.6.5 Rent for Non-permitted Uses. Use of the Demised Premises for purposes not expressly permitted herein may result in additional charges, including charges required by the Tariff, as it may be amended or superseded. Imposing additional charges and receiving Additional Rent for non-permitted uses shall not waive City's rights to declare a default or limit City's remedies under this Agreement and at law.

5.6.6 Rent on New Tenant Improvements. To the extent that Tenant builds new improvements which are not owned by the City, or makes improvements to City owned improvements, as set forth in Section 7.2.1 and Exhibit M, Tenant shall not be charged Rent for the rental value thereof unless, and until, title to such improvements revert to City pursuant to the terms of this Agreement or by operation of law.

5.6.7 City Reimbursements. Tenant shall be liable for and shall pay to City as Additional Rent all expenditures made by the City related to the performance of work or payments made pursuant to fulfilling any Tenant responsibilities not otherwise made by Tenant, including but not limited to, those obligations set forth in Sections 6.2 and 7.8.

## **5.7 Requirements Applicable to Tenant's Payment of Rent.**

5.7.1 Tenant's Obligation to Pay; No Right of Set-Off. Tenant's obligations to pay Rent and Non-Monetary Compensation to City according to the terms and conditions of this Section 5 shall be absolute and unconditional and shall be unaffected by any circumstance, including, without limitation, off-set, counterclaim, recoupment, defense or other right which Tenant may have against City other than offset for the Rent Credits provided for in Section 5.8.

5.7.2 Payments. Tenant shall render its payments at the Harbor Department Administration Building or any other place that City from time to time may designate in writing. Payment shall be made in U.S. Dollars, either in the form of a check (drawn on a bank located in the State of California) or via electronically transmitted funds.

5.7.3 Proration of Payments. If any payment by Tenant is for a period shorter than one calendar month, the compensation for that fractional calendar month shall accrue on a daily basis for each day of that fractional month at a daily rate equal to 1/365 of the total annual compensation. All other payments or adjustments that are required to be made under the terms of this Agreement and that require proration on a time basis shall be prorated on the same basis.

5.7.4 Labor Disturbance. If, by reason of strikes, other labor disputes, lockouts, or other work stoppages of which Tenant did not directly or indirectly cause and/or to which Tenant is not a party ("labor disturbance"), occurring at any of the Demised Premises and lasting more than (30) days, Tenant is prevented from making substantial use of Demised Premises to undertake the Permitted Uses, the rent for the period during which the labor disturbance occurs shall be proportionately adjusted, commencing the thirty-first (31<sup>st</sup>) day after commencement of such labor disturbance, provided Tenant has, prior to such date, given City written notice of such labor disturbance, and such reduction shall be applicable from and after said thirty-first (31<sup>st</sup>) day until Tenant is able to make substantial uses of the Demised Premises to undertake the Permitted Uses.

5.7.5 Delinquent Payments. Payments required to be made by this Section 5 which have not been paid within ten (10) calendar days of the date such payments are due ("grace period") shall be subject to a service charge assessed as simple interest at the rate of 1/30 of two percent (2%) of the amount remaining unpaid each day. Tenant acknowledges that it knows the day of the month its payments hereunder are due and that the grace period commences from the date such payments are due to be made, not the date of City's invoice, if any. Said service charge shall be imposed whether or not a deposit required by Section 5.7.5 is applied to the amount due. City has the unqualified right, upon thirty (30) days' prior written notice to Tenant, to change the level of the delinquency service charge.

## **5.8 Rent Credits.**

5.8.1 In consideration of Tenant's redevelopment of the potentially historic transit sheds and development of a waterfront public promenade on the Premises, as set forth in Section 7.2.1, Tenant shall be entitled to "Rent Credits" in the amounts established in subsections (a) and (b) below. Expenditures made by Tenant for the purpose of other Tenant Improvements as set forth in Section 7.2.1, shall not be eligible for Rent Credits. The maximum Rent Credits available to the Tenant are established below and will not be further adjusted for inflation during the Term of this Agreement.

- (a) Parcels 1A and 2A shall have a maximum Rent Credit of thirty-five million two hundred thousand dollars (\$35,200,000). Upon completion of redevelopment of transit shed Warehouse 57 and development of the public promenade as set forth in Section 7.2.1, Tenant shall submit

documentation detailing actual Tenant expenditures for those specific activities. The Executive Director shall review the Tenant documentation to ensure only redevelopment of transit shed Warehouse 57 and public promenade costs are included. The lesser of the maximum Rent Credit for Parcels 1A and 2A or actual Tenant expenditures for redevelopment of transit shed Warehouse 57 and development of the public promenade shall be certified by the Executive Director in writing to Tenant.

- (b) Parcels 3 and 4 shall have a maximum Rent Credit of one hundred and ninety-two million dollars (\$192,000,000). Upon completion of redevelopment of transit sheds Warehouses 58-60 and development of the public promenade as set forth in Section 7.2.1, Tenant shall submit documentation detailing actual Tenant expenditures for those specific activities. The Executive Director shall review the Tenant documentation to ensure only redevelopment of transit shed Warehouses 58-60 and public promenade costs are included. The lesser of the maximum Rent Credit for Parcels 3 and 4 or actual Tenant expenditures for redevelopment of potentially historic transit shed Warehouses 58-60 and development of the public promenade shall be certified by the Executive Director in writing to Tenant.

5.8.2 Rent Credits shall become effective for use, consistent with the requirements of this Section 5.8, upon completion of all Tenant Improvements for the specified parcels, as set forth in Section 7.2.1, and issuance of a certificate of use or occupancy by City of Los Angeles Building and Safety Department or Tenant otherwise places the property into use, other than for purposes of completing Tenant Improvements detailed in Section 7.2.1. Upon certification of Rent Credits by the Executive Director pursuant Section 5.8.1, Rent Credits shall be applied retroactively to the date all Tenant Improvements for the specified parcels were completed and a certificate of use or occupancy was issued by City of Los Angeles Building and Safety Department or Tenant otherwise placed the property into use, other than for purposes of completing Tenant Improvements detailed in Section 7.2.1.

5.8.3 Tenant may only utilize Rent Credits to pay Minimum Annual Rent established in Sections 5.3.1 and 5.4 of this Agreement during the Term of this Agreement. Rent Credits may not be used by Tenant to pay: (i) past due Minimum Annual Rent; (ii) Percentage Rent pursuant to Section 5.2.3 (iii) Additional Rent pursuant to Section 5.6; or (iv) holdover rent pursuant to Section 2.3.

5.8.4 All Rent Credits shall expire upon expiration or earlier termination of this Agreement. Tenant shall not be entitled to payment of any unused or unapplied Rent Credits. In no event shall any unused Rent Credits give rise to any obligation of City to pay unused Rent Credits to Tenant, its successors, assigns or affiliates, if any.

## **Section 6. Tenant's Environmental Obligations During Term of Agreement.**

### **6.1 Definitions.**

6.1.1 Environmentally Regulated Material. "Environmentally Regulated Material" shall mean any hazardous or toxic substance, material, or waste at any concentration that is or becomes regulated by the United States, the State of California, or any local or governmental authority having jurisdiction over the Demised Premises. Environmentally Regulated Material includes but is not limited to:

(a) Any "hazardous substance" as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") (42 U.S.C. Sections 9601-9675) in its present or successor form;

(b) "Hazardous waste" as that term is defined in the Resource Conservation and Recovery Act of 1976 ("RCRA") (42 U.S.C. Sections 6901-6992k) in its present or successor form;

(c) Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance or requirement (including consent decrees and administrative orders imposing liability or standard of conduct concerning any hazardous, dangerous or toxic waste, substance or material, now or hereinafter in effect);

(d) Radioactive material, including any source, special nuclear, or byproduct material as defined in 42 U.S.C. Sections 2011-2297g-4 in its present or successor form;

(e) Asbestos in any form or condition;

(f) Polychlorinated biphenyls ("PCBs") and substances or compound containing PCBs; and

(g) Petroleum products.

6.1.2 Environmental Laws. "Environmental Laws" shall mean the environmental laws and implementing regulations which are a subset of the Applicable Laws defined in Section 4.3 and which are applicable to the Demised Premises and/or Tenant's use and/or occupancy thereof, in their form as of the Effective Date or as subsequently amended, or as may be promulgated during the term of this Agreement or any holdover. Such Environmental Laws include but are not limited to:

- (a) CERCLA and its implementing regulations;
- (b) RCRA and its implementing regulations;
- (c) The federal Clean Water Act (33 U.S.C. Sections 1251–1376, et seq.) and its implementing regulations;
- (d) The California Porter Cologne Water Quality Control Act (California Water Code, Division 7) and its implementing regulations;
- (e) The federal Clean Air Act (42 U.S.C. Sections 7401-7601) and its implementing regulations;
- (f) The California Clean Air Act of 1988 and its implementing regulations;
- (g) The state Lewis Air Quality Act of 1976 and its implementing regulations; and
- (h) Any other applicable federal, state, or local law, regulation, ordinance or requirement (including consent decrees and administrative orders imposing liability or standard of conduct) now or hereinafter in effect which concerns Environmentally Regulated Material, the Demised Premises and/or Tenant’s use and/or occupancy thereof.

6.1.3 Term Release. “Term Release” shall mean a spill, discharge or any other type of release of Environmentally Regulated Material that occurs on the Demised Premises during the term of this Agreement or any holdover, whether caused by Tenant or a third-party (other than invitees under a temporary assignment pursuant to Section 4.8 or third-parties whose access to the Demised Premises has been requested by City pursuant to Section 3.5), that contaminates or threatens to contaminate City’s Improvements, adjacent harbor waters, soil, sediment, groundwater or air of the Demised Premises or of adjacent premises (including soil, sediment, groundwater or air of those adjacent premises).

6.1.4 Term Contamination. “Term Contamination” shall mean all contamination of improvements, adjacent harbor waters, soil, sediment, groundwater or air of the Demised Premises or of adjacent premises (including soil, sediment, groundwater or air of those adjacent premises) resulting from all Term Releases.

6.1.5 Term Characterization Work Plan. “Term Characterization Work Plan” shall mean the written work plan submitted by Tenant to City, the sufficiency of which is subject to City’s reasonable approval, that details all work (including sampling and analysis) necessary to generate a written

characterization of the nature and extent of contamination (including contamination of air, soil and water) caused by a Term Release or Term Releases and that includes detailed programs for sampling and chemical analysis of soil and groundwater, which programs shall conform with Environmental Laws, accepted principles of environmental science, established regulatory protocols and the Port of Los Angeles "Site Characterization Guidance Manual" as it exists as of the Effective Date or as it may be subsequently amended ("Site Characterization Guidance Manual"). Tenant acknowledges receipt of a copy of such Manual. Following the Effective Date, Tenant shall be solely responsible for obtaining and maintaining the current version of the Site Characterization Guidance Manual.

6.1.6 Term Characterization Report. "Term Characterization Report" shall mean the written report submitted by Tenant to City, the sufficiency of which is subject to City's reasonable approval, that details all findings made as a result of performing the Term Characterization Work Plan and that conforms with the Site Characterization Guidance Manual.

6.1.7 Term Remediation Action Plan. "Term Remediation Action Plan" shall mean the written plan submitted by Tenant to City, the sufficiency of which is subject to City's reasonable approval, that addresses remediation of all contamination caused by Environmentally Regulated Material in soil, harbor waters, groundwater and sediment as identified in the Term Characterization Report, that conforms with Tenant's obligations as set forth below in Section 6.2 and that includes a discussion of remedial action alternatives for restoration of the Demised Premises and a timetable for each phase of restoration. The Term Remediation Action Plan shall comply with Environmental Laws, established regulatory protocols, accepted principles of environmental science and the Site Characterization Guidance Manual.

## **6.2 Tenant Responsibility for Term Contamination.**

6.2.1 Remediation. Tenant shall remediate or cause the remediation of any Term Releases by removing or effecting the removal of all contaminated soil, water, groundwater, sediment or other material it may place or may have placed on site such that the Demised Premises are left (a) at the levels established in Exhibit I or (b) in an environmental condition that fully complies with the guidelines of, orders of, or directives of the applicable governmental agency(ies) that has/have assumed jurisdiction, if any, whichever of the two is stricter, and free of encumbrances, such as deed or land use restrictions, except for those that may be imposed as a result of the presence of Environmentally Regulated Material despite Tenant's compliance with the foregoing requirement. As between City and Tenant, Tenant shall bear sole responsibility for all Term Contamination and any costs related thereto.

6.2.2 Tenant Responsibility; Indemnity. Except for conditions of the Demised Premises that existed prior to the date of Tenant possession of a Parcel pursuant to Section 3.2.1 or conditions of the Demised Premises resulting from invitees under a temporary assignment pursuant to Section 4.8 or third-parties whose access to the Demised Premises has been requested by City pursuant to Section 3.5, Tenant bears sole responsibility for full compliance with any and all Applicable Laws regarding the use, storage, handling, distribution, processing, and/or disposal of Environmentally Regulated Material, regardless of whether the obligation for such compliance or responsibility is placed on the owner of the land, on the owner of any improvements on the Demised Premises, on the user of the land, or on the user of the improvements. Except for conditions of the Demised Premises that existed prior to the date of Tenant possession of a Parcel pursuant to Section 3.2.1 or conditions of the Demised Premises resulting from invitees under a temporary assignment pursuant to Section 4.8 or third-parties whose access to the Demised Premises has been requested by City pursuant to Section 3.5, Tenant agrees that any claims, damages, fines or other penalties asserted against or levied on City and/or Tenant as a result of noncompliance with any Applicable Laws shall be the sole responsibility of Tenant and that Tenant shall indemnify and hold City harmless from any and all such claims, damages, fines and penalties, as well as any costs expended to defend against such claims, damages, fines and penalties, including attorneys' fees. City shall provide Tenant with sixty (60) days' notice to comply with any claims, damages, fines and penalties. If Tenant has not complied with such claims, damages, fines and penalties, or if Tenant has not requested a meet and confer to discuss compliance within such sixty (60) days, then City, at its sole option, may pay such claims, damages, fines and penalties resulting from Tenant's noncompliance with any of the aforementioned authorities and Tenant shall indemnify and reimburse City for any such payments, which shall accrue as Additional Rent pursuant to Section 5.6. As between Tenant and City, City shall indemnify and hold Tenant harmless from any and all such claims, damages, fines and penalties, including attorney's fees, that result from the Baseline Condition, or conditions of the Premises resulting from invitees under a temporary assignment pursuant to Section 4.8 or third-parties whose access to the Premises has been requested by City pursuant to Section 3.5.

6.2.3 Baseline Condition; Baseline Report. City and Tenant acknowledge and agree that they have reviewed and approved the document attached hereto as Exhibit I, which document constitutes the written depiction of the environmental condition of specified Parcels of the Premises on the Effective Date ("Baseline Condition") and which hereinafter shall be referred to as the "Baseline Report" and the reports and studies that the City and Tenant agree will be utilized to establish the Baseline Conditions for the remaining Parcels. City and Tenant acknowledge and agree that following the Effective Date, Tenant will take possession of Parcels over a several year period and that Exhibit I will be updated with a written depiction of the environmental condition of each Parcel

added to the Demised Premises (“Baseline Condition”) based upon the reports and studies identified in Exhibit I.

- (a) Executive Director shall provide Tenant an updated Exhibit I following Tenant’s request for acceptance of a Parcel pursuant to Section 3.2.1, or upon completion of New City Improvements, if any, whichever is later, which establishes the Baseline Condition for the Parcel to be possessed by Tenant. Tenant shall have 30 days to review and approve the updated Exhibit I or notify the City that Tenant, at its sole cost and expense, intends to supplement the Baseline Condition with additional testing and analyses. City shall cooperate with Tenant to provide access to Parcels for such additional testing and analyses. Tenant shall submit testing and analyses results to the City. Executive Director shall provide an updated Exhibit I incorporating Tenant test and analyses results for the Parcel to be possessed by Tenant. Tenant shall have thirty (30) days to review and approve the updated Exhibit I. Failure to approve the updated Baseline Condition within said thirty (30) day period shall be deemed approval of the updated Baseline Condition and the updated Exhibit I.
  
- (b) Upon Tenant’s approval of the updated Exhibit I incorporating the Baseline Condition of Parcels accepted by Tenant, the Executive Director shall issue an exhibit labeled Exhibit I-1 and so forth numerically as Tenant accepts Parcels over the Term of the Agreement. Said revised Exhibit shall be transmitted to Tenant. Upon City’s transmittal to Tenant, each such issued Exhibit I-# shall be deemed to: (i) be incorporated into this Agreement without further action of Board, Council, or Tenant; and (ii) supersede any earlier iterations of Exhibit I-#.

6.2.4 Prior Use. City and Tenant acknowledge that prior to the Tenant taking possession of a Parcel pursuant to Section 3.2.1 the Premises were occupied by users under entitlements separate from this Agreement (“Prior Occupancy”) and others and that as a result of such prior use and occupancy, the Demised Premises on the date the Tenant takes possession of a Parcel pursuant to Section 3.2.1 possess levels of contamination depicted in the Baseline Report (“Existing Contamination”). As to City, Tenant bears no responsibility for Existing Contamination, unless otherwise provided for herein.

6.2.5 Rebuttable Presumption. Tenant acknowledges and agrees that a presumption shall exist that any contamination not specifically depicted and analyzed in Exhibit I constitutes Term Contamination for which, as between City and Tenant, Tenant is solely responsible. City shall provide written notice of the existence of any such contamination to Tenant. Tenant may rebut such presumption by providing to City, within ninety (90) days of City’s written notice, evidence demonstrating that such contamination is not Term Contamination.

Otherwise, such presumption shall be deemed confirmed making Tenant solely responsible for such contamination. Whether any information submitted by Tenant rebuts the aforementioned presumption shall be within City's discretion, exercised reasonably and in good faith. This provision shall survive the expiration or earlier termination of this Agreement.

### **6.3 Environmentally Regulated Material on Demised Premises.**

Tenant shall not cause or permit any Environmentally Regulated Material to be generated, brought onto, handled, used, stored, transported from, received or disposed of (hereinafter sometimes collectively referred to as "handle" or "handled") in or about the Demised Premises, except for: (i) limited quantities of standard office and janitorial supplies containing chemicals categorized as Environmentally Regulated Material; (ii) Environmentally Regulated Material necessary for Tenant to undertake the Permitted Uses, and set forth in Tenant's Environmental Compliance Program as set forth in Section 6.5.2; and (iii) Environmentally Regulated Material handled in conformity with Tenant's ECP as referenced in Section 6.5.2. Tenant shall handle all such Environmentally Regulated Material in strict compliance with Environmental Laws in effect during the term of this Agreement or any holdover.

### **6.4 Tenant Obligations In the Event of a Term Release.**

6.4.1 Duty to Remediate. Upon occurrence of a Term Release, Tenant, at its sole cost and expense, shall initiate and complete the procedure set forth below in Sections 6.4.2 through 6.4.11. The Executive Director may alter, supplement or delete any of the procedures set forth in Sections 6.4.2 through 6.4.11 at his or her sole reasonable discretion.

6.4.2 Reporting Obligations to City. Immediately, to facilitate emergency or other response, and in accordance with Environmental Laws and in no event later than fourteen (14) calendar days following its discovery of the Term Release, Tenant shall provide a written report to City that details all known information regarding such release and any resultant contamination, which information shall include but not be limited to: (i) the date, time and specific location of the release; (ii) the specific type and quantities of materials released; (iii) the cause(s) or suspected cause(s) of the release; (iv) photographs of the release and any and all equipment or fixtures involved; (v) corrective action taken or planned to be taken by or on behalf of Tenant to address the cause or suspected cause of the release; and (vi) the names and contact information of individuals and entities acting for or on behalf of Tenant to address the release, including environmental consultants.

6.4.3 Corrective Action. According to a schedule prescribed in writing by the Executive Director or the applicable governmental agency with jurisdiction, Tenant shall make or cause to be made any and all necessary corrective actions

to address the cause or suspected cause of the Term Release, including but not limited to equipment repairs and/or replacements.

6.4.4 Reporting Obligations to Regulatory Agencies. Within thirty (30) calendar days following its discovery of the Term Release, Tenant shall provide written notification of the Term Release and any resultant contamination to all applicable regulatory agencies as required by Environmental Laws, with copies of such notification(s) to City;

6.4.5 Use of Consultants. Within thirty (30) calendar days following its discovery of the Term Release, Tenant shall provide written notification to City of the consultant(s), if any, Tenant plans to utilize in connection with the Term Characterization Work Plan. Such written notification shall set forth the names of the individuals forming the consultant team, and their qualifications. City shall approve such consultants in its sole reasonable discretion.

6.4.6 Term Characterization Work Plan. Subject to any schedule or protocol required by any governmental agency with jurisdiction which schedule or protocol shall take precedence over these Sections 6.4.6 through and including 6.4.11, within thirty (30) calendar days following City's approval of Tenant's consultant, Tenant shall submit the Term Characterization Work Plan to City for its written approval. Provided Tenant delivers to City a complete Term Characterization Work Plan as hereinabove required, City shall use its best reasonable efforts to expeditiously approve or disapprove such plan. Tenant shall provide additional information upon request of City if City deems the Term Characterization Work Plan inadequate.

6.4.7 Testing and Investigation. Within forty-five (45) calendar days following City's transmittal of its written approval of the Term Characterization Work Plan, Tenant shall commence and complete investigation and testing in accordance with the plan, and shall provide to City the results of such investigation and tests as they become available.

6.4.8 Term Characterization Report. Within one hundred twenty (120) calendar days following City's written approval of the Term Characterization Work Plan, Tenant shall submit the Term Characterization Report to City for its written approval. Tenant shall provide additional information upon request of City if City deems the Term Characterization Report inadequate. Concurrently, Tenant shall submit a report detailing all corrective action taken by Tenant to address the cause or suspected cause of the Term Release. Tenant shall supplement such corrective action if so requested by City.

6.4.9 Term Remediation Action Plan. If so requested in writing by the Executive Director, within sixty (60) calendar days following such request, Tenant shall prepare at its sole cost and expense and submit to City for its approval the Term Remediation Action Plan, together with a list of the consultants Tenant

proposes to execute such plan and such consultants' qualifications (both organizationally and broken down by consultant team member), both of which City shall approve in its sole reasonable discretion. Provided Tenant delivers to City a complete Term Remediation Action Plan, City shall use its best efforts to approve or disapprove such plan in a timely manner. Tenant shall provide additional information upon request of City if City deems the Term Remediation Action Plan inadequate.

6.4.10 Completion of Work. Within a timeframe reasonably established and communicated to Tenant by City following City's written approval of the Term Remediation Action Plan, Tenant shall complete or cause the completion of all work contemplated by the Term Remediation Action Plan. If, in the sole and absolute determination of the Executive Director, such contamination resulting from the Term Release cannot be remediated on site to the satisfaction of City, Tenant shall remove and properly dispose of all soil, water, groundwater, sediment or other material contaminated by the Term Release and, in the cases of soil or sediment contamination, replace same with clean soil or material suitable to City.

6.4.11 Approval of Work. The adequacy of Tenant's execution of any Term Remediation Action Plan shall be within the sole reasonable discretion of the Executive Director. Tenant shall notify the Executive Director in writing when it believes it has completed all work contemplated by the Term Remediation Action Plan. If, upon investigation, the Executive Director reasonably concludes that additional tasks must be fulfilled in order to complete all work contemplated by the Term Remediation Action Plan, Tenant shall complete such tasks forthwith. Upon fulfillment of such tasks, Tenant again shall notify the Executive Director in writing, which will re-initiate the approval process for execution of a Term Remediation Action Plan.

6.4.12 City's Right to Remediate. If Tenant fails to wholly or partially fulfill any obligation set forth in the preceding Sections 6.4.2 through 6.4.11, City may (but shall not be required to) take all steps it deems necessary to fulfill such obligation. Any action taken by City shall be at Tenant's sole cost and expense and Tenant shall indemnify and pay for and/or reimburse City for any and all costs (including any administrative costs) City incurs as a result of any such action it takes. Any such costs shall accrue as Additional Rent in Section 5.6.

## **6.5 Environmental Compliance.**

6.5.1 Generally. In its use and occupancy of the Demised Premises, Tenant shall comply (and shall immediately halt and remedy any incident of non-compliance) with: (a) Environmental Laws; (b) all applicable environmental policies, rules and directives of City's Harbor Department ("Port Environmental Policies") as set forth on Exhibit K-A hereto; and (c) the environmental mitigation

measures (“Mitigation Measures”) and Mitigation Monitoring and Reporting Program set forth collectively in Exhibit K-B hereto.

6.5.2 Environmental Compliance Program. Tenant shall establish and thereafter observe and maintain a written program to facilitate such compliance in accordance with the format and content and other requirements set forth in Exhibit K, which program shall be referred to as the “Environmental Compliance Program” or “ECP.” Tenant shall submit its ECP to the Executive Director within six (6) months of taking possession of the first Parcel(s) pursuant to Section 3.2 for review and approval. Tenant shall update its ECP from time to time as may be necessary, and within thirty (30) days thereof, as a result of (i) Tenant taking possession of a Parcel pursuant to Section 3.2, or (ii) as soon as Tenant introduces Environmentally Regulated Material to the Demised Premises not previously listed in the ECP. Tenant shall submit any updated ECP to the Executive Director. Executive Director’s review and approval of any such ECP shall not relieve Tenant of its obligations pursuant to this Section 6.5.

6.5.3 Revision of Mitigation Measures. Following the Effective Date, upon mutual written agreement of Board and Tenant, Board may revise Exhibit K-B.

**6.6 Environmental Audits.** Tenant shall perform annual written audits of its ECP. The results of such audits shall be maintained on Demised Premises for review by City. City shall have the right to conduct, at its sole cost and expense, periodic audits of Tenant’s compliance with the ECP and management of Environmentally Regulated Material. Tenant shall provide access to backup materials supporting the ECP necessary for City to conduct such audits. City shall provide Tenant with copies of any written reports or results of such audits promptly upon completion of such documents.

**6.7 Waste Disposal.** In discharging its obligations under this Section 6, if Tenant disposes of any soil, material or groundwater contaminated with Environmentally Regulated Material, within thirty (30) days of Tenant’s receipt of original documents, 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, the Port of Los Angeles or the City’s Harbor Department shall not appear on any manifest document as a generator of such material.

**6.8 Laboratory Testing.** In discharging its obligations under this Section 6, Tenant shall perform any tests using a State of California Department of Health Services certified testing laboratory or other similar laboratory of which City shall approve in writing. 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 6.8, “Tenant” includes agents, employees, contractors, subcontractors, and/or invitees of the Tenant.

**6.9 Survival of Obligations.** Except as otherwise provided in this Section 6, this Section 6 and the obligations herein shall survive the expiration or earlier termination of this Agreement.

**Section 7. Improvements.**

**7.1 City Construction Obligations and New City Improvements.**

7.1.1 Plans and Specifications. City, in consultation with Tenant, shall prepare plans and specifications for the construction, erection and installation of New City Improvements referenced in, listed and described in Exhibit L. In the case of Parcels 3 and 4, such plans and specifications shall be prepared only in the event that City funding is approved pursuant to Exhibit L. Tenant acknowledges and agrees that any decisions by the Board and City not to fund New City Improvements for Parcels 3 and 4 shall be absolute and in the Board's and City's sole discretion based on any reason or no reason at all and shall not be subject to any defense or claim by Tenant including but not limited to any reliance claims, estoppel, waiver or any other legal and/or equitable claims or defenses.

Any plans and specifications for construction, erection and installation of New City Improvements on the Premises shall be submitted to Tenant for review and comment related solely to adequacy to meet Tenant's need for the Premises. Tenant shall have ten (10) business days from submittal by City of the 80% design plans and specifications to provide written comments on the design plans and specifications or state that the design plans and specifications meet their needs. If Tenant does not provide any comments within this time period, the design plans and specifications shall be deemed acceptable to Tenant. City and Tenant agree to discuss in good faith any comments or changes submitted by Tenant, which shall not, however, exceed an additional ten (10) business days.

City shall consult with Tenant regarding any design plans and specifications for construction, erection and installation of City's Improvements not located on the Premises (e.g. public right-of-way and street improvements).

7.1.2 Construction and Delivery of New City Improvements. AltaSea must have obtained nonprofit status within the meaning of Section 501(c)(3) of the Internal Revenue Code consistent with Section 13.9.1 prior to the City initiating any New City Improvements on any Parcel. City warrants and represents that it shall construct and deliver New City Improvements consistent with the plans and specifications developed in accordance with Section 7.1.1 and as set forth on Exhibit L, provided however, that as to Parcels 3 and 4, City warrants and represents that it shall construct and deliver New City Improvements only in the event City funding is approved pursuant to Exhibit L.

## **7.2 Tenant Alteration of Premises or Construction of New Improvements.**

7.2.1 Tenant Improvements. Tenant shall deliver Tenant Improvements as set forth in Exhibit M. Tenant shall comply with all provisions in this Section 7.2 for all required Tenant Improvements. AltaSea must have obtained nonprofit status within the meaning of Section 501(c)(3) of the Internal Revenue Code consistent with Section 13.9.1 prior to initiating any construction on any Parcel.

7.2.2 Alterations Require City Authorization. Tenant acknowledges City's interest in controlling the manner in which physical changes are made to the Demised Premises after the Effective Date and covenants that it shall make no improvements, alterations, additions or changes to the Demised Premises including but not limited to the construction of works or improvements or the changing of the grade of the Demised Premises ("Alteration") nor construction of Tenant Improvements, if any, without obtaining City's prior written authorization to undertake such Alteration or new construction.

**7.3 Authorization Procedure.** Tenant shall obtain written authorization to undertake an Alteration or construct a Tenant Improvement according to the following procedure:

7.3.1 Application for Discretionary Projects. If Tenant desires to undertake an Alteration, or construct a new Tenant Improvement, Tenant shall submit to City a complete Application for Discretionary Projects that attaches a complete set of drawings, plans, and specifications reflecting the proposed Alteration. Such drawings, plans and specifications shall be prepared and stamped by a licensed engineer registered in the State of California. Tenant bears sole responsibility for the completeness of such submittal.

7.3.2 Harbor Engineer Authority; Harbor Engineer's General Permit. The Harbor Engineer shall have the right to require changes to the drawings, plans and specifications Tenant submits in connection with such Application for Discretionary Projects, and may require additional environmental review for compliance with CEQA and NEPA or other Harbor Department requirements. If Harbor Engineer orders such a change and Tenant believes that such a change will have any detrimental effect on the structural integrity of the works, project or improvements, or increase any hazard to life or property, Tenant shall immediately notify him/her. If Tenant fails to provide such notification, the drawings, plans and specifications shall be treated for all purposes as if they had been originally prepared by Tenant, as changed. Harbor Engineer's approval of Tenant's submittal, if any, will be reflected by issuance of a Harbor Engineer's General Permit.

7.3.3 Non-Harbor Department Permits. Tenant acknowledges that, in addition to obtaining a Harbor Engineer's General Permit, Tenant additionally may be required to obtain permits and authorizations with respect to the

proposed Alteration from City, federal and state bodies (“Non-Harbor Department Permits”), the issuance of which City’s Harbor Department does not control. In any event, obtaining the Harbor Engineer’s General Permit and any Non-Harbor Department Permits necessary to undertake the proposed Alteration is and shall be the sole responsibility of Tenant. Pursuant to Section 4.3, every Alteration made by Tenant shall conform with Applicable Laws, as well as with the plans and specifications as approved by Harbor Engineer.

7.3.4 Condition Precedent for Harbor Engineer’s Permit. Tenant acknowledges that issuance of the Harbor Engineer’s General Permit by City’s Harbor Department shall be conditioned upon Tenant’s demonstration that it has obtained all other permits and authorizations with respect to the proposed Alteration or new Tenant Improvement as may be required by entities other than City’s Harbor Department.

7.3.5 Completion of Construction; As-Built Plans. Upon completion of all work necessary to construct the Alteration, or new Tenant Improvement, Tenant shall provide City with written confirmation that such work conformed with all permits issued, and “as-built” plans and/or drawings for such work in a form acceptable to Harbor Engineer. Tenant acknowledges that City may perform inspections of the Alteration or new Tenant Improvement to ensure that such Alteration or new Tenant Improvement conformed with the permits issued. Tenant shall undertake any corrective measures reasonably requested by City as a result of such inspections.

**7.4 Notice of Commencement and Completion of Work.** Tenant shall give advance written notice to Harbor Engineer of the date it will commence any construction. Within thirty (30) days of completion of construction, Tenant shall provide written notice to Harbor Engineer of the date of such completion, copies of “as-built” plans for such construction, copies of all permits issued in connection with such construction and copies of all documentation issued in connection with such completed construction, including but not limited to inspection reports and certificates of occupancy.

**7.5 Cost of Project Administrative Obligations.**

7.5.1 Environmental Review. Tenant shall reimburse City for all costs and expenses incurred by City after the Effective Date of this Agreement for legally mandated environmental impact reviews, analysis, and document preparation for Tenant’s proposed Improvements, including but not limited to, compliance with the National Environmental Policy Act and the California Environmental Quality Act.

7.5.2 Permits. Tenant, at its sole cost and 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.

**7.6 Cost of Construction.** All construction by Tenant pursuant to this Section 7 shall be at Tenant's sole cost and expense. Tenant shall keep the Demised Premises, including the improvements constructed, and the Premises arising from Tenant's rights, free and clear of liens for labor and materials and shall hold City harmless from any responsibility in respect thereto.

**7.7 Property of Tenant and Subtenants.** All property brought onto the Premises by Tenant, or in the care, custody or control of Tenant, or by Tenant's subtenants to undertake the Permitted Uses or otherwise shall be and remain the property of Tenant, or its subtenants subject to the terms and conditions contained herein, and shall be there at the sole risk of Tenant. Tenant hereby waives all claims against City with respect to such property, except for injury or damage to such property caused by City's sole negligence or willful misconduct.

**7.8 Utilities and Underground Structures.**

7.8.1 Generally. Tenant shall maintain on the Demised Premises as-built drawings that identify the precise position of any pipelines, utilities or improvements of any type Tenant places on the Demised Premises, or which are placed on the Demised Premises by others and accepted by Tenant for use of the Demised Premises, whether placed above or below ground. Upon twenty four (24) hours' written notice by the Harbor Department, Tenant shall undertake at its sole cost and expense whatever measures are reasonably necessary, including subsurface exploration for any utilities or any other substructure placed on the Demised Premises by Tenant, or placed by others and accepted by Tenant for use on the Demised Premises, to precisely locate the position of such items if the Harbor Department considers the as-built drawings as insufficient to locate such items. Tenant agrees any work necessary to locate such items or any damage which may result from the location being incorrectly described, whether incurred by Tenant or City, shall be borne exclusively by Tenant. Exploration and preparation of all documentation recording the location of lines or structures shall be completed within the time specified in said notice, which shall be commercially reasonable. The subsurface exploration shall verify the vertical as well as horizontal location of all utilities and substructures. Documentation reflecting the results of said exploration shall be filed with the Harbor Engineer.

If Tenant neglects, fails or refuses within the time specified in said notice to begin or fails to prosecute diligently to complete the work of locating any pipeline or any other substructure under Tenant's control or servicing Tenant's operation within the Demised Premises granted herein, the City shall have the right to enter onto the Demised Premises and perform the work designated in the notice. All subsurface exploration required by the provisions contained herein whether performed by Tenant or City shall be performed at Tenant's expense. In

addition, Tenant agrees to bear the cost of any and all damage of whatever nature caused by any act, omission, or negligence of the City and any and all of its boards, officers, agents, consultants, and employees in the performance of said subsurface exploration as required by this provision. Tenant shall be solely responsible for City costs associated with the rights set forth in this Section 7.8.1 and shall pay City, as Additional Rent, within thirty (30) days of receiving an invoice for payment from City. Work performed by City or City's contractors under this provision does not alter Tenant's obligation to maintain the Demised Premises in a safe condition, both during and after completion of the work.

7.8.2 Rules Governing Utilities and Pipelines. After installation, and in any event for the duration of this Agreement, Tenant shall comply with all Applicable Laws, regulations and rules regarding utilities and pipeline testing and inspection requirements.

7.8.3 Relocation of Utilities. At any time during the term of this Agreement, the Board shall have the right to make any such change in the route or location of any utilities constructed or maintained on the Demised Premises by Tenant pursuant to the authority of this Agreement as may be required or made necessary for the progress of harbor development or the performance of any work or improvement within the jurisdiction of the Board. If the Board shall determine that any such change or relocation is necessary, the Board shall give at least ninety (90) days' written notice to Tenant and the work of removal and relocation shall be completed within such time after said written notice as shall be fixed in said notice. The cost of any such removal and relocation shall be borne by Tenant.

If Tenant neglects, fails or refuses within the time specified in said notice to begin or fails to prosecute diligently to complete the work of locating any utilities or any other substructure placed on the Demised Premises by Tenant, or placed by others and accepted by Tenant for use on the Demised Premises, the Harbor Department shall provide written notice to Tenant which shall specify such neglect, failure or refusal. Upon delivery of the notice specifying Tenant's neglect, failure or refusal, Tenant shall have such time as is reasonably necessary to cure such neglect, failure or refusal so long as Tenant commences the cure with such thirty (30) day period and thereafter diligently prosecutes such cure to completion. If Tenant fails to cure in a timely and diligent manner, City shall have the right to enter the Demised Premises to identify the precise location of any utilities or improvements of any type that Tenant has placed on the Demised Premises, whether placed above or below ground. Tenant shall be solely responsible for City costs associated with the rights set forth in this Section 7.8.3 and shall pay City, as Additional Rent, within thirty (30) days of receiving an invoice for payment from City. Work performed by City or City's contractors under this provision does not alter Tenant's obligation to maintain the Demised Premises in a safe condition, both during and after completion of the work.

**7.9 Tenant's Cost.** Any modification, improvement or addition to the Demised Premises and any equipment installation required by the City Fire Department, City Department of Building and Safety, Air Quality Management District, Regional Water Quality Control Board, United States Coast Guard, Environmental Protection Agency, Department of Homeland Security or any other local, regional, state or federal agency in connection with Tenant's undertaking of the Permitted Uses shall be constructed or installed at Tenant's sole cost and expense.

**7.10 Signs.** Notwithstanding the rights granted to Tenant under Section 15, Tenant shall not erect or display, or agree to be erected or displayed, on the Demised Premises, or upon works, buildings and improvements made by Tenant, any advertising matter of any kind, including signs, without first obtaining the written consent of the Executive Director and a Harbor Engineer's General Permit. Tenant shall post, erect and maintain on the Demised Premises such signs as the Executive Director may direct.

## **Section 8. Maintenance and Repair.**

**8.1 Tenant Obligations to Maintain.** Except for those matters included in the City's maintenance and repair obligations as described in Section 8.8 below, Tenant, at its sole cost and expense, shall keep and maintain the Demised Premises and all buildings, works and improvements of any kind thereon, including the improvements existing on those portions of the Demised Premises and Existing and New City Improvements as depicted on Exhibit C (and as this Exhibit may be modified from time to time), in good and substantial repair and condition and shall be responsible for and perform all necessary inspection, maintenance and repair thereof, including preventive maintenance, using materials and workmanship of similar quality to the original improvements. Tenant shall obtain any permits, including but not limited to those issued by City, necessary for such maintenance and repair. City shall reimburse Tenant for any repairs made necessary by use of the Demised Premises by a temporary user pursuant to Section 4.8.

**8.2 Tenant Failure to Maintain.** If Tenant fails to make any repairs or to perform required maintenance within thirty (30) days after receipt of notice from City to do so, City may, but shall not be obligated to, make such repairs or perform such maintenance. Tenant shall reimburse City, as Additional Rent, all of City's costs (as defined in Section 8.3) within thirty (30) days after receipt of City's invoice for work performed. In the event Tenant shall commence such repairs and diligently prosecute the same to completion or shall begin to perform the required maintenance within the thirty (30) day period, City shall refrain from commencing or prosecuting further any repairs or performing any required maintenance until the work has been completed by Tenant. Tenant shall thereafter pay on demand, as Additional Rent, City's costs incurred pursuant to this Section 8.2 prior to Tenant's commencement of repair or maintenance. The making of any repairs or the performance of maintenance by City, which is the responsibility of Tenant, shall in no event be construed as a waiver of the

duty or obligation of Tenant to make future repairs or perform required maintenance as herein provided.

### **8.3 Definition of City's Costs.**

"City's costs" for purposes of this Section 8 shall include, in City's sole reasonable discretion, the cost of maintenance or repair or replacement of property neglected, damaged or destroyed, including direct and allocated costs for labor, materials, services, equipment usage, and other indirect or overhead expenses arising from or related to maintenance, repair or replacement work performed by or on behalf of City.

**8.4 Litter and Debris.** Tenant, at its sole cost and expense, shall provide sufficient dumpsters or other like containers for trash collection and disposal and keep the Demised Premises free and clear of rubbish, debris, graffiti, and litter at all times. Tenant shall perform periodic inspections and cleaning of the storm water catch basins (including filters), maintenance holes, and drains, maintaining the submerged land underlying the water berthing area at the Demised Premises free and clear of debris from the wharf and from vessels, and cargo loading and unloading operations of vessels berthed at said berths in connection with Tenant's undertaking of the Permitted Uses. Tenant, at its sole cost and expense, further shall keep and maintain the Demised Premises in a safe, clean and sanitary condition in accordance with all applicable federal, state, municipal and other laws, ordinances, rules and regulations.

**8.5 Fire Protection Systems.** All fire protection sprinkler systems, standpipe systems, fire hoses, fire alarm systems, portable fire extinguishers and other fire-protective or extinguishing systems, with the exception of hydrant systems, or appliances which have been or may be installed on the Demised Premises shall be maintained and repaired by Tenant, at its cost, in an operative condition at all times.

**8.6 City Inspections.** Tenant shall provide personnel to accompany City's representatives on periodic inspections of the Demised Premises to determine Tenant's compliance with this Agreement.

**8.7 Services and Utilities.** Unless otherwise provided for herein, Tenant shall pay all charges for services furnished to the Demised Premises or used in connection with its use and occupancy, including but not limited to heat, gas, power, telephone, light, and janitorial services, and pay all deposits, connection fees, charges and meter rentals required by the supplier, including City.

### **8.8 City's Maintenance Obligations.**

8.8.1 Generally. City, at its sole cost and expense, shall keep, maintain and repair wharf structures on or under the Demised Premises at Parcels 2A, 3 and 4 and the structural integrity thereof to the extent that such maintenance and repairs are not required pursuant to damages caused by Tenant as described in Section 8.8.2.

Notwithstanding the foregoing, Interim Use by the Tenant of Parcel 3 pursuant to Section 3.2.1.3(f) of this Agreement shall be on an “as is” basis as conditions exist at this location on the Effective Date of this Agreement. City shall have no obligations under this Section 8.8 for the wharf structure on Parcel 3 during such Interim Use beyond said “as is” conditions. “Wharf Structure” for purposes of this subsection includes, without limitation, the beams, girders, piles, sea walls, retaining walls, fill material, subsurface support slabs, bulkheads and pre-stressed concrete or wood piling, joists, pile caps and timber decking (except as noted herein), and any and all mooring dolphins. The wharf structure does not include the paving or surface condition of the timber decking.

8.8.2 Damage by Tenant. Notwithstanding Section 8.8.1, if damage to any wharf structure is caused by the acts or failure to act of Tenant, its officers, agents, employees, subtenants or invitees (including but not limited to third-party users of the Demised Premises authorized by Tenant and contractors retained by Tenant to perform work on the Demised Premises, hereinafter collectively “invitees”), Tenant shall be responsible for all costs, direct and 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, as Additional Rent, for all the City’s cost of repair. All damage to the wharf structure shall be presumed to be the responsibility of Tenant and Tenant agrees to be responsible for such damage unless Tenant can demonstrate to the satisfaction of City that someone other than its officers, agents, employees or invitees caused the damage. The sufficiency of proof presented by Tenant to City shall be determined by City in its sole judgment.

8.8.3 City’s Failure to Maintain. If Tenant believes that City has failed to perform any maintenance or repairs to the wharf structure, Tenant shall provide written notice to the Executive Director which shall specify such failure. Upon receipt of the notice specifying City’s failure, the Parties shall meet and confer within thirty (30) days after receipt of the notice to determine the responsible Party for the maintenance or repairs indicated in Tenant’s written notice. In the event that City agrees to undertake any such maintenance or repairs, City shall have such time as is reasonably necessary to complete the work. If the Parties cannot agree as to whether City has failed to perform pursuant to this section within thirty (30) days after the meet and confer, or after such additional time as is reasonably necessary to determine whether a failure has occurred, Tenant’s sole remedy shall be in accordance with Section 9.7.

## **Section 9. Default and Termination.**

**9.1 Tenant’s Default.** The occurrence of any of the following shall constitute a default by Tenant under this Agreement:

- (a) Tenant's failure to pay when due any rent required to be paid under this Agreement if the failure continues for three (3) days after written notice of the failure from City to Tenant;

(b) Tenant's failure to perform any other obligation under this Agreement, if Tenant fails to commence to cure the failure within thirty (30) days after delivery of written notice of the failure from City to Tenant, or if the failure continues for ninety (90) days after delivery of such notice;

(c) Tenant's abandonment of the Demised Premises, including but not limited to Tenant's absence from the Demised Premises for three (3) consecutive days (excluding Saturdays, Sundays, and California legal holidays) while in default of any provision of this Agreement;

(d) To the extent permitted by law:

(1) A general assignment by Tenant or any guarantor of the Agreement for the benefit of the creditors without written consent of City;

(2) The filing by or against Tenant, or any guarantor, of any proceeding under an insolvency or bankruptcy law, unless (in the case of an involuntary proceeding) the proceeding is dismissed within sixty (60) days;

(3) The appointment of a trustee or receiver to take possession of all or substantially all the assets of Tenant or any guarantor, unless possession is unconditionally restored to Tenant or that guarantor within thirty (30) days and the trusteeship or receivership is dissolved;

(4) Any execution or other judicially authorized seizure of all or substantially all the assets of Tenant located on the Demised Premises, or of Tenant's interest in this Agreement, unless that seizure is discharged within thirty (30) days;

(e) The undertaking of an unreasonable or improper use on the Demised Premises;

(f) Tenant's failure to complete Tenant Improvements as set forth in Section 7.2.1 and in compliance with the terms and conditions of this Agreement;

(g) Tenant's failure to deliver and provide the Non-Monetary Compensation as set forth in Section 5.2.2.

**9.2 Replacement of Statutory Notice Requirements.** When this Agreement requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by Code of Civil Procedure Section 1161 or any similar or successor statute. If City serves a statutory notice pursuant to Code of Civil Procedure Section 1161 et seq. to declare Tenant's default, City may proceed to obtain a judgment and/or order for possession and/or for

any other remedy available at law and/or equity without further notice. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Agreement) in the manner required by Section 16.9 shall replace and satisfy the statutory service-of-notice procedures, including those required by Code of Civil Procedure Section 1162 or any similar or successor statute.

**9.3 City's Remedies on Tenant's Default.** On the occurrence of a default by Tenant, City shall have the right to pursue any one or more of the following remedies in addition to any other remedies now or later available to City at law or in equity. These remedies are not exclusive but are instead cumulative. Any monetary sums that result from application of this Section 9.3 shall be deemed Additional Rent.

9.3.1 Termination of Agreement. City may terminate this Agreement in whole or in part and recover possession of the Premises, in whole or in part. Once City has terminated this Agreement, in whole or in part as the case may be, Tenant shall immediately surrender the Demised Premises, in whole or in part as the case may be, to City. On termination of this Agreement, pursuant to Civil Code Section 1951.2 or its successor, City may recover from Tenant all of the following:

(a) The worth at the time of the award of any unpaid rent that had been earned at the time of the termination, to be computed by allowing interest at the rate set forth in Item 270 of the Tariff but in no case greater than the maximum amount of interest permitted by law;

(b) The worth at the time of the award of the amount by which the unpaid rent that would have been earned between the time of the termination and the time of the award exceeds the amount of unpaid rent that Tenant proves could reasonably have been avoided, to be computed by allowing interest at the rate set forth in Item 270 of the Tariff but in no case greater than the maximum amount of interest permitted by law;

(c) The worth at the time of the award of the amount by which the unpaid rent for the balance of the term of the Agreement after the time of the award exceeds the amount of unpaid rent that Tenant proves could reasonably have been avoided, to be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%);

(d) Any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform obligations under this Agreement, including, without limitation, restoration expenses, expenses of improving the Demised Premises for a new tenant (whether for the same or similar use) brokerage commissions, and any special concessions made to obtain a new tenant; and

(e) Any other amounts, in addition to or in lieu of those listed above, that may be permitted by Applicable Law; and

(f) To the extent that Tenant fails to surrender the Demised Premises after Termination, Tenant agrees that the damages to City for such holdover shall be one hundred fifty percent (150%) of the rent payable for the last month prior to the Termination of this Agreement plus other charges payable under this Agreement, for each and every month of such holdover after Termination.

9.3.2 Continuation of Agreement in Effect. City shall have the remedy described in Civil Code Section 1951.4, which provides that, when a tenant has the right to sublet or assign (subject only to reasonable limitations), the City may continue the Agreement in effect after the tenant's breach and abandonment and recover rent as it becomes due. Accordingly, if City does not elect to terminate this Agreement on account of any default by Tenant, City may enforce all of City's rights and remedies under this Agreement, including the right to recover all rent as it becomes due.

9.3.3 Tenant's Subleases. Whether or not City elects to terminate this Agreement on account of any default by Tenant, City may:

(a) Terminate any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the Demised Premises; or

(b) Choose to succeed to Tenant's interest in such an arrangement. If City elects to succeed to Tenant's interest in such an arrangement, Tenant shall, as of the date of notice by City of that election, have no further right to, or interest in, the rent or other consideration receivable under that arrangement.

**9.4 Form of Payment After Default.** If Tenant fails to pay any amount due under this Agreement within ten (10) days after the due date or if Tenant draws a check on an account with insufficient funds, City shall have the right to require that any subsequent amounts paid by Tenant to City under this Agreement (to cure a default or otherwise) be paid in the form of cash, money order, cashier's or certified check drawn on an institution acceptable to City, or other form approved by City despite any prior practice of accepting payments in a different form.

**9.5 Acceptance of Rent Without Waiving Rights.** City may accept Tenant's payments without waiving any rights under this Agreement, including rights under a previously served notice of default. If City accepts payments after serving a notice of default, City may nevertheless commence and pursue an action to enforce rights and remedies under the previously served notice of default.

**9.6 City's Default.** City's failure to perform any obligation under this Agreement, if City fails to commence to cure the failure within thirty (30) business days after delivery of written notice of the failure from Tenant to City, or if the failure continues for ninety (90) days after delivery of such notice unless the failure is such that cannot be cured in ninety (90) days in which case if City fails to diligently cure within a reasonable amount of time.

**9.7 Tenant's Remedy on City Default.** Tenant's sole remedy for a City default shall be to seek specific performance in a court of competent jurisdiction.

**9.8 Damage or Destruction of Improvements.**

9.8.1 Insured Damages. If during the Term, any buildings, structures or improvements on the Demised Premises are partially or totally destroyed from a risk covered by the insurance described in Section 12, thereby rendering the Demised Premises partially or totally inaccessible or usable, Tenant must restore the Demised Premises to the extent of the available insurance to substantially the same level of usability for the Permitted Uses as they were immediately before the damage or destruction.

9.8.2 Uninsured Damages. If, during the Term, improvements on the Demised Premises are partially or totally destroyed from a risk not covered by the fire and extended coverage insurance described in Section 12, thereby rendering the Demised Premises partially or totally inaccessible or unusable, such damage or destruction shall not automatically terminate the Agreement. If, however, the cost or restoration exceeds ten percent (10%) of the full replacement value of improvements, as said value existed immediately before such damage or destruction, Tenant may, at Tenant's option, terminate this Agreement by giving City written notice within sixty (60) days from the date of the damage or destruction. If Tenant elects to terminate as above provided, Tenant may remove from the Demised Premises at its sole cost and expense any cranes, moveable equipment and the like, at its election. Tenant otherwise shall be obligated, unless otherwise directed in writing by City, to demolish all remaining damaged improvements, remove all debris and remediate all Term Contamination as provided in Section 11, at Tenant's sole cost and expense. If Tenant fails to exercise its right to terminate this Agreement, this Agreement shall continue in full force and effect for the remainder of the Term and Tenant shall restore the Demised Premises to substantially the level of usability as they were immediately before the damage or destruction.

**Section 10. Force Majeure.**

Notwithstanding anything to the contrary in this Agreement, any prevention, delay or stoppage due to strikes; lockouts; labor disputes or shortages; acts of God; inability to obtain labor, materials or reasonable substitutes therefor; governmental or regulatory actions; civil commotions; fire or other casualty; transportation or delivery delays; blocked access rights; acts of a public enemy; war; terrorism; severe weather; tsunami;

flood; or earthquake and other causes beyond the reasonable control of the Party obligated to perform (each, an "Event of Force Majeure"), shall, except with regard to either Party's obligation to reimburse the other Party that has already accrued, excuse the performance of such Party for a period equal to any such prevention, delay or stoppage and, therefore, if this Agreement specifies a time period for performance of an obligation of either Party, that time period shall be extended by the period of any delay in such Party's performance caused by an Event of Force Majeure, so long as the non-performing Party diligently attempts to cure the non-performance caused by the Event of Force Majeure. In the event of the happening of any such contingencies, the Party delayed by an Event of Force Majeure shall immediately give the other Party written notice of such contingency, specifying the cause for delay or failure, and such notice from the Party delayed shall be prima facie evidence that the delay resulting from the causes specified in the notice is excusable. The Party delayed by an Event of Force Majeure shall use reasonable diligence to remove the cause of delay, and if and when the contingency which delayed or prevented the performance of a Party shall cease or be removed, the Party delayed shall notify the other Party immediately, and the delayed Party shall recommence its performance of the terms, covenants and conditions of this Agreement. Notwithstanding the foregoing, the term of this Agreement shall not exceed fifty (50) years in length regardless of the existence of any Event of Force Majeure.

## **Section 11. Restoration and Surrender of Premises.**

**11.1 Tenant's Restoration Obligations.** On or before the Expiration Date, or any sooner termination of this Agreement, other than by termination pursuant to Section 9 of this Agreement, unless otherwise excused in writing by the Executive Director, Tenant shall be obligated to, as directed by City in its sole and absolute discretion, quit the Premises and surrender possession of the Demised Premises leaving all Demised Premises improvements depicted on Exhibit C as said Exhibit may be modified from time to time during the term of the Agreement (including but not limited to City's and Tenant's Improvements) in good and usable condition, said condition to be consistent with a first class marine research facility of similar age as repaired, maintained and upgraded as required by Section 4.13, Section 4.15 and Section 8. If the condition of the Demised Premises is upgraded during the term of this Agreement, Tenant shall restore the Demised Premises to the upgraded condition, subject to normal wear and tear. Tenant agrees to remove all debris and sunken hulks from channels, slips and water areas within or fronting upon the Demised Premises not solely caused by City. 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 Section 9, Tenant is also obligated to restore the Demised Premises as provided above or to pay the cost of restoration if City chooses to perform the work. In connection with the foregoing, Tenant, at its sole cost and expense, shall restore the Demised Premises (including their soil, groundwater and sediment) such that, on the Expiration Date, they will be returned to City:

(a) Free of Term Contamination (as defined in Section 6.1.4) and in at least as good of a condition as the condition depicted in the Baseline Report. As between City and Tenant, Tenant shall bear sole responsibility for Term Contamination and any costs related thereto;

(b) Free of any encumbrances including but not limited to deed or land use restrictions as a result of any Term Release (as defined in Section 6.1.3) and/or any liens (UCC, federal or state tax or otherwise) on the Demised Premises or on fixtures or equipment, or personal property left on the Demised Premises;

(c) Free of all personal property placed on the Demised Premises by Tenant or any sub-tenant, including furniture, fixtures or equipment; and

(d) At the option of the City, free of all above- and below-ground works, structures, utilities, improvements and pipelines of any kind, including the saltwater system (collectively referred to as "Structures"), placed on the Demised Premises by Tenant except permanent buildings constructed by Tenant on Parcels 1A, 1B, 5 and 6 and public space areas. If the Demised Premises have been improved by a prior tenant or by both City and a prior tenant, then such Structures which are left on the Demised Premises at Tenant's request or for Tenant's benefit shall also be the responsibility of Tenant except as may be otherwise specified by this Agreement.

**11.2 Restoration Procedure.** Tenant, at its sole cost and expense, shall initiate and complete the procedure set forth below in Sections 11.2.1 through 11.2.4 and comply with any other conditions reasonably imposed by the Executive Director. Provided that Tenant discharges its obligations under this Section 11.2 expeditiously and in good faith, City shall reasonably endeavor to ensure that such discharge disturbs as little as reasonably possible Tenant's undertaking of the Permitted Uses. The Executive Director may alter or delete any of the procedures set forth in Sections 11.2.1 through 11.2.4 at his or her sole and absolute discretion.

11.2.1 Site Excavation Plan. Not later than two (2) years before the Expiration Date and sooner if requested in writing by the Executive Director, Tenant shall submit to City a written plan hereinafter referred to as the "Site Vacation Plan," the sufficiency of which is subject to City's reasonable approval, that includes:

(a) If a Term Release has occurred or is reasonably suspected, a work plan detailing all work (including sampling and analysis) necessary to generate a written characterization of the nature and extent of contamination (including contamination of air, soil and water) on the Demised Premises and that includes detailed programs for sampling and chemical analysis of soil and groundwater, which programs shall conform

with applicable Environmental Law, accepted principles of environmental science, established regulatory protocols and the Port of Los Angeles Site Characterization Guidance Manual. Such work plan shall be developed with specific reference to determining the then-current environmental condition of the Demised Premises as compared to the condition of the Demised Premises as set forth in the Baseline Report (as defined in Section 6.2.3) and whether any instances of unremediated Term Contamination (as defined in Section 6.1.4) exist. Such work plan shall identify all consultants Tenant intends to use to generate the written characterization. City shall approve such consultants in its sole reasonable discretion;

(b) If a Term Release has occurred or is reasonably suspected, a work plan detailing all work necessary to obtain, at Tenant's sole cost and expense, environmental and other entitlements (pursuant to CEQA, the National Environmental Protection Act ("NEPA") and any other applicable Environmental Laws) necessary to undertake the work contemplated by Section 11.2.1(a);

(c) A description of all liens on the Demised Premises, Improvements, Structures, and/or on fixtures and/or equipment or personal property intended to be left on the Demised Premises following the Expiration Date;

(d) A description of all claims, causes of action, orders or enforcement actions then pending against or in connection with the Demised Premises, the undertaking of the Permitted Uses, and/or this Agreement;

(e) All work including but not limited to demolition, grading and disposal, necessary to remove Improvements or Structures. Tenant shall identify any contractors or consultants proposed to undertake such work, which shall be approved by City in its sole reasonable discretion; and

(f) A written schedule with milestones acceptable to City in its sole reasonable discretion under which entitlements pursuant to Section 11.2.1(b) will be obtained and operations on the Demised Premises will be ramped-down in advance of their cessation on the Expiration Date and the Demised Premises will be readied for turnover to the City on the Expiration Date.

11.2.2 Preliminary Site Closure Report. If a Term Release has occurred or is reasonably suspected, Tenant shall, following City's written approval of Tenant's Site Vacation Plan and not later than eighteen (18) months before the Expiration Date, or sooner if requested in writing by the Executive Director, submit to City a written report hereinafter referred to as the "Preliminary Site

Closure Report,” the sufficiency of which is subject to City’s reasonable approval, that includes:

(a) All findings of the characterization required by Section 11.2.1 with substance and format that conforms with the Site Characterization Guidance Manual identified in Section 6.1.5;

(b) If the characterization required by Section 11.2.1 results in a finding that Term Contamination exists, a remediation action plan to City, the sufficiency of which is subject to City’s reasonable approval, that addresses remediation of all such Term Contamination and that (i) conforms with Section 11.1; and (ii) includes a discussion of remedial action alternatives for restoration of the Demised Premises and a timetable for each phase of restoration (“Expiration Remediation Action Plan”). The Expiration Remediation Action Plan shall conform with applicable Environmental Law, established regulatory protocols, accepted principles of environmental science and the Site Characterization Guidance Manual. Consultants or contractors selected by Tenant to perform such work shall be subject to City’s reasonable written approval;

(c) A report detailing the status of the removal of any liens identified in connection with Section 11.2.1;

(d) A report detailing the status of any claims, causes of action, orders or enforcement actions identified in connection with Section 11.2.1; and

(e) An updated schedule with milestones acceptable to City in its sole reasonable discretion under which operations on the Demised Premises will be ramped-down in advance of their cessation on the Expiration Date and the Demised Premises will be readied for turnover to the City on the Expiration Date.

11.2.3 Commencement of Remediation. Following City’s written approval of Tenant’s Preliminary Site Closure Report, and not later than one (1) year before the Expiration Date, or sooner if requested in writing by the Executive Director, Tenant shall:

(a) Commence remediation of any Term Contamination in accordance with the Expiration Remediation Action Plan. Consultants or contractors selected by Tenant to perform such work shall be subject to City’s reasonable written approval;

(b) Provide a report detailing the status of the removal of any liens identified in connection with Section 11.2.1;

(c) Provide a report detailing the status of any claims, causes of action, orders or enforcement actions identified in connection with Section 11.2.1; and

(d) Provide an updated schedule with milestones acceptable to City in its sole reasonable discretion under which entitlements pursuant to Section 11.2.1(b) will be obtained and operations on the Demised Premises will be ramped-down in advance of their cessation on the Expiration Date and the Demised Premises will be readied for turnover to the City on the Expiration Date.

11.2.4 Completion of Remediation. Not later than six (6) months before the Expiration Date, or sooner if requested in writing by the Executive Director, Tenant shall have:

(a) Completed the remediation required by the Expiration Remediation Action Plan, and have submitted to City a report certified by the consultant(s) performing the remediation confirming same;

(b) Resolved and removed all liens identified in connection with Section 11.2.1 to the reasonable satisfaction of City;

(c) Resolved all claims, causes of action, orders or enforcement actions identified in connection with Section 11.2.1 to the reasonable satisfaction of City and any governmental agencies with jurisdiction over such claims, causes of action, orders or enforcement actions;

(d) Obtained, at its sole cost and expense, all necessary entitlements pursuant to Section 11.2.1(b); and

(e) Submitted an updated schedule with milestones acceptable to City in its sole reasonable discretion under which operations on the Demised Premises will be ramped-down in advance of their cessation on the Expiration Date and the Demised Premises will be readied for turnover to the City on the Expiration Date.

11.2.5 Adequacy of Remediation. Subject to orders or directives issued by any regulatory agency with jurisdiction which orders or directives shall take precedence over this Section 11.2.5, the adequacy of Tenant's compliance with the Expiration Remediation Action Plan requirements shall be within the sole reasonable discretion of City. Tenant shall notify the Executive Director in writing when it believes it has completed all work contemplated by the Expiration Remediation Action Plan.

**11.3 Restoration Indemnity.** In addition to and not as a substitute for any remedies provided by this Agreement or at law or equity, Tenant shall defend, indemnify

and hold harmless City from any and all claims and/or causes of action brought against City and from all damages and costs which arise out of or are related to:

(a) Claims brought by holders of liens on the Premises, Improvements, Structures, and/or on fixtures and/or equipment or property left on the Demised Premises following the Expiration Date; and

(b) Claims, causes of action, orders or enforcement actions pending against or in connection with any portion of the Demised Premises of which Tenant has taken possession pursuant to Section 3.2 of this Agreement, the Permitted Uses and/or this Agreement.

Such indemnity is intended to and shall survive the expiration or earlier termination of this Agreement.

**11.4 Relocation Assistance.** Nothing contained in this Agreement shall create any right in Tenant or any subtenants for relocation assistance or payment from City upon expiration or termination of this Agreement (whether by lapse of time or otherwise) or upon the expiration or termination of Tenant's Interim Use of Parcel 3. Tenant acknowledges and agrees that it and any subtenants shall not be entitled to any relocation assistance or payment pursuant to the provisions of any state or federal law, including Title 1, Division 7, Chapter 16 of the California Government Code (Sections 7260 et seq.), or any subsequent enactment, with respect to any relocation of its business or activities upon the expiration of the term of this Agreement or upon its earlier termination or upon the termination of any holdover.

**11.5 Demolition of Improvements; Acceptance of Improvements.** If Tenant's Improvements are required to be removed under the terms of this Agreement and are not removed on or before the earlier to occur of the date of the termination of this Agreement or the Expiration Date, City shall have the right, but not the obligation, to remove and/or demolish same and restore the Demised Premises at Tenant's cost. In that event, Tenant agrees to pay to City, upon demand, City's costs (as defined in Section 8.2) of any such removal or demolition or restoration, but only to the same level required of Tenant hereunder. Notwithstanding the foregoing, City reserves the right to accept any works, buildings or other improvements upon the Demised Premises, including a change in the grade thereof, constructed or altered pursuant to this Section 11 in lieu of restoration of the Demised Premises to their condition prior to such construction or Alteration.

## **Section 12. Indemnity and Insurance.**

### **12.1 Indemnity.**

12.1.1 Generally. Except as may arise from the sole negligence or willful misconduct of City, Tenant 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 cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), 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:

- (a) Any dangerous, hazardous, unsafe or defective condition of, in or on the Demised Premises, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the Demised Premises by Tenant, its officers, agents, employees, subtenants, licensees or invitees;
- (b) Any operation conducted upon or any use or occupation of the Demised Premises by Tenant, its officers, agents, employees, subtenants, licensees or invitees under or pursuant to the provisions of this Agreement or otherwise;
- (c) Any act, error, omission, willful misconduct or negligence of Tenant, its officers, agents, employees, subtenants, licensees or invitees, regardless of whether any act, omission or negligence of City, its officers, agents or employees contributed thereto;
- (d) Any failure of Tenant, its officers, agents or employees to comply with any of the terms, conditions and obligations of this Agreement 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 subsections (a) through (d) above, 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 City's Charter.

12.1.2 City's Non-Insured Losses. Tenant also agrees to indemnify City and pay for all damages or loss suffered by City and City's Harbor Department, including but not limited to damage to or loss of City property, to the extent not insured by City, and 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 this Section 12.1. The term "persons" as used in this Section 12.1 shall include, but not be limited to, officers and employees of Tenant.

12.1.3 Term Contamination Losses. Tenant shall also indemnify, defend and hold City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution of the value of the Demised Premises, damages for loss or restriction on use of rentable or useable space or of any amenity of the Demised Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant

fees and expert fees) which arise during or after the Agreement term as a result of Term Contamination for which Tenant is otherwise responsible for under the terms 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 Term Contamination present in the soil or groundwater on or under the Demised Premises.

12.1.4 Survival of Obligations. The indemnity obligations in this Section 12.1 shall survive the expiration or earlier termination of this Agreement and shall apply regardless of the active or passive negligence of City and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on City.

**12.2 Insurance.** Tenant shall procure and maintain at its expense and keep in force during the times indicated the following insurance:

12.2.1 General Requirements. Insurance procured by Tenant at any time during the term of this Agreement shall include the following features:

(a) Notice of Cancellation. Each insurance policy shall provide that it will not be cancelled or reduced in coverage until after the Harbor Department's Risk Manager has been given a ten (10) days' written notice of cancellation for nonpayment of premium and a thirty (30) days' written notice of cancellation for any other reason.

(b) Acceptable Evidence and Approval of Insurance. Electronic submission is the required method of submitting Tenant's insurance documents. Track4LA<sup>®</sup> is the City's online insurance compliance system. Tenant's insurance broker or agent shall obtain access to Track4LA<sup>®</sup> at <http://track4la.lacity.org/> and follow the instructions to register and submit the appropriate proof of insurance on Tenant's behalf. In the event that Tenant or its broker or agent experiences any difficulties using Track4LA<sup>®</sup>, Tenant shall contact a Harbor Department representative.

(c) Renewal of Policies. Prior to the expiration of each policy, Tenant shall show through submitting to Track4LA<sup>®</sup> that the policy has been renewed or extended or, if new insurance has been obtained, submit the appropriate proof of insurance to Track4LA<sup>®</sup>. If Tenant neglects or fails to secure or maintain the required insurance, or if Tenant fails to submit proof of insurance as required above, the City's Harbor Department may, at its option and at the expense of Tenant as Additional Rent, obtain such insurance for Tenant.

(d) Modification of Coverage. The Executive Director, at his or her discretion, based upon recommendation of independent insurance consultants to City, may request that Tenant 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. The modification of coverage will occur no less than every five years of the term to insure that the coverage amounts are consistent with industry standards at the time of the modification for the Permitted Uses of the Demised Premises.

(e) Accident Reports. Tenant shall report in writing to the 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 Fifty Thousand Dollars (\$50,000) to property, occurring upon the Demised Premises, or elsewhere within the Harbor District, if Tenant's officers, agents or employees are involved in such an accident or occurrence while undertaking the Permitted Uses. 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.

12.2.2 Insurance Required. Prior to taking possession of the first Parcel(s) pursuant to Section 3.2 and prior to the Interim Use of Parcel 3, or portion thereof, Tenant shall provide written evidence to the Harbor Department's Risk Manager, pursuant to Section 16.9 of this Agreement, that Tenant shall have in effect at the time of taking possession of such Parcel(s), including interim use of Parcel 3, or portion thereof, and shall maintain during the Term of the Agreement, the following amounts and types of insurance. Further, Tenant shall update such insurance throughout the Term of the Agreement as Parcels are added to the Demised Premises, or in the event of Interim Use Parcel 3, or portions therefore, are deleted from the Demised Premises, so that the Demised Premises is continually insured in the following amounts and types of insurance during the Term of the Agreement.

(a) Commercial General Liability. Commercial general liability insurance, including contractual liability, auto liability and property damage insurance, with the railroad exclusion deleted where Permitted Uses and operations are performed within fifty feet (50') of a rail track, and written by an insurance company authorized to do business in the State of California, or approved by the California Department of Insurance as a surplus lines insurer eligible to do business in 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) for injury or death to one or more persons arising out of each accident or occurrence and Five Million Dollars (\$5,000,000) for property damage for each accident or occurrence. Tenant shall also procure and maintain at its expense and keep in force at all times during the term of this Agreement automobile insurance with limits of liability not less than Five Million Dollars (\$5,000,000) covering injuries or death resulting from each accident or claim arising out of any one claim or accident. Where Tenant provides or dispenses

alcoholic beverages, Host Liquor Liability coverage shall be provided as above. Said limits shall provide first dollar coverage except that the Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Tenant. The retention or self-insurance provided shall provide that any other insurance maintained by the Department shall be excess of Tenant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause.

The submitted policy shall, in addition, provide the following coverage either in the original policy or by endorsement substantially as follows:

"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 City, the Board, 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 Lease No. \_\_\_\_, and under any amendments, modifications, extensions or renewals of said Lease regardless of whether such operations, uses, occupations, acts and activities occur on the Demised Premises or elsewhere within the Harbor District.

"The policy to which this endorsement is attached shall provide a ten (10) days' prior written notice of cancellation for nonpayment of premium, and a thirty (30) days' prior written notice of cancellation for any other reasons to the Harbor Department's Risk Manager;

"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;

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

"Notice of occurrences or claims under the policy shall be made to the Risk Manager of City's Harbor Department with copies to the City Attorney's Office."

(b) Fire Legal Liability. In addition to and concurrently with the aforesaid insurance coverage, Tenant shall also secure and maintain, either by

an endorsement thereto or by a separate policy, fire legal liability insurance with a minimum limit of Two Hundred Fifty Thousand Dollars (\$250,000), covering legal liability of Tenant for damage or destruction to the works, buildings and improvements owned by City provided that said minimum limits of liability shall be subject to adjustments by the Executive Director to conform with the deductible amount of the fire insurance policy maintained by the Board, with waiver of subrogation in favor of Tenant so long as permitted by the Board's fire insurance policy, upon thirty (30) days' prior written notice thereof to Tenant at any time during the term of this Agreement. Said policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as additional insureds, a 10-days' notice of cancellation for nonpayment of premium, and a 30-days' notice of cancellation for any other reasons.

(c) Ocean Marine Liability. Tenant shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connections with Tenant's operations. The cost of the insurance shall be borne by Tenant. The coverage shall be 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 Best's Rating is not available). Coverage shall include, but not be limited to:

(i) Hull and machinery coverage up to the value of the vessel(s);

(ii) Protection and Indemnity coverage with combined single limits of Five Million Dollars (\$5,000,000) per occurrence for bodily injury, illness, death, loss of or damage to the property of another, and Jones Act risks or equivalent thereto internationally.

(iii) Ship repairers legal liability to cover loss, damage or expenses to any property temporarily in the Tenant's care, custody or control.

Coverage shall contain a defense of suits provision and a severability of interest clause. Each policy shall also contain an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents, and employees as Primary additional insureds, a 10-days' notice of cancellation for nonpayment of premium, and a 30-days' notice of cancellation for any other reasons.

(d) All Risk Property Insurance. Upon completion of any Tenant Improvements, Tenant shall secure, and shall maintain at all times during the term of this Agreement, All Risk Property insurance that requires the Tenant to insure the works, structures and improvements erected by Tenant on the Demised Premises on an "All Risk" basis equal to full replacement cost of the property with no coinsurance clause. Coverage shall include a "Loss Payee" endorsement where losses payable under this policy shall be adjusted with the

named insured and paid to the "City of Los Angeles Harbor Department" as its interests may appear. Additionally, evidence of Business Interruption and Extra Expense insurance in such amounts as will cover all rent and other monies payable to the Harbor Department and will reimburse Tenant for direct and indirect loss of earnings due to a covered peril for a period of at least twelve (12) months.

Said policy shall include a 10-days' notice of cancellation for nonpayment of premium, and a 30-days' notice of cancellation for any other reasons.

(e) Workers' Compensation. Tenant shall secure the payment of compensation to employees injured while performing work or labor necessary for and incidental to performance under this Agreement in accordance with Section 3700 of the Labor Code of the State of California. Tenant shall file with the City one of the following: 1) a certificate of consent to self-insure issued by the Director of Industrial Relations, State of California; 2) a certificate of Workers' Compensation insurance issued by an admitted carrier; or 3) an exact copy or duplicate thereof of the policy certified by the Director or the insurer. Such documents shall be filed prior to delivery of Demised Premises. Where Tenant has employees who are covered by the United States Longshore and Harbor Workers' Compensation Act, Tenant shall furnish proof of such coverage to the City. It is suggested that Tenant consult an insurance professional of its choosing to determine whether its proposed operation methods will render its employees subject to coverage under such Act. All Workers' Compensation insurance submitted to City shall include an endorsement providing that any carrier paying benefits agrees to waive any right of subrogation it may have against City.

(f) Railroad Protective Liability Insurance. Where any Permitted Uses or operations are performed within fifty feet (50') of rail track, Tenant shall provide a policy of Railroad Protective Liability insurance in which Pacific Harbor Line (PHL) acting for itself and its railroad users are named insureds and the City of Los Angeles, its boards, officers, agents and employees are included as additional insureds with Tenant. The minimum limits of Railroad Protective Liability insurance shall be the limits normally carried by Tenant but not less than Two Million Dollars (\$2,000,000) combined single limit for property damage and bodily injury including death. If the submitted policies contain aggregate limits, Tenant shall provide evidence of insurance protection for such limits so that the required coverage is not diminished in the event that the aggregate limits become exhausted. Any deductible amount shall be paid solely by Tenant.

Tenant's Comprehensive General Liability coverage shall also have the railroad exclusion deleted.

(g) Environmental Impairment Liability Insurance. Should Tenant's operations involve the storage or use of any type of hazardous materials or

pollutants, the Tenant will be required to maintain environmental impairment liability insurance which shall include coverage for bodily injury, property damage, including third-party claims for on-site and off-site bodily injury and property damage, clean-up and defense, with a limit of at least Five Million Dollars (\$5,000,000) per occurrence, which is to remain in effect at least five (5) years after the termination of the Agreement.

12.2.3 Additional Insurance Requirements Related to Design and Construction. In addition to the foregoing insurance requirements in Section 12.2.2, Tenant shall procure and maintain the following insurance for any design and/or construction period.

(a) Professional Liability. Tenant is required to provide Professional Liability insurance with respect to negligent or wrongful acts, errors or omissions, or failure to render services in connection with the professional services to be performed during the term of this Agreement. This insurance shall protect against claims arising from professional services of the insured, or by its employees, agents, or contractors, and include coverage (or no exclusion) for contractual liability.

Tenant and/or its contractors or consultants providing professional services, shall have professional liability insurance in the amount of Two Million Dollars (\$2,000,000), which covers work to be performed pursuant to this Agreement and keep such insurance or its equivalent in effect at all times during performance of said work and until two (2) years following issuance of a certificate of occupancy, and in cases where a certificate of occupancy is not required, until two (2) years following construction completion. Policies shall include a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons. Notice of occurrences of claims under the policies for this Agreement shall be made to the City Attorney's Office with copies to Risk Management.

(b) All Risk Builder's Risk Insurance/Installation Floater.

(i) Except as provided in Section (b)(ii) below, Tenant shall, at the Tenant's own expense, provide all risk builder's risk insurance covering loss, damage or destruction of property, including material in transit and stored on and off site, satisfactory to the City, in an amount at least equal to the value of the construction and materials on hand. Tenant shall keep such policy in force until a certificate of use or occupancy is issued by City of Los Angeles Building and Safety Department for any Tenant Improvement. Acceptable evidence of coverage shall name the City, its boards, officers, agents and employees as an additional named insureds and as loss payee as its interest may appear.

(ii) Tenant need not provide all risk builder's risk insurance for fills; excavations; rock work; concrete or masonry walls and bulkheads

retaining earth; foundations entirely below ground or in earth fill; pipe, sewer systems, conduit, and electric light and power systems entirely below ground or submerged; ballast and grading for railroad tracks on or in earth; pavements, sidewalks and pits on solid earth or in fill outside of buildings; incombustible poles, area lighting and metal fencing not attached to exterior or interior of buildings. Tenant is not relieved of the obligation to rebuild these improvements when damaged.

(iii) An installation risk or “floater” policy, written to cover only specific types of equipment during construction, may be provided to cover damage to work or high valued equipment or materials.

12.2.4 Right to Self-Insure. Upon written approval by the Executive Director, Tenant may self-insure if the following conditions are met:

(a) Tenant has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Tenant must have a formal resolution of its board of directors authorizing self-insurance.

(b) Tenant agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.

(c) Tenant agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.

(d) Tenant agrees that any insurance carried by Department is excess of Tenant’s self-insurance and will not contribute to it.

(e) Tenant provides the name and address of its claims administrator.

(f) Tenant submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to the Executive Director’s consideration of approval of self-insurance and annually thereafter.

(g) Tenant agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.

(h) Tenant has complied with all laws pertaining to self-insurance.

## **Section 13. Tenant Transfers of Interest in Agreement.**

**13.1 Transfers Prohibited.** Other than provided for in Sections 13.4 and 13.9, and unless processed and approved strictly in accordance with this Section 13, no transfer of this Agreement, or any interest therein or any right or privilege thereunder, regardless of whether accomplished by a separate agreement, sale of stock or assets, merger or consolidation or reorganization by or of Tenant (or any entity that directly or indirectly controls or owns fifty percent (50%) or more of Tenant), or accomplished in any other manner, whether voluntary or by operation of law, including but not limited to assignment, sublease, transfer, gift, hypothecation or grant of total or partial control, or any encumbrance of this Agreement (hereafter collectively referred to as "Transfer"), shall be valid or effective for any purpose. For purposes of this Agreement, "Transfer" also shall include the involvement of Tenant or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise) whether or not a formal assignment or hypothecation of this Agreement or Tenant's assets, which involvement results in a reduction of the net worth of Tenant (defined as the net worth of Tenant, excluding guarantors, established by generally accepted accounting principles) by an amount greater than twenty-five percent (25%) of such net worth as it was represented at the time of the execution of this Agreement, or at the time of the most recent Transfer to which City has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater. For purposes of this Section 13, the term "by operation of law" includes but is not limited to: (1) the placement of all or substantially all of Tenant's assets in the hands of a receiver or trustee; or (2) a transfer by Tenant for the benefit of creditors; or (3) transfers resulting from the death or incapacity of any individual who is a Tenant or of a general partner of a Tenant (except as provided in Section 13.2.1(e) below).

**13.2 Procedure to Obtain Consent to Transfer.** Notwithstanding the prohibition set forth in Section 13.1, if Tenant desires to undertake a Transfer, it may seek City's consent thereto. Tenant covenants that before entering into or permitting any Transfer, it shall provide to City written notice at least thirty (30) days before the proposed effective date of the Transfer. Notwithstanding the foregoing, City reserves the right to allow Tenant, on a case-by-case basis, to submit to City for City's consent Transfers that have become effective. In any event, Tenant's written request to City for consent shall hereinafter be referred to as "Transfer Notice."

13.2.1 Tenant's Transfer Notice shall contain each of the following:

- (a) Specific identification of the entity or entities with whom Tenant proposes to undertake the Transfer ("Transferee");
- (b) Specific and detailed description of the Transferee's entity type, ownership (including identification of all parent and subsidiary entities), background/history, nature of the Transferee's business,

Transferee's character and reputation and experience in the operations proposed;

(c) Specific and detailed description of the type of Transfer proposed (e.g., assignment, sublease, grant of control, etc.) and the rights proposed to be transferred;

(d) Specific and detailed description of the operations proposed to be undertaken at the Premises by Tenant and Transferee if City consents to the Transfer which includes a breakdown of the responsibilities and duties of Tenant and Transferee;

(e) All of the terms of the proposed Transfer, including the total consideration payable by Transferee; the specific consideration (if any) payable by Transferee in connection with the Premises and/or uses under this Agreement if the proposed Transfer is part of an acquisition or purchase that involves assets outside this Agreement; the proposed use of the Premises; the effective date of the proposed Transfer; and a copy of all documentation concerning the proposed Transfer;

(f) The proposed form of a guaranty or guaranties providing greater or substantially the same protection to City as any guaranty in effect prior to or contemporaneous with the proposed Transfer;

(g) A business plan for the Transferee including specific estimates of revenue anticipated under each of the following categories: existing contracts, contracts under negotiation and other specified sources;

(h) A general description of any planned Alterations or improvements to the Premises;

(i) A description of the worth of the proposed Transferee including an audited financial statement;

(j) Any further information relevant to the proposed Transfer that City reasonably requests; and

(k) Written authorization in a form acceptable to City allowing City to inspect and review but not to copy, at times and locations reasonably selected by City, any books and records or other information of Tenant or Transferee (or third-parties acting for or on either of their behalves) reasonably determined by City to be necessary for its assessment of Tenant's request for consent.

13.2.2 If City consents to a Transfer, the following limits apply:

(a) City does not agree to waive or modify the terms and conditions of this Agreement;

(b) Such consent does not constitute either consent to any further or other Transfer by either Tenant or Transferee or a bar disqualifying submittal of additional Transfer Notices in accordance with the terms of this Agreement following such consent;

(c) If, following such consent, Tenant remains a Party to this Agreement, Tenant shall remain liable under this Agreement and any guarantor shall remain liable under its guaranty;

(d) Such consent shall not transfer to the Transferee any option granted to the original Tenant by this Agreement unless such transfer is specifically consented to by City in writing;

(e) Tenant may enter into that Transfer in accordance with this Section 13 if: (a) the Transfer occurs within six (6) months after City's consent; (b) the Transfer, in the sole and absolute discretion of the Executive Director, is on substantially the same terms as specified in the Transfer Notice; and (c) Tenant delivers to City promptly after execution an original executed copy of all documentation pertaining to the Transfer in a form reasonably acceptable to City;

(f) If the Transfer occurs more than six (6) months after City's consent or, in the sole and absolute discretion of the Executive Director, the terms of the Transfer materially change from those in the Transfer Notice, Tenant shall submit a new Transfer Notice under this Section 13, requesting City's consent. A material change for purposes of this Section 13 is one the terms of which would have entitled City to refuse to consent to the Transfer initially, or would cause, in the sole and absolute discretion of the Executive Director, the proposed Transfer to be more favorable to Transferee than the terms in the original Transfer Notice; and

(g) Tenant and/or Transferee, upon City's written request, shall provide proof, in a form satisfactory in the sole reasonable discretion of the Risk Manager of City's Harbor Department, demonstrating that insurance of the type and limits required by Section 12 is and shall be in full effect at all times in or around the time period in which the proposed Transfer is anticipated to occur. If requested in writing by City, Transferee shall provide a guaranty agreement in a form acceptable to City obligating Transferee to pay any uninsured or underinsured loss on a claim that, in City's sole and absolute discretion, would have been covered by insurance fully compliant with Section 12.

(h) Transferee shall execute and deliver a written acceptance of assignment in a form acceptable to City in which Transferee expressly assumes all of Tenant's obligations under the Agreement.

**13.3 Factors Germane to City Consent.** In evaluating any Transfer Notice, it shall not be unreasonable for City to withhold or condition its consent to a Transfer based on the following factors, among others:

(a) The net worth, financial condition and creditworthiness of the Transferee and the existence of any guaranty provided by the Transferee's parent or related entity(ies);

(b) The character, experience and reputation of the Transferee (or its operator) in operating the business contemplated by the Transfer;

(c) Whether the Transfer will negatively impact the short-term or long-term development, land use or other plans of City's Harbor Department, and whether consent to such Transfer would violate any of the legal duties of City's Harbor Department, including duties owed to other tenants;

(d) Whether the proposed Transfer is consistent with the terms and conditions of this Agreement in existence when Tenant submitted the Transfer Notice and with the laws, rules and regulations applicable to the Premises and Tenant's use thereof;

(e) Whether the information provided by Tenant in connection with Section 13.2.1 justifies such consent;

(f) The Transferee's level of commitment and specific plans to invest to improve the Premises following approval of the proposed Transfer, if any.

#### **13.4 Permitted Transfers.**

13.4.1 Subleasing Permitted. Pursuant to the Permitted Uses in Section 4, Tenant is authorized to sublease the Demised Premises to third parties in conformance with this Agreement and the following;

(a) Board approved five (5) year Tenant sublease template. The Tenant may submit a proposed five (5) year Tenant sublease template(s) for consideration by the Board at any time during the Term of this Agreement. Such sublease template(s) must include rental rates. The sublease template(s) for business incubator subtenants shall include an income equity and royalty sharing term providing for a minimum payment to Tenant of two percent (2%), provided however, that the percentage minimum may be adjusted after Board approval of the business incubator and accelerator plan described in Section 13.4.1(b). In

the absence of a Board approved sublease template, all proposed Tenant subleases shall be processed pursuant to the procedures established in Section 13.2. In addition to the sublease template(s), Tenant shall provide to the Board, for informational purposes only, all fees and other charges the Tenant may require subtenants, licensees, and concessionaires to pay, including, but not limited to, reimbursements rates for common areas, general and administrative fees, fees for overhead and other costs and expenses.

(b) Board approved Tenant business incubator and accelerator plan. The Tenant may submit a business incubator and accelerator plan for consideration by the Board at any time during the Term of this Agreement. The plan shall include, but not be limited to, the following terms; (i) the sublease duration term for different types of businesses; (ii) a minimum percentage amount for Tenant to receive from subtenants for business incubator income equity and royalty sharing; and (iii) termination rights for non-performance by subtenants. In the absence of a Board approved business incubator and accelerator plan, all proposed Tenant subleases shall be processed pursuant to the procedures established in Section 13.2.

(c) Subleasing to academic and government entities. Tenant is hereby authorized to sublease for a term not to exceed ten (10) years to the Southern California Marine Institute, any California college or university, and state and federal government agencies consistent with the terms of this Agreement. All such subleases shall be submitted to the Executive Director for review for compliance with terms and conditions of this Agreement. Unless the Executive Director disapproves such subleases, or provides written comments to Tenant, within sixty (60) days of Tenant's submittal, the sublease shall be deemed approved. In the event of a disagreement between the Executive Director and Tenant regarding any such sublease, the sublease shall be processed pursuant to the procedures established in Section 13.2.

(d) Incorporation and subsequent modification of template or plan. Any sublease template or plan approved by the Board pursuant to (a) and (b) above shall be incorporated by the Executive Director into Exhibit N. Tenant shall submit any modifications to either the sublease template or plan for review and approval by the Board. Upon approval by the Board, a revised exhibit shall replace Exhibit N and shall be labeled Exhibit N- # with each subsequent modification labeled numerically in order (e.g., Exhibit N-1).

**13.5 Charter and Administrative Code.** Tenant acknowledges that this Agreement is subject to the Charter of City and the Administrative Code of City and that approval of a Transfer may require action by several separate entities, including but not limited to the Los Angeles City Council.

**13.6 Tenant Remedies.** If City wrongfully denies or conditions its consent, Tenant may seek only declaratory and/or injunctive relief. Tenant specifically waives

any damage claims against City in connection with the withholding or conditioning of consent.

**13.7 Indemnity in Favor of City.** In addition to and not as a substitute for the indemnities Tenant provides to City pursuant to Section 12 of this Agreement, Tenant shall indemnify, defend and hold harmless City and any and all of its boards, officers, agents, or employees from and against any and all claims and/or causes of action of any third-party (including but not limited to Transferee) arising out of or related to a proposed Transfer.

**13.8 Rent or Performance.** City in its sole discretion may accept rent or performance of Tenant's obligations under this Agreement from any person other than Tenant pending approval or disapproval of a Transfer. City's exercise of discretion to accept rent or performance shall be reflected in writing.

**13.9 Transfers of Ownership.**

13.9.1 Assignment to AltaSea. Within one (1) year of the Effective Date of this Agreement, Rockefeller Philanthropy Advisors, Inc. shall assign all of its rights, title, and interest in and to this Agreement in its entirety to AltaSea, a California nonprofit public benefit corporation, that at the time of assignment shall have filed for tax exempt status within the meaning of Section 501(c)(3) of the Internal Revenue Code. AltaSea shall be created, and subsequently maintained, solely for the purposes of the ownership, leasing, development, construction, Tenant Improvements, financing, fund raising, management, maintenance, operation, use and sub-leasing and licensing of the Project, as well as outreach, education, scientific research, business development, marketing and programming activities, and activities in connection with, or related or incidental to any of the foregoing, and performing Tenant's obligations pursuant to this Agreement. City approval for said assignment is hereby approved, however, an executed original of an Assignment and Assumption of Agreement substantially in compliance with Exhibit J shall be submitted by Tenant to the Executive Director as a condition precedent to the City undertaking any construction obligations for New City Improvements at Parcel 2A. The Parties hereby authorize the Executive Director to attach the Assignment and Assumption Agreement as an addendum to this Agreement. Notwithstanding anything to the contrary herein, from and after the date that Rockefeller Philanthropy Associates, Inc. assigns this Agreement to AltaSea, and an original of the fully executed Assignment and Assumption Agreement is delivered to the Executive Director, (a) Rockefeller Philanthropy Associates, Inc. shall be fully released from any and all obligations or liability under the Agreement, including without limitation for the performance and observance of any and all obligations, covenants and conditions in the Agreement, (b) AltaSea shall assume any and all obligations or liability under the Agreement, including without limitation for the performance and observance of any and all obligations, covenants and conditions in the Agreement from the Effective Date of the Agreement and (c) the City shall look

solely to AltaSea in connection with any and all matters arising, related to or in connection with the Agreement, regardless of when such matters arose. If such assignment of this Agreement to AltaSea has not been delivered to the City on or before the date that is one (1) year after the Effective Date, then either Party may terminate this Agreement by providing thirty (30) days' prior written notice to the other Party, provided such notice is given prior to the delivery to City of such assignment. Further, if AltaSea does not obtain nonprofit status within the meaning of Section 501(c)(3) of the Internal Revenue Code within five (5) years of the Effective Date, then the City shall have the right to terminate this Agreement by providing thirty (30) days written notice to Tenant.

13.9.2 Ownership or Control. The transfer of more than twenty-five percent (25%) of the economic interest in Tenant or any entity that directly or indirectly controls or owns fifty percent (50%) or more of Tenant in one or more transactions, regardless of whether Tenant is a publicly or privately held entity, shall constitute a Transfer within the meaning of Section 13.1.

13.9.3 Partnerships. If Tenant is a partnership, any transfer or attempted transfer by any general partner of Tenant of more than twenty-five percent (25%) of its partnership interest in Tenant in one or more transactions shall be a prohibited Transfer within the meaning of Section 13.1. Notwithstanding the foregoing, if any transfer of a general partner's interest is due to the death of a general partner and results in the transfer to the immediate members of the general partner's family, who will be immediately and personally involved in the operation of the partnership, the City will not unreasonably withhold its consent to such transfer.

13.9.4 Guarantor. If a parent or other entity has guaranteed or otherwise secured any or all of Tenant's obligations under this Agreement and if the ownership, makeup or financial condition of such parent or other entity has, in the sole reasonable discretion of the Executive Director, materially changed at any point during the term of this Agreement, the right is reserved for City to require amendments of such guarantee, the provision of new security, or a combination thereof reasonably required by the Executive Director to maintain the level of security as provided by the original guarantee. Following the effective date, Tenant shall have a continuing obligation to notify City in writing of any and all events that do or might constitute a material change within the meaning of this Section 13.9.4.

13.9.5 The Executive Director shall have the authority, but not the obligation, to unilaterally modify the foregoing conditions based on the facts of a particular case.

**13.10 Assignments for Security Purposes.** The Board will consider Tenant's request to assign this Agreement to secure financing of improvements on the Premises on a case-by-case basis. Consent to assignments for security purposes will not be

granted unless Tenant and its lenders satisfy the following conditions, among others, which may be reasonably imposed by the Board:

- (a) Monies borrowed will be used exclusively to construct improvements on the Premises;
- (b) Monies borrowed must be in a fixed amount. New borrowings or refinancings require further Board approval;
- (c) The collateral covered by the security agreement securing Tenant's loan shall cover only Tenant's interest in improvements on the Premises, not the interests of City in improvements, and not any improvements or fixtures which, if removed, would leave the Premises untenantable. In this Section 13.10, "untenantable" means failing to comply with the standards described in Civil Code Section 1941.1 or its successor;
- (d) Nothing in the instrument which creates the security interest in the lender shall amend, modify, or otherwise affect the rights of City under this Agreement or any guaranty;
- (e) In the event the lender initiates any action to foreclose the interest of Tenant in this Agreement, the lender agrees to deliver to the Board in person or by registered mail a copy of any notice of default sent to Tenant and agrees, ten (10) calendar days in advance of any foreclosure sale, to give written notice to the Board by registered mail. Such notices shall be addressed as follows:

Board of Harbor Commissioners  
c/o Director of Real Estate Division  
P.O. Box 151  
San Pedro, CA 90733-0151

Such notice shall specify which of the below alternative courses of action the lender will take with respect to the Agreement and any guaranty. Any and all of the below stated alternatives are contingent upon the Board's approval in accordance with the conditions in subsection (f) below. Lender may:

- (1) Assume as principal all of the obligations and duties arising on or after the foreclosure conveyance date under the Agreement; or
- (2) Assume as principal all of the obligations and duties arising on or after the foreclosure conveyance date under the Agreement, and hire an operator, acceptable to the Executive Director, who shall operate the Premises pursuant to the Agreement; or
- (3) Assume as principal all of the obligations and duties arising on or after the foreclosure conveyance date, and thereafter reassign the

Agreement with the consent of the Board by order. Notwithstanding any provision of this Agreement to the contrary, in the event the lender initiates any action to foreclose the interest of any subsequent assignee of the Agreement, the lender agrees to make the notifications and elections required herein.

The foregoing election by the lender shall be without prejudice to any rights the Board may have with respect to Tenant's default of this Agreement; provided, however, that the Board shall mail to both Tenant and lender a copy of any written notice of default in the performance of the terms and conditions of the Agreement, by registered mail, return receipt requested, addressed as follows:

(Name and Address of Tenant and lender is to be specified by Tenant. If no lender is specified, notice to Tenant alone is agreed to be sufficient.)

The lender shall have the option to cure such default within the time specified in such notice, provided that if such default is noncurable in nature, City shall have the right to immediately reclaim the Premises and lender shall have no further interest.

(f) Any lender proposal to transfer its interest in this Agreement or interest therein or right or privilege thereunder requires the Board's consent. The Board may withhold its consent in its reasonable discretion if the Board determines that the proposed transferee cannot meet all of the following conditions, and any other conditions which may be reasonably imposed by the Board:

(1) This Agreement shall be in full force and effect and no default shall exist or the lender shall agree in writing to cure all such defaults before the transfer.

(2) When requesting the Board's consent to such a transfer, the lender shall demonstrate that: (a) the financial condition of the proposed transferee is as sound as that of Tenant at the time this Agreement was initially entered into or as at the time of the proposed transfer - whichever provides the better financial security to the Board; (b) the proposed transferee has the requisite experience and reputation or has retained an operator with the requisite experience and reputation to operate the Premises; and (c) the proposed transfer will not unfavorably affect the revenues of the City, employment or the services available to the maritime community.

(3) Even if the Board consents to such a proposed transfer, Board may first require that transferee and the Board agree on a new

compensation for the Premises transferred. If the Board modifies the compensation, it shall take into account then the Board policy for setting compensation and the prevailing market conditions.

(g) The form of all instruments and documents affecting the City's interests in the Premises shall be acceptable to the Executive Director and City Attorney of City in their sole and absolute discretion.

(h) The Board shall have the authority, but not the obligation, to modify any of the foregoing conditions based on the facts of a particular case.

**13.11 Tenant Name Change.** Tenant shall promptly notify City in writing of any changes to its name set forth in the preamble of this Agreement.

**13.12 Written Certificate.** If requested in writing by the Executive Director, Tenant shall, within ten (10) days of its receipt of such written request, certify under penalty of perjury under California law whether it has or has not undertaken a Transfer.

#### **Section 14. Recordkeeping, Inspection and Audit.**

Tenant shall keep full and accurate books, records and accounts relating to its operations and programming on the Demised Premises and shall cause its contractors, operators or subtenants to keep such records. City shall have the right and privilege, through its representatives, at all reasonable times and on reasonable notice, to inspect such books, records and accounts in order to verify, without limitation, compliance with the terms and conditions of this Agreement, and the accuracy of the sums due, owing and paid to City hereunder. The right of inspection hereby reserved to City shall impose no obligation on City to make inspections to ascertain the condition of the Demised Premises, and shall impose no liability upon City for failure to make such inspection. Tenant agrees that such books, records and accounts shall be made available to City at Tenant's offices in the City of Los Angeles. City shall protect, to the extent permitted by law, the confidentiality of any such books, records and/or accounts so inspected.

#### **Section 15. Marks and Naming Opportunities.**

**15.1 City-Associated Name or Mark.** A "City-Associated" name or mark, as used in this Agreement, shall mean any name or mark that (i) contains, in whole or partly, name(s) and/or mark(s) (including service marks, trademarks, names, titles, descriptions, slogans, insignias, emblems or logos) of the City of Los Angeles or any department, agency or commission thereof; and (ii) imparts the color of authority of the City of Los Angeles; and/or (iii) otherwise imparts association with or endorsement by the City of Los Angeles on any goods or services offered by Tenant under such name or mark.

**15.2 Project Name Using City-Associated Name.** Within twelve (12) months from the Effective Date of this Agreement, Tenant shall coin or create a name which

includes the use of the City-Associated name “The Port of Los Angeles” to identify the Project (“Project Name”) such that the Project Name shall be in the format similar to “AltaSea at the Port of Los Angeles.” Other than as allowed pursuant to this Section 15.2, no other City-Associated name or mark shall be used for the Project Name without prior approval of City.

During the term of this Agreement (a) Tenant will be the owner of the Project Name and all goodwill associated therewith, (b) Tenant shall exclusively and continuously use the Project Name for the identification, marketing, fundraising and all other uses referencing the Project, (c) Tenant shall have the sole right to commercially exploit the Project Name, including the sale or distribution of goods and products using the Project Name, notwithstanding any revenue sharing required by Section 5 and (d) Tenant shall have the right and responsibility (to the extent it determines appropriate) to institute and prosecute all disputes with third parties concerning use of the Project Name, to the extent consistent with Los Angeles City Charter Sections 271, 272 and 273, and City shall cooperate with Tenant in prosecuting such disputes and may participate in the legal proceedings at City’s own expense, and (e) at termination, cancellation or expiration of this Agreement, Tenant shall immediately cease any use of the Project Name and promptly transfer, at no compensation paid by City, to City all of their legal right, title and interest in the Project Name, including goodwill, trademarks, service marks and all registrations thereof.

**15.3 Exclusive Ownership of Tenant Marks During Term.** During the Term, (a) Tenant shall have the exclusive right to coin or create any Non-City-Associated name or names to identify portions of the Project except public promenade areas but including the naming and sponsorship of Project buildings and rooms and parking spots included within the Demised Premises, and which are not in interference with the overarching use of Project Name, and to create or coin all other Non-City-Associated service marks, trademarks, names, titles, descriptions, slogans, emblems or logos used, from time to time, in connection with the Project (collectively “Tenant Marks”); and (b) the Tenant Marks and all goodwill associated therewith shall be the exclusive property of Tenant. A “Non-City-Associated” name or mark, as used in this Agreement, shall mean any name or mark that is not a “City-Associated” name or mark which is defined in Section 15.1 or the Project Name defined in Section 15.2.

In the event that Tenant seeks to coin or create any Non-City-Associated name or names to identify portions of the public promenade, Tenant shall submit a request for consideration by the Board.

During the Term, subject to Section 15.9, Tenant shall have the sole right to commercially exploit naming and sponsorship opportunities that arise in connection with the Project and Tenant may coin, create and/or use any name or sponsorship identity to the extent such right shall not interfere with the use of the Project Name as required by Section 15.2. Such naming and sponsorship opportunities shall be subject to the requirements herein, including but not limited to Section 15.9.

**15.4 City Disclaimer of Non-City-Associated Marks.** Except for City-Associated Marks and the Project Name, City disclaims any right, title or interest in or to any of the Tenant Marks by operation of this Agreement; and Tenant shall have the sole right and responsibility (to the extent it determines appropriate) to institute and prosecute all disputes with third parties concerning any Tenant Mark.

**15.5 References to Tenant Marks.** During the Term, City shall not use the Project Name or any other Tenant Mark, or any combination or variation of any of them, in the name of any partnership, corporation or other entity or, except as set forth in Section 15.6, in any other manner.

**15.6 Publicity and Exhibits.** Notwithstanding the restriction set forth in Section 15.5, during the Term, City may use the Project Name or any other Tenant Mark in (i) any press release, announcement, advertisement or other public communication, provided that such use is solely in a descriptive manner (e.g., to describe the Project as a location), and (ii) as necessary to conduct the business of the City of Los Angeles, including that of the Los Angeles Harbor Department, provided that such use is solely in a descriptive manner (e.g., to describe the Project as a location).

**15.7 Effect of Lease Termination.** Tenant makes no representation or warranty to City or any subsequent operator of the Project that any Tenant Mark will be available to City or such subsequent operator following the expiration or termination of this Agreement. If any sponsor or other party with whom Tenant has contracted concerning any Tenant Mark during the Term either is contractually obligated or elects to continue its relationship with the Project following the expiration or termination of this Agreement, Tenant hereby assigns and will cause the sponsor or other party to assign all of its rights to any such Tenant Mark and its rights to income from such contract or other relationship to City effective upon the Expiration Date or Termination Date, as the case may be. If any such sponsor or other party discontinues its relationship with the Project upon the expiration or termination of this Agreement, Tenant and any other sponsor or other party shall have the right to enter the Demised Premises and may remove all signs, furnishings, printed materials; emblems, slogans or other distinguishing characteristics related to such sponsor or party.

**15.8 Indemnification Regarding Tenant Marks.** Tenant shall Indemnify City against any claim of trademark infringement, misappropriation or similar allegation of misuse of the Project Name or any other Tenant Mark or any other City-Associated Mark as defined in Section 15.1 which occurs during the Term asserted by any third party against City, except to the extent that such claim is based upon the gross negligence or willful misconduct of City. This Section 15.8 shall survive the expiration or termination of this Agreement.

**15.9 City Approval.** Notwithstanding Tenant's authority to coin or create names or marks and commercially exploit such opportunities under Section 15.3, Tenant agrees that it shall not approve names, sponsorships or marks that impart

notions or contain elements that put the City in a false light or that are racist, sexist, derogatory to any legally protected groups/class or unfitting for public facilities.

Tenant's naming and sponsorship opportunities provided for under Section 15.3 shall not include the right to utilize names, sponsors or marks coined or created by Tenant (or its sponsors or third parties) which are in any way related to or connected with alcohol, tobacco, fire arms or adult entertainment firms, unless such use is approved by the Board at its sole discretion and in accordance with City of Los Angeles Charter Section 245 or its successor. Tenant's naming and sponsorship opportunities provided for under Section 15.3 shall not include the use of any persons, entities or firms that are identified on lists maintained by the Office of Foreign Assets Control of the United States Department of Treasury, the Bureau of the Industry and Security of the United States Department of Commerce or their successors, or on any other list of persons, entities or firms with which the City may not do business under applicable law including but not limited to the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List or the Debarred List.

The restrictions hereunder are not intended for City to assert creative or artistic control during the creation of names, sponsorships and marks or to frustrate the purpose of business of Tenant, but rather to ensure that use of the Demised Premises leased herein is consistent with that of a public venue leased by a governmental entity.

**15.10 No Assignment or Transfer of City's Intellectual Property.** Nothing in this Agreement shall be construed to transfer or assign to any party, signatory herein or not, any of the intellectual property rights of the City, including but not limited to trademark rights. Rights not expressly granted by City herein are reserved. Other than as allowed in Section 15.2 or as may be subsequently approved by City during the term of this Agreement, Tenant has no right to use any of the City-Associated marks.

## **Section 16. Miscellaneous.**

**16.1 Titles and Captions.** The Parties have inserted the section titles in this Agreement only as a matter of convenience and for reference, and the section titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the Parties in including any particular provision in this Agreement.

**16.2 Construction of Agreement.** This Agreement shall not be construed against the Party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all Parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the Parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one Party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting Party shall not be applicable.

**16.3 Entire Agreement; Amendments.** This Agreement and all exhibits referred to in this Agreement constitute the final complete and exclusive statement of the terms of the agreement between City and Tenant pertaining to Tenant's use and occupancy of the Premises and supersedes all prior and contemporaneous understandings or agreements of the Parties. Neither Party has been induced to enter into this Agreement by, and neither Party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

**16.4 Modification in Writing.** This Agreement may be modified only by written Agreement of all Parties. Any such modifications are subject to all applicable approval processes set forth in City's Charter, City's Administrative Code, or elsewhere.

**16.5 Exhibits.** All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. References to sections are to sections of this Agreement unless stated otherwise.

**16.6 Waivers.** A failure of any Party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing. The subsequent acceptance of rent by the 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 the 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.

**16.7 Joint and Several Obligations of Tenant.** If more than one individual or entity comprises Tenant, the obligations imposed on each individual or entity that comprises Tenant under this Agreement shall be joint and several.

**16.8 Time is of the Essence.** Time shall be of the essence as to all dates and times of performance, and obligations set forth herein, whether or not a specific date is contained herein. If performance is required by the terms hereof on a Saturday, Sunday or legal holiday in California, the performance shall be made on the next business day.

**16.9 Notices.** The Parties shall send all notices or other communication necessary under this Agreement in writing by personal service, or express mail, Federal Express, DHL, UPS or any other similar form of airborne/overnight delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, addressed to the Parties at their respective addresses as follows:

If to Tenant:

Rockefeller Philanthropy Advisors  
6 West 48<sup>th</sup> Street, 10<sup>th</sup> Floor  
New York, New York 10036  
Attn: Yolanda Arias

with copies to:

Kellie Stockdale Webb, Vice President  
Phillips & Associates  
P.O. Box 241040  
Los Angeles, California 90024

and:

David Ulich, Esq.  
Sheppard Mullin Richter & Hampton LLP  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, California 90067-6055

If to City:

Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro, California 90731  
Attn: Executive Director  
Ref: Lease No. 904

with copies to:

Los Angeles City Attorney's Office  
425 South Palos Verdes Street  
San Pedro, California 90731  
Ref: Lease No. 904

Any such notice shall be deemed to have been given upon delivery or two business days after deposit in the mail as aforesaid. Either Party may change the address at which it desires to receive notice upon giving written notice of such request to the other Party.

**16.10 Statements of Tenant as Applicant.** This Agreement may be granted pursuant to an application filed by Tenant with the Board. If the application or any of the attachments thereto contain any material misstatements of fact, the Board may cancel this Agreement. Upon any such cancellation of the Agreement granted hereunder,

Tenant shall forfeit any and all rights to any Parcels provided for in this Agreement and shall quit and surrender the Demised Premises as provided in Section 9.

**16.11 Governing Law and Venue.** This Agreement is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced and governed under and by the laws of the State of California, without reference to choice of law rules. Any action or proceeding arising out of or related to this Agreement shall be filed and litigated in the state or federal courts located in the County of Los Angeles, State of California, in the judicial district mandated by applicable court rules. If either Party files or attempts to litigate an action in violation of this Section 15.11, the other Party shall be entitled to recover reasonable costs and attorneys' fees incurred to enforce this Section 15.11.

**16.12 Affirmative Action.** Tenant agrees not to discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition. 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 O are incorporated herein and made a part hereof.

**16.13 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, buildings, 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.

**16.14 Possessory Interest.** 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. Tenant acknowledges that the notice required under California Revenue and Taxation Code section 107.6 has been provided.

**16.15 Severability.** Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the Parties shall revise the part, term, condition or provision so as to comply with the Applicable Law or public policy and to effect the original intent of the Parties as closely as possible.

In the event that a material part of the Agreement, or the entire Agreement, cannot be revised so as to comply with the Applicable Law or public policy, then City and Tenant shall relieve, indemnify, protect and save harmless the other Party and any and all of their respective 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 cost of litigation (including all actual litigation costs, including but not limited to, costs of experts and consultants), and for any and all expenditures and payments made by either Party in complying with the Agreement up to the point in time when the Agreement was declared invalid, illegal or incapable of being enforced, and for any civil fines and penalties that may arise from or be caused directly or indirectly by said declaration or determination by any court of competent jurisdiction.

**16.16 Waiver of Claims.** Tenant hereby waives any claim against City and the 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.

**16.17 Attorneys' Fees.** In any legal action or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to "reasonable attorneys' fees" and any other costs and expenses, including but not limited to expert fees, incurred in that proceeding in addition to any other relief to which it is entitled. The "reasonable attorneys' fees" awarded under this Section 15.17 shall be determined by calculating the hours reasonably expended by each counsel for the prevailing Party multiplied by the prevailing market hourly rate in Southern California for attorneys of comparable skill and experience.

**16.18 Conflict of Interest.** 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 California Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of City's 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.

**16.19 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.

**16.20 Business Tax Registration Certification.** City's Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09. This section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Los Angeles Harbor Department. See Exhibit P.

**16.21 Service Contractor Worker Retention Policy and Living Wage Policy Requirements.** The Board adopted Resolution No. 5771 on January 3, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention ("SCWR"), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of City's Harbor Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Tenant shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this Agreement and otherwise pursue legal remedies that may be available.

**16.22 Wage and Earnings Assignment Orders/Notices of Assignments.** Tenant is obligated to fully comply with all applicable state and federal employment reporting requirements for the Tenant and/or its employees. Tenant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders/Notices of Assignments applicable to them personally. Tenant shall fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Section 5230 et seq. Tenant shall maintain such compliance throughout the term of this Agreement.

**16.23 Equal Benefits Policy.** The Board adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of City's Harbor Department. Tenant shall comply with the policy wherever applicable. Violation of the policy shall entitle the City to terminate any agreement with Tenant and pursue any and all other legal remedies that may be available.

**16.24 State Tidelands Grants.** This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times 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 provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Tenant agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

**16.25 No Third Party Beneficiaries.** Nothing in this Agreement shall be deemed to confer upon any Person (other than City or Tenant) any right to insist upon, or to enforce against City or Tenant, the performance or observance by either Party of its obligations under this Agreement.

**16.26 Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of City and shall be binding upon and inure to the benefit of the successors and permitted assigns and subtenants of Tenant.

**16.27 Disclosure Laws.** Tenant acknowledges that City is subject to laws, rules and/or regulations generally requiring it to disclose records upon request, which laws, rules and/or regulations include but are not limited to the California Public Records Act (California Government Code Sections 6250 et seq.) ("Disclosure Laws"). Tenant further acknowledges City's obligation and intent to comply with such Disclosure Laws in all respects. Notwithstanding the foregoing, in the event that City receives a request for disclosure of records in connection with this Section 16.27, City will immediately notify Tenant in writing, enclosing a copy of such request, at which point Tenant may take whatever steps deemed appropriate, including but not limited to seeking a protective or other order excusing disclosure from a court of competent jurisdiction. In the absence of such an order from a court of competent jurisdiction excusing City from its disclosure obligations, City shall undertake whatever action is necessary to comply with the requirements imposed by the applicable Disclosure Law(s). In the event that any action is filed by Tenant and/or by any requester of information where Tenant elects to challenge any disclosure, and City is named as a party to that action, Tenant shall defend and hold City and City's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, subsidiary and affiliated entities, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing harmless from any and all defense costs and judgments or settlements in any such action as well as all other losses and expenses arising out of or related to such action.

#### **16.28 Visual Artists' Rights Act.**

16.28.1 Generally. Tenant shall not install, or cause to be installed, any work of art subject to the Visual Artists' Rights Act of 1990 (as amended), 17 U.S.C. 106A, *et seq.*, or California Civil Code Section 980, *et seq.*, (hereinafter collectively "VARA") on or about the Demised Premises without first obtaining a waiver in writing, of all rights under VARA, satisfactory to the Board and approved as to form and legality by the City Attorney's Office, from the artist. Said waiver shall be in full compliance with VARA and shall name City as a party

for which the waiver applies.

16.28.2 Prohibition. Any work of art installed, or caused to be installed, by Tenant without the prior written authorization of the Harbor Department shall be deemed a trespass, removable by City, by and through its Harbor Department, upon three (3) days written notice, all cost, expenses and liability therefor to be borne exclusively by Tenant.

16.28.3 Indemnity. Tenant, in addition to other obligations to indemnify and hold City harmless, as more specifically set forth in this Agreement, shall indemnify and hold harmless City from all liability resulting from Tenant's failure to obtain the artist's waiver of VARA and failure to comply with any portion of this Section 16.28.

16.28.4 Cumulative Remedy. The rights afforded by the City under this Section 16.28 shall not replace any other rights afforded City in this Agreement or otherwise, but shall be considered in addition to all its other rights.

**16.29 Proprietary Capacity**. The capacity of City in this Agreement shall be as lessor only ("Proprietary Capacity"), and any obligations or restrictions imposed by this Agreement on City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect the governmental capacities of City, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions of each pursuant to federal, State or local law ("Governmental Capacity"). Whenever not expressly otherwise stated, (a) City, when acting in its Proprietary Capacity, shall not unreasonably withhold its approvals to matters requiring its approval hereunder, (b) Tenant shall not unreasonably withhold its approval to matters requiring its approval hereunder and (c) City, when acting in its Governmental Capacity, shall be permitted to utilize its sole discretion with respect to matters requiring its approval hereunder.

**16.30 Prevailing Wage**. Construction work for Tenant's Improvements performed on the Demised Premises may require payment of prevailing wages. The Tenant is obligated to make that determination, and shall be bound by and comply with applicable provisions of the California Labor Code and Federal, State, and local laws related to labor. The Tenant shall indemnify and pay or reimburse the City for any damages, penalties or fines (including, but not limited to, attorney's fees and costs of litigation) that the City incurs, or pays, as a result of noncompliance with applicable prevailing wage laws in connection with the work performed for Tenant's Improvements.

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

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


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

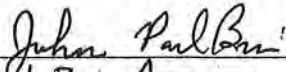
By \_\_\_\_\_  
Executive Director

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

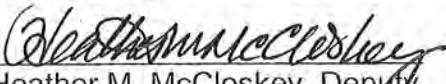
ROCKEFELLER PHILANTHROPY  
ADVISORS, INC., a Delaware corporation, for  
future assignment to AltaSea, a California  
public benefit corporation

Dated: 9/24/13

By   
Chris Page, Senior Vice President  
(Print/type Name and Title)

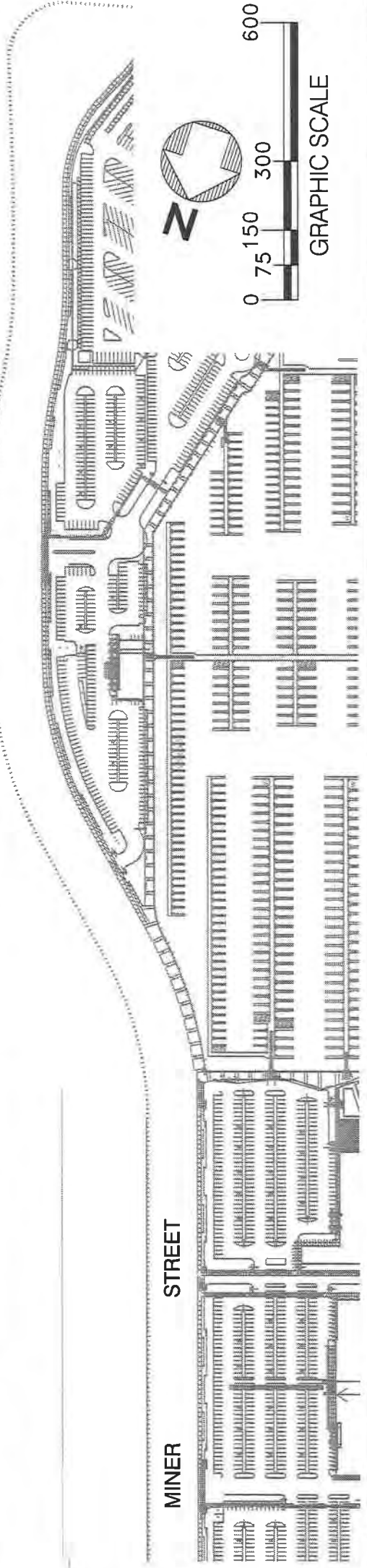
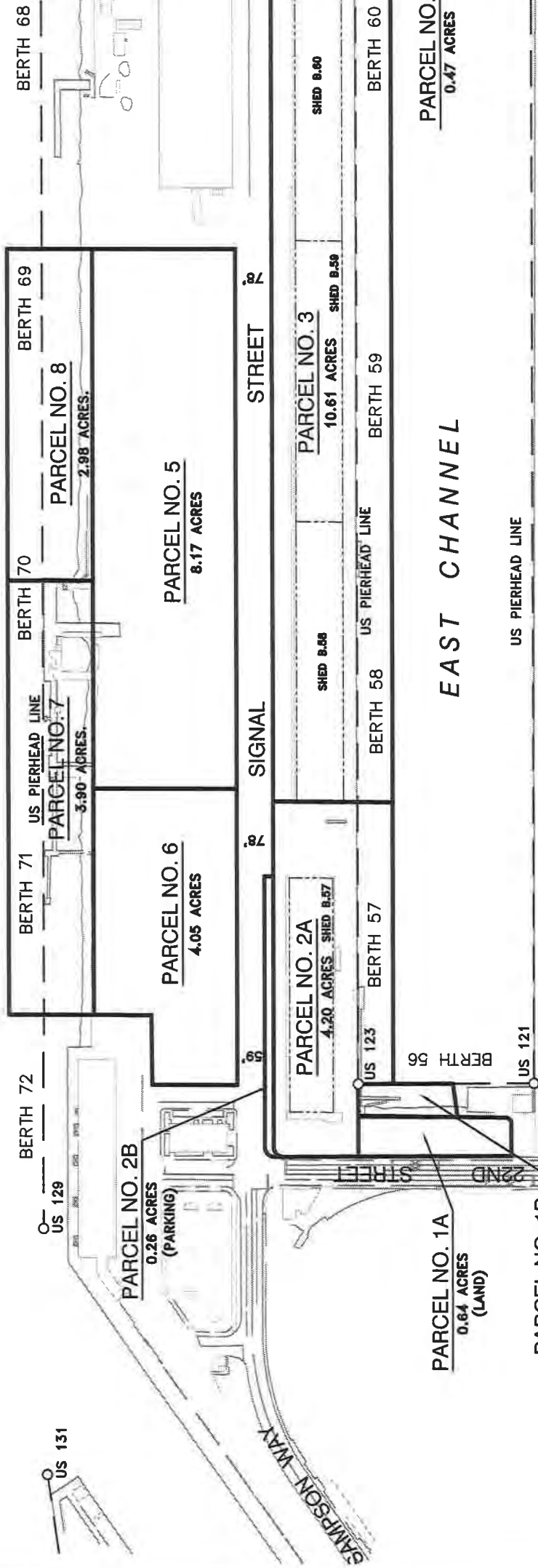
Attest:   
John Paul Bui, Associate  
(Print/type Name and Title)

APPROVED AS TO FORM  
9/25, 2013  
MICHAEL N. FEUER, City Attorney  
Janna B. Sidley, General Counsel

By   
Heather M. McCloskey, Deputy

SHED	AREA
BERTH 57	46,500 S.F.
BERTH 58	58,850 S.F.
BERTH 59	60,150 S.F.
BERTH 60	60,000 S.F.

**MAIN CHANNEL**



- NOTES:**
- 1) Horizontal Datum is based on the North American Datum of 1983 (NAD 83), California Coordinate System, Zone 5, Feet.
  - 2) Parcel locations and areas are approximate and require a more detailed survey of the site and existing conditions. Information shown on this drawing is for planning purposes only.
  - 3) Parcel No. 4A (Saltwater intake pipeline) will extend, either subsurface or above grade, through Parcel Nos. 4, 3 & 2A. Exact location to be determined.

NO.	DATE	DRAWN	REVISIONS	CH'KD	APP'D	SCALE: 1" = 300'	RECOMMENDED FOR APPROVAL	PERMIT MAP - AUTHORITY NO. L904
						DRAWN: DRR CHECKED: C. GROSSI DESIGNED: D. RAASCH	CHIEF OF DESIGN <i>Marie Ruy</i>	<b>ALTASEA - MARINE RESEARCH CENTER</b>
						ENGR/ARCH <i>David R. Raasch</i>	ASSISTANT CHIEF HARBOR ENGINEER <i>Liba. W. W.</i>	
							APPROVED <i>Robert</i> CHIEF HARBOR ENGINEER	DRAWING NUMBER 45640

## EXHIBIT B

### DEMISED PREMISES

#### 1. Parcels In Tenant Possession

The Demised Premises consists of the following Parcels, Existing City Improvements and completed New City Improvements thereon that Tenant has taken possession of pursuant to the procedures and requirements established in Section 3.2 of the Agreement.

<u>Parcel No.</u>	<u>Date of Possession</u>	<u>Latest Rent Due Date</u>
-------------------	---------------------------	-----------------------------

Tenant is not in possession of any Parcels.

#### 2. Parcels Tenant Has Accepted, Pending Tenant Possession

The following is a list of Parcels accepted by Tenant pursuant to the procedures and requirements established in Section 3.2 of the Agreement and for which the Executive Director has found Tenant is compliance with the terms and conditions of this Agreement necessary for Tenant Parcel acceptance as set forth in Section 3.2 of the Agreement. Tenant possession of the Parcels listed below is required, pending completion of New City Improvements pursuant to Section 7.1 and Exhibit L of the Agreement.

<u>Parcel No.</u>	<u>Tenant Acceptance Date</u>	<u>Date City Determined Acceptance Compliance</u>	<u>Estimated Date of Tenant Possession</u>
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Tenant has not accepted any Parcels.

## **EXHIBIT C IMPROVEMENTS**

### **1. Existing City Improvements**

- A. Currently Non-Historic Existing City Improvements: Upon the Effective Date of the Agreement, the City Improvements existing on the Premises and owned by the City that are not considered historic are as follows:
- a. 3,640 square foot facade on the north end of transit shed Warehouse 57 (north end of Parcel No. 2).
  - b. Approximately 700 linear feet of timber and concrete wharf fronting Berths 70-71 (Parcel No. 7).
  - c. 1,950 square foot, two story office building (southeast corner of Parcel 5).
- B. Currently Potentially Historic Existing City Improvements: Upon the Effective Date of the Agreement, the City Improvements existing on the Premises and owned by the City that have been determined eligible for listing on the California Register of Historical Resources are as follows:
- a. 46,500 square foot transit shed Warehouse 57 (Parcel No. 2)
  - b. Approximately 625 linear feet of timber and concrete wharf fronting Berths 57 (western edge of Parcel No. 2)
  - c. 180,000 square foot transit shed, Warehouses 58-60 (Parcel No. 3)
  - d. Approximately 1,860 linear feet of timber and concrete wharf fronting Berths 58-60 (western edge of Parcel Nos. 3 and 4)
  - e. 5,500 square foot, two story pump house building (along eastern Parcel 5 and 7 boundary)

### **2. Completed New City Improvements**

No New City Improvements have been completed.

### **3. Tenant Completed Improvements**

No Tenant Improvements have been completed.



LOS ANGELES HARBOR

LOS ANGELES MAIN CHANNEL

EAST CHANNEL

SANTA CATALINA FERRY

ADMIRAL HIGBEE

SIGNAL

B 72

B 71

B 70

B 69

B 68

65.5

load limit 100 lbs/SF up to 3 tons or two axle vehicles.

load limit 1,500 lbs/SF

B 59

B 58

B 57

B 60

B 56

Cranes are prohibited from operating on the wharf, unless a Harbor Engineer's Permit or a Heavy Lift Permit has been specifically issued for such activity.

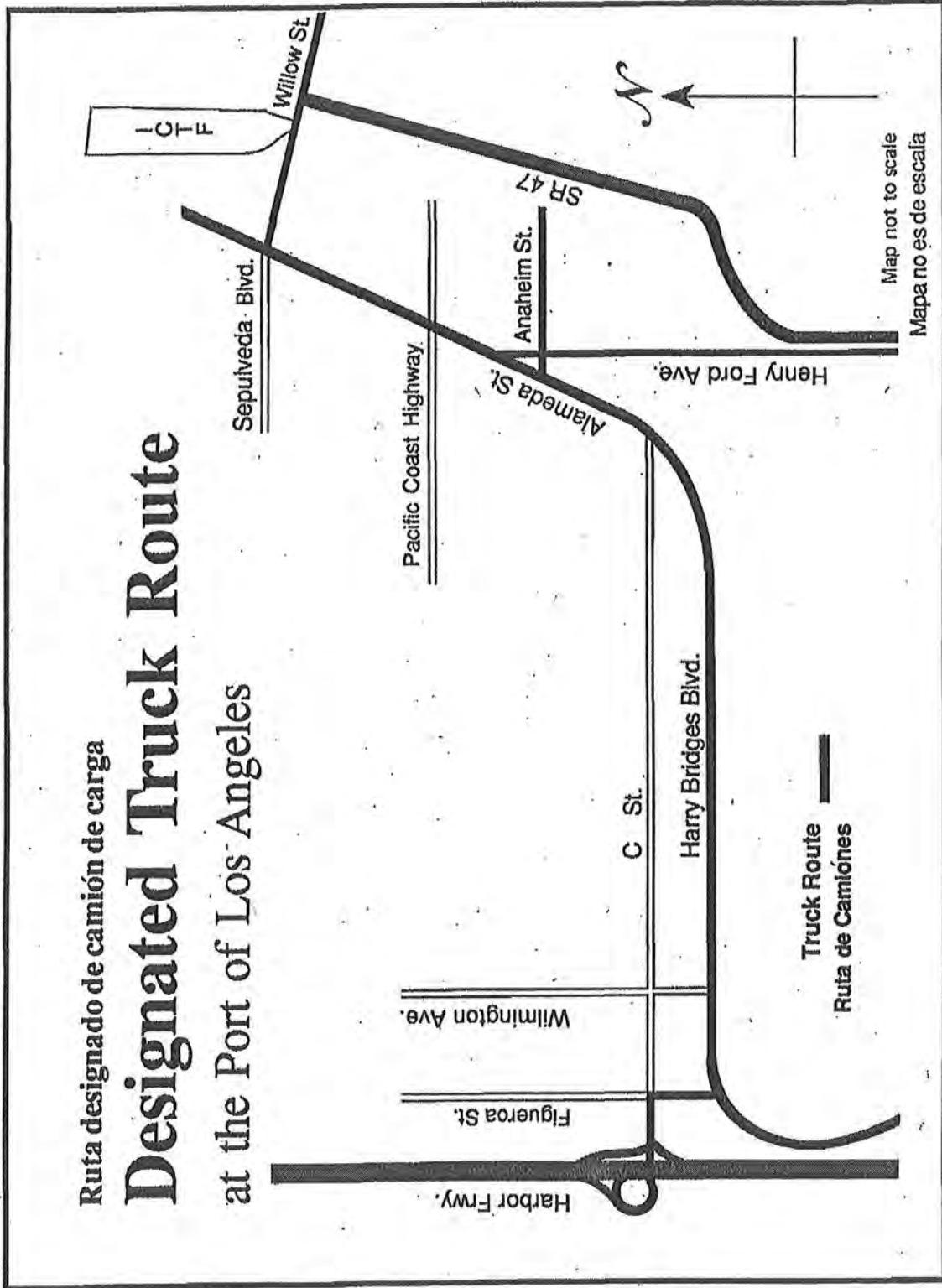
Vessels are prohibited from berthing at the wharf, unless a Harbor Engineer's Permit has specifically been issued for such vessel berthing.



EXHIBIT E

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 F

### NON- MONETARY COMPENSATION SERVICES AND PUBLIC BENEFITS TO BE PROVIDED BY TENANT

#### **Section 1: General Requirements**

The Tenant shall provide the services and benefits established in this Section 1 from the Effective Date of the Agreement through expiration or earlier termination of the Agreement.

- 1) Tenant acknowledges that City maintains leases and other agreements for existing facilities, attractions, and activities with other non-profit 501(C)(3) entities and City agencies, including but not limited, Cabrillo Marine Aquarium, the Maritime Museum, U.S.S. Iowa, the Los Angeles Maritime Institute, and Port Tech LA. Tenant agrees to collaborate and coordinate with such other non-profit entities and City agencies to ensure Tenant activities complement and do not duplicate other non-profit LA Waterfront activities to maximize success of all non-profits and diversified recreational, commercial, and job opportunities.
- 2) Tenant and its subtenants shall post all concession cashiers, maintenance, security and any entry-level position employment opportunities at the First Source Workforce Development Office ("First Source"), a workforce development program that provides prospective employee applicants through a non-exclusive job referral system. Tenant shall also consult the First Source list of prospective employee applicants prior to any such hiring.
- 3) Tenant shall participate in the Harbor Department internship program and by the fifth year following the Effective Date of this Agreement provide up to five (5) summer internships.
- 4) Tenant shall in good faith and with all reasonable diligence use commercially reasonable efforts to use suitable advertising and other means to promote the use of the Premises granted by this Agreement. Tenant shall utilize local hotels, facilities and venues in the City, and particularly in the communities of San Pedro and Wilmington, and encourage its visitors and guests to utilize such hotels, facilities and venues, for any off-site and/or ancillary purposes and events required for the associated use of the Demised Premises, including but not limited to conventions and meetings, to its commercially reasonable ability.
- 5) Thirty (30) days following the end of the Compensation Year, Tenant shall annually report in writing to the City the following information, as applicable:

- (a) Number of all employment opportunities submitted to First Source by Tenant and its subtenants.
- (b) Number of employees Tenant and its subtenants hired through First Source and number of employees otherwise hired.
- (c) Interpretive Center visitation levels, broken down by:
  - General public
  - Students provided organized tours, broken down by: Kindergarten – Sixth (6<sup>th</sup>) grade; Middle School; High School; and College students.
  - Tenant sponsored community events
  - Tenant sponsored conferences
  - Tenant sponsored special events
- (d) Number of students reached through off-site programs: Kindergarten – Sixth (6<sup>th</sup>) grade; Middle School; High School; and College students.
- (e) Number of college students participating in courses at the Demised Premises, broken down by graduate and under graduate levels.
- (f) Number of Post Doctorate students based at the Demised Premises.
- (g) Number of visitors and students provided boat tours, broken down by participant categories listed in item (c).
- (h) Number of other public tours provided, broken down by participant categories listed in item (c).
- (i) Date, attendance level, and summary of marketing and outreach materials for the annual open house event.
- (j) Date, time, subject, location, and attendance level of all public lectures provided by Tenant and its subtenants, pursuant to the requirements established in Section 2 below.
- (k) Date, time, community group, and event provided rent free use of the Interpretive Center auditorium, pursuant to the requirements established in Section 2 below.
- (l) List of all subtenants and their location within the Demised Premises.
- (m) Location of all conferences held by Tenant and its subtenants related to research and operations at the Demised Premises.
- (n) Research funding obtained and sources of research funding by Tenant and its subtenants.
- (o) Number of Tenant and its subtenant employees with the Demised Premises being their primary work location.
- (p) Any other information deemed appropriate by the Tenant to illustrate services and public and economic benefits provided by Tenant operations.
- (q) Capital expenditures in the prior Compensation Year.
- (r) Number of volunteer hours worked and activities performed on the Demised Premises.
- (s) Approximate number of daylight hours Parcel 2A wharf public promenade access is restricted due to Tenant activities and operations.

- 6) Within thirty (30) days after the end of each Compensation Year, Tenant shall submit to the Executive Director a written certification of compliance with the Exhibit F, Exhibit K, and Tenant's Environmental Compliance Plan developed pursuant to Exhibit K requirements as may be applicable for such Compensation Year. In the event that the Tenant did not achieve compliance with any applicable requirement(s) in the prior year, Tenant shall include a plan to remedy the identified deficiency. In the event of non-compliance, the City may request more frequent reporting from Tenant related the Exhibit F requirements and Tenant shall provide City with such more frequent written reports until compliance with the requirements is achieved. All reports submitted by Tenant shall be verified and contain the following statement signed by an authorized officer of Tenant: "I, (Name of Officer), am the (Title of Officer) of (TENANT), and I hereby verify that I have personal knowledge of the information contained in this report and that the same is true, correct and complete under penalty of perjury under the laws of the State of California."

## **Section 2: Parcel Specific Requirements**

In addition to the general services and benefits established in Section 1, the Tenant shall provide the additional services and benefits specified below for each parcel possessed by Tenant.

### **2.1 Parcels 1A Requirements**

- 1) Tenant acknowledges that the Harbor Department holds events along the LA Waterfront throughout the year to provide unique opportunities for public access. Upon occupancy of Parcel 1A, Tenant shall provide the Harbor Department a list of Tenant and subtenant planned public events for the coming calendar year, no later than November 1. Tenant shall work with the Harbor Department in good faith to coordinate events so as to maximize the success of Tenant and Harbor Department events.
- 2) Within five (5) years following the Effective Date of the Agreement, the Tenant, regardless of the status of construction of the interpretive center or other Tenant Improvements, shall annually reach 5,000 kindergarten through 12<sup>th</sup> grade students through on or off site programs, such as through classroom based programs or providing teachers with curriculum materials related to on-going or planned research and operations at the Demised Premises.
- 3) Upon completion of construction, Tenant shall operate and maintain an interpretive center, related to the activities at the Demised Premises' facilities, that is open to the public free of charge for a minimum of 40 hours at least five days a week, excluding federal and City of Los Angeles holidays. At least two of such five days must be Saturday and Sunday for a minimum of four (4) hours each day. The hours of operations of the Cabrillo Marine Aquarium will be used as a guideline to

leverage audiences for both facilities. Public restrooms in the interpretive center shall be available to public promenade users during interpretive center hours.

- 4) Upon opening of the interpretive center, Tenant shall provide at a minimum, free to the public:
  - a) Bi-weekly kindergarten through 12<sup>th</sup> grade educational tours, including transportation to and from the schools to the Demised Premises, for Los Angeles Unified District (LAUSD) students during the school year.
  - b) Bi-monthly Saturday workshops for the community pertinent to Demised Premises operations or other marine-related topics.
  - c) An annual open house of the Project facilities at the Demised Premises as they are developed by the Tenant. The Tenant is not required to provide public access to all facilities on the Demised Premises during the open house event, but interpretive materials or programs explaining the purpose of the various facilities and the benefit of the marine research being conducted shall be provided to the public by the Tenant.
  - d) A public lecture series pertinent to Demised Premises operations or other marine-related topics, with a minimum of 12 lectures annually. Lectures may be provided at locations other than the Demised Premises to enable greater public outreach opportunities, but all 12 lecture locations shall be within the City of Los Angeles.
- 5) Within two (2) years following opening of the interpretive center, Tenant shall provide interpretive center tours to a minimum of 5,000 kindergarten through 12<sup>th</sup> grade school students and reach an additional 15,000 kindergarten through 12<sup>th</sup> grade school students on or off-site, such as through classroom based programs or providing teachers with curriculum materials related to the research and operations conducted on the Demised Premises.
- 6) Within four (4) years following opening of the interpretive center, the Tenant shall provide interpretive center tours to a minimum of 10,000 kindergarten through 12<sup>th</sup> grade school students and reach an additional 25,000 kindergarten through 12<sup>th</sup> grade school students on or off-site, such as through classroom based programs or providing teachers with curriculum materials to the research and operations conducted on the Demised Premises.
- 7) Upon opening of the interpretive center, Tenant shall allow the City to use the interpretive center auditorium free of charge, including janitorial services, security services, utility costs, and any additional costs, for a minimum of twelve (12) days annually for City of Los Angeles or Harbor Department sponsored events or meetings. The City must provide Tenant a minimum of thirty (30) days written

notice requesting use of the auditorium. The thirty (30) days written notice period can be waived at the sole discretion of the Tenant.

- 8) Upon opening of the interpretive center, Tenant shall allow community groups the use of the interpretive center auditorium for minimum 6 events annually. The Tenant shall waive the rental fee for these events; however, security, janitorial, and any additional costs will be the responsibility of the community groups.
- 9) No later than two (2) years following the Effective Date of the Agreement Tenant shall develop and maintain a website detailing the Project marine research activities and Tenant plans. Tenant shall update the research information on the website semi-annually at a minimum.
- 10) Upon completion of construction, Tenant shall maintain at its sole cost and expense the public promenade and other public spaces on the Demised Premises, consistent with Harbor Department standards. The public promenade shall be open to the public free of charge and consistent with the hours of other LA Waterfront promenade areas.

## **2.2 Parcel 2A**

- 1) Upon occupancy of Parcel 2A, Tenant shall:
  - a) Develop and maintain exhibit space at transit shed Warehouse 57 that is open to the public, free of charge, a minimum of 40 hours a week and specifically related to marine research activities being undertaken at the Demised Premises. Hours shall be established by the Tenant and posted at both the exhibit area and on the Tenant's website.
  - b) Develop and make available on Tenant's website middle and high school curriculum materials related to the research being highlighted in the transit shed Warehouse 57 exhibit space.
  - c) Provide the following free tours, separate and apart from each other and other tours required by this Exhibit F:
    - i. Bi-weekly tour of the public exhibit space and Demised Premises activities in coordination with the interpretive center tours.
    - ii. Bi-monthly tours of the Demised Premises gardens.
    - iii. Bi-monthly tours on which investigators or researchers will discuss their marine research work.
  - d) Provide six (6) lectures annually, separate and apart from other lectures required by this Section 2.2 or other Sections of this F, by investigators or researchers participating in research at the Demised Premises. Lectures may be provided at locations other than on the Demised Premises to

enable greater public outreach opportunities, but all 6 lecture locations shall be within the City of Los Angeles.

- e) Provide free boat tours, including transportation to and from the school to the Demises Premises, to elementary, middle, or high school students a minimum of once a month. Students participating in the boat tour may be the same students participating in other tours required by this Section 2.2 or other Sections of this Exhibit F.
  - f) Tenant's website shall be enhanced to include:
    - i. Video of real time research being conducted at Demised Premises.
    - ii. Details of tour and lecture schedules.
  - g) Provide City free of charge, including fuel, vessel staff, equipment, and any other costs, use of a research vessel adequate to perform harbor water quality sampling for one eight (8) hour day every month. Tenant will work with the City to establish an advanced schedule for use of the vessel consistent with monthly monitoring protocols.
- 2) Five (5) years following occupancy of Parcel 2A, Tenant and its subtenants shall have a Post Doctorate program based at the Demised Premises.
  - 3) Five (5) years following occupancy of Parcel 2A, Tenant and its subtenants shall have an undergraduate program based at the Demised Premises.
  - 4) Ten (10) years following occupancy of Parcel 2A, Tenant and subtenant operations shall provide approximately 70 jobs on the Demised Premises.
  - 5) Upon completion of construction activities on Parcel 2A, Tenant shall maintain at its sole cost and expense the public promenade, public restrooms, and public spaces on the Demised Premises, consistent with City Harbor Department standards. The public promenade shall be open to the public free of charge and consistent with the hours of other LA Waterfront promenade areas. Public restrooms on Parcel 2A shall be open to the public free of charge and consistent with the hours posted for the 22<sup>nd</sup> Street Park.
  - 6) Upon occupancy of Parcel 2A, Tenant shall prepare and submit to the Executive Director a plan for controlling public access on the public promenade during vessel loading and unloading activities and other essential operations conducted on the wharf area.

### **2.3 Parcel 3 Interim Use**

Tenant shall pursue subtenants that will benefit the long term operation of the Project and its goals. Tenant shall develop plans to transition such subtenants to other

Demises Premises locations prior to initiation of Parcel 3 New City Improvements to ensure continuity of operations and subtenant relationships.

## **2.4 Parcels 3 and 4**

- 1) Upon occupancy of Parcels 3 and 4, Tenant shall:
  - a. Develop and maintain two exhibit spaces at transit shed Warehouses 58-60 (minimum 3,000 square feet) specifically related to business development activities being undertaken at the Demised Premises to be open to the public free of charge a minimum of 40 hours a week. Hours shall be established by Tenant and posted at both the exhibit area and on Tenant's website.
  - b. Develop and make available on Tenant's website middle and high school curriculum materials related to the new businesses being highlighted in the exhibit space at Warehouses 58-60.
  - c. Provide the following free public tours, separate and apart from each other and other tours required by this Exhibit F:
    - i. Bi-weekly tours of the public exhibition space and Parcel 3 and 4 activities in coordination with the interpretive center tours.
    - ii. Bi-monthly tours of the gardens and other public area features on Parcels 3 and 4 including the viewing platform at the south section of Parcel 4.
  - d. Provide six (6) lectures annually, separate and apart from other lectures required by Exhibit F, by business entrepreneur subtenants on the Demised Premises. Lectures may be provided at locations other than the Demised Premises to enable greater public outreach opportunities, but all 6 lecture locations shall be within the City of Los Angeles.
  - e. Enhanced Tenant website to detail tour and lecture schedules.
- 2) 5 years following occupancy of Parcels 3 and 4, Tenant and subtenant operations shall provide approximately 180 jobs on the Demised Premises, in addition to the 70 on-site jobs set forth in Section 2.2 (4).

## **2.5 Parcels 5, 6, 7 and 8**

Tenant shall provide Non-Monetary Compensation services and public benefits associated with development of Parcels 5, 6, 7, and 8 as established pursuant to the procedures set forth in the Agreement.

**Section 3: Updates to Exhibit F**

At each Five-Year Rate Adjustment, this Exhibit F may be updated to reflect appropriate non-monetary compensation services and public benefits. Such updates shall be made by order of the Board as set forth in Section 5.5.

## EXHIBIT G

### APPRAISAL STANDARDS

Appraisers are required to provide confidential appraisal reports that at a minimum contain the following specifications as a condition of acceptance by the Harbor Department.

#### **Confidentiality Agreement**

The appraiser shall keep all aspects of this assignment in the strictest confidentiality from all non-intended users, including but not limited to: lenders, title companies, city agencies, utility companies, assessors, other appraisers, and members of your staff or company that are not directly involved in this assignment. All persons listed in the Certification may be required to sign a confidentiality agreement prepared by the City Attorney. The agreement shall be all-inclusive and include, but not be limited to, the appraisal, all knowledge, facts, files and work product of the assignment. All requests for information, data, or files regarding this assignment shall be immediately referred to the client.

#### **Letter of Transmittal**

The letter of transmittal shall clearly state all of the real property value conclusions and all extraordinary assumptions of the report. The fair rental value of the property will be stated as annual rent per year per acre. The market land and improvement value will be stated both as the total value and the value per square foot. The report shall also contain a brief description of the property appraised, interest appraised, date of value, date of report, client, intended use, intended user, signature, type of appraisal and report type.

#### **Subject Property Addresses**

[REDACTED]

#### **Subject Property**

[REDACTED]

#### **Interest Appraised**

[REDACTED]

#### **Date of Appraisal**

[REDACTED]

#### **Date of Value**

[REDACTED]

#### **Client of the Appraisal**

[REDACTED]

## **Intended Use of the Appraisal**

[REDACTED]

## **Intended Users**

Harbor Department, its Board of Harbor Commissioners, and related parties for the purposes of determining [REDACTED]

## **Type of Appraisal**

[REDACTED]

## **Purpose**

[REDACTED]

## **Appraisal Standards**

Full compliance with USPAP (2012-2013) edition and Specific Client Standards and Scope of Work as set forth in this document and the appraisal contract. Appraisers shall be state licensed as Certified General Appraisers by the State of California. A copy of the appraisers' licenses shall be submitted prior to the commencement of the assignment

## **Definition of Market Value**

The term market value, to be used in the appraisal report is to be defined and qualified as being:

Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

This example definition is from regulations published by federal regulatory agencies pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 between July 5, 1990, and August 24, 1990, by the Federal Reserve System (FRS), National Credit Union Administration (NCUA), Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the Office of Comptroller of the Currency (OCC). This definition is also referenced in regulations

jointly published by the OCC, OTS, FRS, and FDIC on June 7, 1994, and in the Interagency Appraisal and Evaluation Guidelines, dated October 27, 1994.

### **Definition of Fair Market Rent**

The term fair market rent to be used in the appraisal report is to be synonymous with the term market rent defined and qualified as being:

The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the lessee and lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from lessor to lessee under conditions whereby:

1. Lessee and lessor are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market;
4. The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract;
5. The rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction."

Source: Appraisal Institute - The Dictionary of Real Estate Appraisal

### **Executive Summary**

An Executive Summary or Summary of Salient Facts shall be included as attached to this Scope of Work.

### **Personal Inspection**

All appraisers listed in the appraisal certification are required to make a personal inspection of the subject property.

### **Appraiser Qualification**

Document appraiser qualifications. Minimum appraiser qualifications are as set forth in Exhibit H.

### **Scope of Work**



### **History of Ownership**

As set forth in USPAP– (City of Los Angeles Harbor Department)

## **Marketing Time**

As set forth in USPAP 2012-2013

## **Information Sources**

At the time the assignment is awarded to the appraiser, the Harbor Department will provide as necessary, site maps, relevant information and a description of all areas to be appraised. The appraisal will provide a determination of fair rental value and market value of the Subject Property.

## **Externalities**

Information, including but not limited to: analysis of national, regional and local economic trends and other relevant forces that influence or impact property values; descriptions of the immediate and surrounding economic areas; description of the property's access features; availability and market characteristics of competing properties; and a conclusion as to the social, economic, governmental, and environmental characteristics of the subject property. This section is limited to a maximum of 15 pages.

## **Graphics**

Subject property location map, aerial view, neighborhood map, photos and site map or plat of land. The report shall be presented in a letter size bound report.

## **Zoning**

Include a discussion of master plan, current zoning, overlay zones, architectural overlays; including designation, height restrictions, permitted uses, setbacks, coverage ratios, FARs, landscaping and parking requirements.

## **Assessor's Information**

Include the assessor's possessory interest parcel number, last tax bill information, possessory interest information, and method of taxation.

## **Highest and Best Use**

The report shall include a Highest and Best Use Analysis as if vacant. Land value and land rent shall be based upon the highest and best use as if vacant.

## **Comparable Information**

Each comparable land sale, improved sale, rental comparable and rate of return comparable shall be described in detail on a separate data sheet that will include the verification date and source, as well as, other important features. A comparable location map that identifies the subject property and all comparable data shall be included along with a summary table of the comparable data. All reports must include an adjustment grid that delineates each item of adjustment, as well as the direction and amount of each adjustment made. All adjustments are to be discussed in the pertinent analysis section of the report.

## **Method of Appraisals – Scope of Assignment**

Describe all information analyzed, the appraisal procedures followed, and the reasoning that supports the analysis, opinions and conclusions. All appraisal methods shall be considered and all appropriate appraisal methods shall be applied. If standard approaches to value are not included, the report must contain a discussion of the reason for the exclusions.

### **Sales Comparison Approach**

This approach, if relevant, will include a direct comparison of sales, rental data and rates of return, of other similar properties both nationally and locally. Additionally, the report will reconcile comparables with market data derived from surrounding property types.

### **The Income Capitalization Approach**

This approach, if relevant, will include an estimate of market rent and market value of the property. Values will be estimated based on the direct capitalization approach or a discounted cash flow methodologies. Direct capitalization rates and land rental rates of return will be derived from verified comparable sale and leased properties with similar risk characteristics. If surveys of land rental rates of return are included they shall contain examples of actual recent transactions for each survey result. Discounted cash flow analyses will contain internal rates of return derived from investor surveys and interviews with buyers of verified comparable sales.

### **The Cost Approach**

This approach, if relevant, will value the property as a whole and will set forth the reproduction cost new including direct costs, indirect costs, and entrepreneurial profit. Indirect costs shall include, but not be limited to land carry, site costs, utility connection fees, estimated construction time, construction loan interest, taxes, long-term financing costs, insurance, permits and fees, architectural fees, and engineering fees. A depreciation analysis will estimate total life, remaining economic life, effective age, and total accrued depreciation from all causes. All cost new estimates will be referenced to cost manuals (including date and page) and cost services, and/or market data comparables.

### **Reconciliation**

The report shall reconcile the results of all approaches employed and provide an analysis that results in a final conclusion of the fair market rent and market value of the subject property. The reconciliation will state the effective date of value, the interest appraised and the property rights appraised.

## **EXHIBIT H**

### **APPRAISER QUALIFICATIONS**

Any appraisals that provide opinions of market value shall be performed by an appraiser whose business is located in Los Angeles or Orange Counties and holds a Certified General Appraiser classification within the State of California obtained through the qualification procedures set forth by the California Office of Real Estate Appraisers (OREA) and be a member in good standing with the Appraisal Institute and hold the designation MAI. A copy of all licenses and certifications shall be submitted prior to commencement of work. The MAI designated appraiser shall be the principal appraiser of the property and not limited to a review appraiser.

Any appraiser selected to perform an appraisal of port related properties (total property, land and/or improvements) shall have working knowledge of port related properties that is appropriate for the work being performed.

## **EXHIBIT I**

### **BASELINE**

As set forth in Agreement Section 6.2.3, following Tenant's request for acceptance of a Parcel(s) pursuant to Agreement Section 3.2.1 or upon completion of New City Improvements, if any, whichever is later, Exhibit I will be updated to document the Baseline Condition for the Parcel(s) to be possessed by Tenant.

Tenant has not accepted any Parcels.

## Exhibit J

### ASSIGNMENT AND ASSUMPTION OF AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF AGREEMENT ("Assignment") is made this \_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date"), by and between Rockefeller Philanthropy Advisors, Inc., a Delaware corporation ("Assignor"), and AltaSea at the Port of Los Angeles, a California corporation ("Assignee") (herein collectively referred to as "Parties").

#### RECITALS

Whereas, on or about \_\_\_\_\_, 20\_\_, the City of Los Angeles ("City"), as landlord, and Assignor for an on behalf of Assignee, as tenant, entered into Lease No. 904, dated said date, with respect to premises at the Port of Los Angeles for the purpose of developing and operating an Urban Marine Research Center ("Agreement");

Whereas, Assignor desires to assign, and Assignee desires to acquire Assignor's interest in and to the Agreement; and

Whereas, the Agreement provides, among other things, that the Agreement will be assigned to Assignee without further City consent, provided however, that no assignment shall be valid unless and until Assignor submits this fully executed Assignment to City.

Accordingly, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, IT IS AGREED as follows:

1. Assignor assigns to Assignee, as of the effective date of this Assignment, all Assignor's right, title and interest in and to the Agreement, together with the funds deposited by Assignor pursuant to the terms of the Agreement.

2. To Assignor's knowledge as of the date of this Assignment, Assignor covenants that it is not in default under the Agreement, that the Agreement is not encumbered by any prior transfer, assignment, mortgage or any encumbrance other than those listed herein, which are required pursuant to and in furtherance of the Agreement, and that Assignor has full and lawful authority to assign the Agreement.

[LIST OF ENCUMBRANCES HERE]

3. Assignee assumes the Agreement, and will perform and observe all the covenants and conditions therein contained on Assignor's part to be performed and observed, which shall accrue before, from and after the effective date of this Assignment.

4. Upon the submission by Assignor of a fully executed copy of this Assignment to City, the Assignor is released from any and all obligations and liabilities under the Agreement pursuant to Section 13.9.1 of the Agreement.

5. Assignee shall assume any and all obligations or liability under the Agreement, including without limitation for the performance and observance of any and all obligations, covenants and conditions in the Agreement from the Effective Date of the Agreement and the City shall look solely to the Assignee in connection with any and all matters arising, related to or in connection with the Agreement, regardless of when such matters arose.

6. This Assignment may not be changed, modified, discharged or terminated orally or in any other manner than by an agreement in writing signed by the Parties hereto or their respective successors and assigns, and approved by the City.

7. Assignee acknowledges and consents to the City's attachment of this fully executed Assignment as an addendum to the Agreement, and agrees that all references to "Tenant" therein shall from the effective date of this Assignment refer to Assignee without need for further amendment of the Agreement. Assignee hereby represents that pursuant to Section 16.9 of the Agreement, the following information shall be the address of record for Assignee as Tenant under the Agreement:

Assignor/Tenant: AltaSea at the Port of Los Angeles  
Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
Attn: (name/title)

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date and year first above written.

**Assignor:** ROCKEFELLER PHILANTHROPY ADVISORS, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Assignee:** ALTASEA AT THE PORT OF LOS ANGELES

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT K

### FORMAT AND CONTENT REQUIREMENTS FOR TENANT'S ENVIRONMENTAL COMPLIANCE PROGRAM ("ECP")

#### Introduction and General Requirements

This exhibit incorporates by reference all terms defined in the Agreement to which it is attached ("Agreement").

Tenant's ECP shall be set forth on letter-sized paper and shall be maintained in a three-ring or similar binder denominated "Environmental Compliance Program." Tenant additionally shall maintain the ECP in electronic form in a format acceptable to City and Tenant. Tenant's ECP shall possess separate sections devoted to (1) applicable Environmental Laws, (2) Port Environmental Policies, (3) Mitigation Measures, (4) the Source Control Program, (5) Violations and Corrective Action, (6) Document Retention and Organization and (7) Training.

Tenant's ECP shall identify and document the employee(s) of Tenant responsible for establishing, observing and/or maintaining compliance with Section 6 of the Agreement and the ECP, as well as any third-party consultants retained for or on behalf of Tenant to assist in such task, and contact information for such employees and/or third-party consultants. By executing the Agreement, Tenant authorizes and permits City to directly contact such employees and/or third-party consultants at any reasonable time.

Starting with the Compensation Year in which the Tenant's initial ECP is first submitted to the Executive Director for review and approval, as set forth in Agreement Section 6.5.2, and annually thereafter during the term of the Agreement, Tenant shall submit a written certification of compliance with Exhibit K and the Tenant's ECP as set forth in Exhibit F. Tenant's ECP compliance review shall contain sufficient information to demonstrate compliance with each of the Port Environmental Policies identified in Exhibit K-A and each of the applicable mitigation measures identified in Exhibit K-B for the preceding Compensation Year. The ECP Compliance Report shall also generally report on Tenant's compliance with all other provisions of the ECP, based upon the annual ECP audit performed pursuant to Agreement Section 6.6. If violations of the ECP are identified in the annual audit, corrective actions taken and planned review of the effectiveness of such actions shall be documented in the Tenant's annual certification of compliance. All reports submitted by Tenant shall be verified and contain the following statement signed by an authorized officer of Tenant:

At a minimum, Tenant shall update the ECP within thirty (30) days following: (i) Tenant taking possession of a Parcel pursuant to Agreement Section 3.2 or (ii) Tenant or subtenant introduces new Environmentally Regulated Material to the Demised Premises not previously listed in the ECP. The ECP shall also establish a regular frequency, no greater than every 5 years, at which the ECP shall be updated to ensure compliance with changing regulatory requirements and operational changes. Such ECP updates shall be submitted to the Executive Director, with a copy to the Environmental Management Division of the Harbor

Department. Tenant submittal and/or Executive Director review and approval of any revised shall not relieve Tenant of its obligations pursuant to Section 6.5 of the Agreement.

**Applicable Environmental Laws**

Application of Environmental Laws to Tenant and/or its use and/or occupancy of the Demised Premises and to subtenants and/or subtenants use and/or occupancy of the Demised Premises may require Tenant and subtenants to hold entitlements (such as permits and licenses), potentially including, but not limited to, those entitlements listed in Table 1 below.

Table 1

<b>AGENCY</b>	<b>POSSIBLE PERMITS</b>
South Coast Air Quality Management District	Permit to Construct
	Permit to Operate
Los Angeles Regional Water Quality Control Board	NPDES Permit
	Waste Discharge Permit
	Stormwater Permit
Los Angeles Fire Department	Unified Program Permit
Los Angeles Department of Public Works	Industrial Wastewater Discharge Permit
	Sewer Connection Permit
U.S. Coast Guard	Explosives and Dangerous Cargo Permit
Department of Toxic Substances Control	Hazardous Waste Facility Permit
	Hazardous Waste Haulers Permit

The section of Tenant's ECP devoted to applicable Environmental Laws shall: (a) state to the best of Tenant's ability the Environmental Laws that apply to Tenant and/or Tenant's use and/or occupancy of the Demised Premises; b) state to the best of Tenant's ability the Environmental Laws that apply to subtenants and/or subtenants use and/or occupancy of the Demised Premises; (c) list all Tenant and subtenant environmental entitlements held in connection with the applicable Environmental Laws covered by item(a) and (b) above, along with the issuing agency, purpose, unique permit identifier (permit number in most cases), and expiration date of each such entitlements.

Tenant shall, on a continuing basis during the term of the Agreement and any holdover, provide City with complete and legible copies of all notices, reports, correspondence and other documents sent by Tenant or subtenant to or received by Tenant or subtenant from any governmental agency with jurisdiction over the Demised Premises related to soil, groundwater, or building material contamination thereof. Such written materials include, without limitation, all documents related to any threatened or actual release of Environmentally Regulated Material, or to any investigations into or clean up of any actual or threatened release of Environmentally Regulated Material, including all test results.

### **Port Environmental Policies**

The section of Tenant's ECP devoted to Port Environmental Policies shall contain a narrative summary of the pollution prevention and response procedures in force on the Demised Premises and provisions related to such procedures included in subleases, and a description of all relevant pollution prevention equipment and structures on the Demised Premises or on call. Pursuant to Section 6.3 of the Agreement, the ECP shall describe the types, amounts, and general location of Environmentally Regulated Material typically handled on the Demised Premises, whether by Tenant or subtenants, and their potential environmental hazards.

For potentially flammable (NFPA rating 2 or higher), toxic, and corrosive materials, the ECP shall specify the location of the relevant Material Safety Data Sheet (MSDS) and shall describe the storage, monitoring, and reporting procedures. This section of the ECP shall include Tenant's Business Emergency Plan required for the Demised Premises, and list any such plans separately required by the Los Angeles Fire Department for subtenant operations.

### **Mitigation Measures**

The section of Tenant's ECP devoted to Mitigation Measures shall consist of documentation necessary to document Tenant's monitoring and reporting on the Mitigation Measures as required by the Mitigation Monitoring and Reporting Program attached to the Agreement as Exhibit "K-B." This Section of the ECP shall incorporate the standard Harbor Department Mitigation and Monitoring and Reporting forms and establish the frequency that Tenant is required to report to the Harbor Department regarding compliance with each applicable mitigation measure.

### **Source Control Program**

The Tenant's ECP shall include a source control program for Environmentally Regulated Material stored or utilized on the Demised Premises by Tenant and/or subtenants. Such source control program may reference similar subtenant programs; however, the Tenant's source control program for the Demised Premises must address the coordination between Tenant and subtenants necessary to avoid and quickly respond to any accidental release of Environmentally Regulated Material and to protect the environment and health and safety of adjacent subtenants and the general public accessing the public promenade and other public areas.

### **Violations and Corrective Action**

Tenant acknowledges and agrees that it possesses a non-delegable obligation to ensure that the conduct of Tenant, as well as of Tenant subtenants, visitors, and invitees to the Demised Premises complies with Section 6 of the Agreement and Tenant's ECP. Tenant further acknowledges and agrees that it

possesses a non-delegable obligation and to report any violations of Section 6 and/or Tenant's ECP to the Executive Director.

The section of Tenant's ECP devoted to Violations and Corrective Action shall set forth: (a) any Tenant and/or subtenant regulatory violations since the last ECP update; (b) Tenant's and/or subtenant's corrective action, if any, in connection with such violation(s); and (c) the governmental agencies issuing of such violation or acting in connection with such violation.

### **Document Retention and Organization**

Tenant shall maintain all documents necessary to comply with Section 6 and the ECP on the Demised Premises located at the Port of Los Angeles.

The section of Tenant's ECP devoted to Document Retention and Organization shall set forth Tenant's document retention policy, provisions related to such procedures included in subleases, and Tenant's method of organizing and maintaining documents necessary to comply with Section 6 of the Agreement and the ECP.

At a minimum, the types of documentation that shall be addressed in the document retention policy, including the duration of that each document type will be will be maintained, include but is not limited to the types of documentation listed in Table 2 below.

Table 2

<b>COMPLIANCE CATEGORY</b>	<b>TYPICAL DOCUMENTATION</b>
All	Construction, operating, and discharge permits; logs; compliance reports required by HDP special conditions; and other permits
Hazardous Wastes	Manifest, shipping records, quarterly and annual reports, and Materials and correspondence files
	Reportable quantity records; inventory
	Emergency response plan
Air	Inspection, operating, and service log of burners, generators, and diesel engines
	Citations for violations; records of agency enforcement actions
Water	Monitoring records of discharges to receiving waters and POTWs by source
	Logs of process, wastewater, and receiving water sampling
	Treatment plant records, certifications, and Licenses
	Incident records for spills and upsets
	Citations for violations; records of agency enforcement actions
Solid Waste	Manifests and other records of quantities and shipments
Miscellaneous	Records of inspections by regulatory agencies

	Citations for pollution control violations and records of agency enforcement action
	SPCC plans for oil handling facilities
	Underground Storage Tank (UST) Monitoring Reports

**Training**

Tenant shall undertake and provide training to its employees as required by Applicable Environmental Laws and shall maintain records thereof. Tenant shall regularly provide training to subtenants regarding the Demised Premises source control program and the Tenant's ECP and subtenant's responsibilities under the Tenant's ECP. The ECP shall document the planned frequency of such training.

The section of Tenant's ECP devoted to Training shall list the training requirements for Applicable Environmental Laws for Tenant employees, the source control training required by this Exhibit K for Tenant and subtenants, and the dates required training was provided, or is planned to be provided.

## EXHIBIT K-A

### APPLICABLE ENVIRONMENTAL POLICIES, RULES AND DIRECTIVES OF CITY'S HARBOR DEPARTMENT (PORT ENVIRONMENTAL POLICIES)

1. Port of Los Angeles Environmental Management Policy, as amended, or its successor policy. Available at: [http://www.portofla.org/img/Env\\_Mgmt\\_Policy.gif](http://www.portofla.org/img/Env_Mgmt_Policy.gif)
2. San Pedro Bay Ports Clean Air Action Plan, as amended, or its successor plan/document. Available at: <http://www.cleanairactionplan.org>.
3. Port of Los Angeles and Port of Long Beach Water Resources Action Plan or its successor plan/document. Available at [http://www.portoflosangeles.org/DOC/WRAP\\_Final.pdf](http://www.portoflosangeles.org/DOC/WRAP_Final.pdf)
4. Port of Los Angeles Green Building Policy (2007), as amended, or its successor policy.
5. Port of Los Angeles Sustainable Construction Guidelines (2008), as amended, or its successor document.
6. Resolution No. 5317 – Policy for Operation of Hazardous Waste Transfer, Storage and Disposal (TSD) Facilities on Harbor Department Property and any amendments or successor resolution.

Tenant acknowledges that City has provided copies, or made copies available via the Port's website, of the above policies to Tenant.

**EXHIBIT K-B**

**MITIGATION MONITORING AND REPORTING PROGRAM**

# MITIGATION MONITORING AND REPORTING PROGRAM

## City Dock No.1 Marine Research Center Project

### Environmental Impact Report (EIR)

*Prepared for:*

Los Angeles Harbor Department  
Environmental Management Division  
425 S. Palos Verdes Street  
San Pedro, CA 90731  
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c/o Kevin Grant  
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September 2012

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# 1.0

## MITIGATION MONITORING AND REPORTING PROGRAM

### 1.1 Introduction

Section 21081.6 of the California Public Resources Code (PRC) requires a Lead or Responsible Agency to adopt a mitigation monitoring and reporting program (MMRP) when approving or carrying out a project. The purpose of this program is to ensure that when an environmental document, either an Environmental Impact Report (EIR) or a negative declaration, identifies measures to reduce potential adverse environmental impacts to less-than-significant levels that those measures are implemented as detailed in the environmental document. As lead agency for the City Dock No.1 Marine Research Center Project (proposed Project), the Los Angeles Harbor Department (LAHD) is responsible for implementation of this MMRP.

An EIR has been prepared for the proposed Project that addresses the potential environmental impacts, and where appropriate, recommends measures to mitigate these impacts. As such, this MMRP is required to ensure that adopted mitigation measures are successfully implemented and a monitoring strategy was prepared for each mitigation measure identified in the proposed Project. Once the Board of Harbor Commissioners adopts the MMRP, the applicable LAHD division(s) will incorporate the mitigation monitoring/reporting requirements in the appropriate permits (i.e., engineering specifications, engineering construction permits, real estate entitlements, and/or coastal development permits). Therefore, in accordance with the aforementioned requirements, this document lists each mitigation measure, describes the methods for implementation and verification, and identifies the responsible party or parties as detailed below in the MMRP Implementation section.

### 1.2 Proposed Project Overview

The proposed project site is bounded by the East Channel to the west, the Main Channel to the east, 22<sup>nd</sup> Street to the north, and the open water of the San Pedro Bay to the south. Local access to the site is provided by 22<sup>nd</sup> Street and Sampson Way.

The proposed Project involves a comprehensive plan for the reuse of City Dock No. 1 that would be built out in two phases. The proposed City Dock No. 1 Marine Research Center Project involves the following major elements:

- Adaptive reuse of the transit sheds at Berths 57–60 to accommodate marine research laboratory, classroom, and meeting spaces within a collaborative environment to create research synergies among universities, colleges, government agencies, and business ventures.
- Wharf retrofits of Berths 57–60 and related infrastructure, including a seawater circulation system and berthing facilities for large research vessels as well as street improvements.
- Construction of a new building at Berth 56 with classrooms and a lecture hall/auditorium.
- Relocation of the Southern California Marine Institute (SCMI) from its existing location at Berth 260 on Terminal Island to Berths 56 and 57.
- Development of an interpretive center open to the public.
- Establishment of a marine science business park/incubator space with offices and research laboratory space within Berths 58–60 transit sheds.
- Installation of floating docks in the East Channel to accommodate smaller research vessels.
- Integration with and development of the waterfront promenade along the water's edge, consistent with the approved San Pedro Waterfront Project while not impacting the health and safety of the visiting public.
- Development of Berths 70 and 71, following the planned demolition and remediation of the existing Westway Terminal site. This development would include the construction of a new building for National Oceanographic and Atmospheric Administration (NOAA) operations, the use of existing berthing space for research vessels, and the construction of a new building to host a natural seawater wave tank facility.

Each of these key proposed project elements is described in further detail below.

## 1.3 Proposed Project Purpose

The overall purpose of the proposed Project is to adaptively reuse the transit sheds at Berths 57–60 and the adjacent Berths 70–71 proposed project site and existing buildings (e.g., transit centers) to provide world-class marine research facilities and space to bring together leading researchers and entrepreneurs, including SCMI, southern California universities and colleges, government research agencies, such as the NOAA, and businesses to conduct cutting-edge urban marine research and education, and develop technologies to address the most pressing problems of the day. The proposed Project seeks to achieve this purpose through the rehabilitation of the existing buildings and wharves to house state-of-the-art marine research and educational facilities and provide deep draft berthing space for research vessels, and by providing for a cluster of university researchers, educational programs, and spin-off marine science technology ventures.

### 1.3.1 Proposed Project Objectives

The proposed Project would provide a world-class urban marine research center and support the research needs of the Southern California region's universities, research and education institutions, and government agencies, as well as provide an incubator for marine-related business venues. Specifically, the proposed Project would achieve the following objectives.

- Adaptively reuse Berths 56–60 and 70–71 to provide marine researchers in Southern California with world-class marine research facilities including laboratories, a seawater circulation system, offices, classrooms, a lecture hall/auditorium, and storage space to study the most pressing marine-related problems of the day.
- Construct a natural seawater wave tank to allow scientists from around the world to study tsunamis, rouge waves, and the generation of wave energy; conduct vessel and platform studies; and conduct coastal engineering studies.
- Provide space within Los Angeles Harbor to relocate, upgrade, and expand SCMI's operations, which are currently located at Berth 260 in Fish Harbor.
- Provide an opportunity for SCMI and its members, government and other institutional researchers, and research organizations with multiple deep draft berths to accommodate vessels ranging in size from small to large 300-foot vessels adjacent to landside facilities.
- Provide a location for a marine-related business incubator park for synergy among research and commercial interests, and develop commercial technologies to address marine environmental problems.
- Provide public amenities, including public education classroom space and interpretive exhibits related to marine studies and a cafe, along with a waterfront promenade, consistent with the San Pedro Waterfront Project while not impacting the health and safety of the visiting public.

### 1.4 Proposed Project Elements

The proposed Project involves a comprehensive plan for the reuse of City Dock No. 1 that would be built out in two phases. Phase I, which is anticipated to begin in late 2012 and conclude in 2016, would include the conversion of Berths 56 and 57 into a new SCMI facility and development of an interpretive center open to the public. The majority of the remaining proposed project elements would be constructed under Phase II, which is anticipated to commence construction in 2013 and conclude around 2024. Table 1-1 provides a summary of the two phases of development by each element and the total area each major element would contribute to the overall proposed Project.

All construction staging and material laydown would occur within the proposed project site at Berths 70-71 and the Sampson Way and 22<sup>nd</sup> Street Parking Lot during Phase I, with the majority of the staging and laydown occurring at the parking lot as Phase II progresses toward completion. In addition, prior to commencement of the

proposed Project, the existing occupant (SP Bait Company) would relocate its operations from the proposed project site.

**Table 1-1. Elements of the Proposed Project**

<i>Element/Phase</i>	<i>Area</i>
<b>PHASE I (2012-2016)</b>	
<b>Berth 56</b>	
<ul style="list-style-type: none"> <li>▪ Construct 2-Story Learning Center at Berth 56 (150-seat lecture hall/auditorium and classrooms)</li> </ul>	11,500 sf
<b>Berth 57</b>	
<ul style="list-style-type: none"> <li>▪ Convert Berth 57 Transit Shed into SCMI Research Facility and Develop Marine Research- and Education-Related Facilities               <ul style="list-style-type: none"> <li>□ Office-Related Space (12,000 sf)                   <ul style="list-style-type: none"> <li>○ Faculty Office Space</li> <li>○ Administrative Suite</li> <li>○ Staff Support Facilities (toilets, showers, and lockers)</li> </ul> </li> <li>□ Laboratory Related Space (34,500 sf)                   <ul style="list-style-type: none"> <li>○ Teaching Laboratories</li> <li>○ Research Laboratories and Facilities</li> <li>○ Lab Support Space</li> <li>○ Building Support Facilities (machine shop, storeroom, chemical storage, hazardous waste, scuba gear, instrument support, etc.)</li> </ul> </li> </ul> </li> </ul>	46,500 sf
<ul style="list-style-type: none"> <li>□ Outdoor Space (8,200 sf)<sup>1</sup> <ul style="list-style-type: none"> <li>○ Outdoor Teaching/Outreach Classroom</li> <li>○ Outside Storage Space</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>▪ Replace Berth 57 Entrance (3,640 sf) with New Addition (Public Interpretive Center)</li> </ul>	3,600 sf
<ul style="list-style-type: none"> <li>▪ Install Seawater Circulation and Life Support System including Exterior Storage Tanks for Berths 57 and Seawater Intake/Discharge Infrastructure to Serve City Dock No.1 Research Laboratory Buildout</li> </ul>	New utility
<ul style="list-style-type: none"> <li>▪ Construct Floating Docks Adjacent to Berth 57 (12 vessel slips)</li> </ul>	18,500 sf
<ul style="list-style-type: none"> <li>▪ Rehabilitate/Repair Berth 57 Wharf and Associated Ground Improvements               <ul style="list-style-type: none"> <li>□ Create Berthing for Research Vessels and Loading Space on the Wharf for Crane</li> </ul> </li> </ul>	625 lf <sup>d</sup>
<ul style="list-style-type: none"> <li>▪ Construct Public Plaza at Berth 57</li> </ul>	7,500 sf <sup>d</sup>
<ul style="list-style-type: none"> <li>▪ Relocate SCMI from Berth 260 to new Berth 57 Facilities</li> </ul>	--

<i>Element/Phase</i>	<i>Area</i>
<b>Berth 260</b>	
<ul style="list-style-type: none"> <li>▪ Demolish Existing SCMI Facility (demolition of existing 19,000-sf building, 2,700-sf warehouse, and 2,400-sf shop storage)</li> </ul>	(24,100 sf)
<i>Total Structure Square Feet in Phase I</i>	<i>80,100 sf<sup>2</sup></i>
<b>Signal Street Improvements/Parking Facilities</b>	
<ul style="list-style-type: none"> <li>▪ Repair/Repave/Restripe</li> </ul>	625 lf <sup>d</sup>
<ul style="list-style-type: none"> <li>▪ Add Surface Parking Adjacent to Berth 56</li> </ul>	15 spaces
<ul style="list-style-type: none"> <li>▪ Add Surface Parking Adjacent to Berth 57</li> </ul>	40 spaces
<ul style="list-style-type: none"> <li>▪ Utilize Sampson Way and 22<sup>nd</sup> Street (existing parking lot; 4.5 acres)</li> </ul>	409 spaces
<i>Total Parking Added in Phase I</i>	<i>55 spaces</i>
<i>Total Available Parking in Phase I</i>	<i>464 spaces</i>
<i>Total Area Redeveloped and Enhanced in Phase I</i>	<i>8.8 acres</i>
<b>PHASE II (2013–2024)</b>	
<b>Berths 58–60</b>	
<ul style="list-style-type: none"> <li>▪ Covert Transit Sheds into Marine Research Facility                             <ul style="list-style-type: none"> <li>□ Office Related Space (50,000)                                     <ul style="list-style-type: none"> <li>○ Office/Administrative Space<sup>3</sup></li> <li>○ Staff Support Facilities (toilets, showers, and lockers)</li> <li>○ Hallways, Walkways</li> </ul> </li> <li>□ Laboratory Related Space (70,000)                                     <ul style="list-style-type: none"> <li>○ Research Laboratories and Facilities</li> <li>○ Lab Support Space</li> <li>○ Storage Facilities (robotics, instruments, etc. deployed on marine research vessels)</li> <li>○ Marine Research Vessel Support Facilities (crew quarters, showers, etc.)</li> <li>○ Building Support Facilities (machine shop, storeroom, chemical storage, hazardous waste, scuba gear support, etc.)</li> </ul> </li> <li>□ Outdoor Space (16,400 sf)                                     <ul style="list-style-type: none"> <li>○ Outside Storage Space</li> </ul> </li> </ul> </li> </ul>	120,000 sf
<ul style="list-style-type: none"> <li>▪ Convert Transit Shed to Marine Business Incubator Space                             <ul style="list-style-type: none"> <li>□ Office Related Space (20,000)                                     <ul style="list-style-type: none"> <li>○ Office/Administrative Space<sup>3</sup></li> <li>○ Staff Support Facilities (toilets, showers, and lockers)</li> </ul> </li> <li>□ Laboratory Related Space (40,000)                                     <ul style="list-style-type: none"> <li>○ Research Laboratories and Facilities</li> <li>○ Lab Support Space</li> <li>○ Storage Facilities (robotics, instruments, etc. deployed on marine research vessels)</li> </ul> </li> </ul> </li> </ul>	60,000 sf

<i>Element/Phase</i>	<i>Area</i>
▪ Develop Waterfront Promenade including Public Plaza/Viewing Platform at Berth 60	6,000 lf <sup>1</sup>
▪ Construct Waterfront Café	1,000 sf
▪ Install Seawater Circulation System including Exterior Storage Tanks for Berths 58–60	New utility
▪ Relocate Items Stored by Water Taxi Service (to within the general vicinity)	--
▪ Rehabilitate/Repair Berths 58–60 Wharf and Associated Ground Improvements	1,875 lf <sup>1</sup>
□ Create Berthing for Research Vessels and Loading Space on the Wharf <sup>3</sup>	--
<b>Berths 70-71 (Westways)<sup>4</sup></b>	
▪ Construct 2-Story NOAA Administration and Research Facility	50,000 sf
▪ Implement Wharf Maintenance	--
▪ Construct 5-story Building (to house an 80,000 sf wave tank), including Seawater Intake	100,000 sf
▪ Opportunity Site. Options could include: <ul style="list-style-type: none"> <li>□ Support Facilities for Berth 57–60 Operations such as Seawater Storage Tanks, Life Support Facilities, Discharge Treatment Facilities, and Storage Space.</li> <li>□ Outside Research Tanks</li> <li>□ Additional Marine Research/Business Laboratory Space</li> </ul>	
<i>Total Structure Square Feet in Phase II</i>	<i>331,000 sf</i>
<b>Signal Street Improvements/Parking Facilities</b>	
▪ Implement Repaving and Restriping	1,875 lf <sup>1</sup>
▪ Install New Diagonal Parking	155 spaces
▪ Remove Existing Heavy Rail Line from Street	8,000 lf <sup>1</sup>
<i>Total Parking Added in Phase II</i>	<i>155 spaces</i>
<i>Total Parking Available in Phase II</i>	<i>619 spaces<sup>5</sup></i>
<i>Total Area Redeveloped and Enhanced in Phase II</i>	<i>25.00 acres</i>
<b>PROPOSED PROJECT TOTALS</b>	
Total Proposed Project Area Structures	411,100
Total Parking Spaces Available for Proposed Project	619
Total Proposed Project Area Redeveloped and Enhanced	33.8 acres
<sup>1</sup> Not a structure and is therefore not counted in total structure sf. <sup>2</sup> Excludes demolition of existing SCMI Facility at Berth 260. <sup>3</sup> NOAA facilities, including office and research space within Berths 58–60 Transit Shed and berthing space at Berths 58–60 to be relocated to Berths 70–71 when remediation and development of those berths has been completed. <sup>4</sup> Demolition of the Westway tanks, piping, and related structures at Berths 70–71 as well as the remediation following has been analyzed under the San Pedro Waterfront EIS/EIR and is not considered a component of the proposed Project. <sup>5</sup> In addition to the 155 new parking spaces provided under Phase II, visitors and employees would have access to the 464 parking spaces identified under Phase I for a total of 619 spaces for the proposed Project. sf = square feet; lf = linear feet	

### 1.4.1 Learning Center Building (Berth 56)

Berth 56 improvements under Phase I would include construction of a Learning Center building. This building would include three classrooms and a 150-seat auditorium that would feature theater-style seating and related facilities. The Learning Center would be designed in accordance with the Secretary of the Interior's Standards for Rehabilitation (Secretary's Standards) to ensure architectural compatibility with adjacent historic resources, including plan review by a qualified consulting architectural historian for compliance with the Secretary's Standards.

### 1.4.2 Transit Shed Upgrades for SCMI (Berth 57)

In order to achieve the conversion of Berth 57, construction would first involve wharf upgrades and landside improvement to meet current seismic code. Upon completion of the wharf retrofit and ground improvements, work would begin on upgrading the existing Berth 57 transit shed to current seismic and occupancy codes. Phase I would also include the demolition of an existing 1933 wood-frame structure to allow construction of a new glazed entryway to potentially house the public interpretive center. The new structure would introduce a contemporary, neutral, and visually prominent entrance into the SCMI facility, distinct from the existing historic transit shed façade. This new façade may include large glass aquaria at the entrance way. The façade would reflect the same general shape and profile as the transit shed in height and massing and could include an area for public education and outreach.

The existing Berth 57 transit shed would require extensive renovations prior to occupancy by SCMI. The SCMI research facility would include office space for faculty, staff, and administration; laboratory space for teaching and research laboratories; lab support and building support spaces; and outdoor space for outdoor teaching, classrooms, and storage space. A seawater circulation and life support system would be installed at Berth 57, including exterior storage tanks, and seawater intake/discharge infrastructure adequate to serve City Dock No. 1 urban marine research center build-out.

Repair, retrofit, and rehabilitation of the transit shed to address structural deficiencies would be facilitated by the exposed condition of all structural elements. These include repairing rusted exterior corrugated metal siding with new panels, upgrading structural connections to meet established seismic and wind load resistance, retrofitting large openings (east and west façades) to ensure stability and water tight openings, sandblasting and repainting corroded steel members and gusset plates, and replacing deteriorated and damaged steel members, as required. In addition, it is anticipated that new traverse and longitudinal frames would be added, interior steel columns repaired, and new concrete encasements around the base of each column constructed. Installation of a continuous perimeter foundation wall, limited to shallow (2 to 3 feet maximum) excavations to inhibit water intrusion at the building perimeter and utility placement may be required. However, to gain access to the wharf underlying the transit sheds, the roof and western façade of the transit sheds would be temporarily removed to provide direct access to the wharf for pile driving purposes.

All renovations would be required to conform to the Secretary's Standards for buildings eligible for listing or listed on the National Register of Historic Places (NRHP) and would undergo a plan review by a qualified consulting architectural historian to ensure compliance. Due to the minimal nature of the existing structure (without insulation), the existing transit sheds would primarily serve as an "outer shell building" to provide basic shelter from water and wind and sun. The proposed marine laboratory, classroom, and office SCMI facility facilities would be within the existing envelope of the transit shed and be constructed by the tenant, SCMI. Therefore, the historic integrity of Berth 57 would be maintained and, at the same time, it would be adaptively re-used to integrate state-of-the-art fire/life safety protection, seismic resistance, security features, and utility infrastructure as required by its change in use. The exterior of the transit sheds would largely be maintained with the exception of necessary improvements to the siding, roof, cornices, etc. There is a potential that a few of the current loading doors would be replaced with windows to provide for public viewing/research interpretive opportunities. The following list summarizes the ways in which this project element would generally meet the guidance provided in the Secretary's Standards.

- Existing metal roll-up-style doors would be replaced with new glazed openings to provide more light, air, and egress into the interior spaces. This modification would be consistent with the guidance provided by the Secretary's Standards because it would maintain the repetitive punched openings along the structure's elevations, and most of the roll-up doors are non-original replacements. The design of the new glazing systems would reference the industrial maritime character of the building, with industrial metal sashes and clear glazing, as opposed to vinyl or wood sashes and reflective or opaque glazing.
- Deteriorated historic features would be repaired rather than replaced whenever feasible. Where the severity of deterioration requires replacement of a distinctive feature, the new feature would match the old in design, color, texture, and other visual qualities and, where possible, materials. In the case of the Berth 57 transit shed, rusting corrugated metal siding, steel members, and gusset plates would be repaired, and those materials that cannot be repaired due to advanced deterioration would be replaced in-kind with similar metal materials.
- Correcting structural deficiencies in preparation for the new use is allowable by the Secretary's Standards assuming that the improvements are completed in a manner that preserves the structural system and individual character-defining features. In the case of the interior of the transit shed at Berth 57, the open trusses are character-defining features of the building's interior. Upgrading the structural connections would not obscure, remove, or otherwise significantly alter in an adverse manner the metal truss system.
- Removal and replacement of portions of the roof and western façade to accommodate the wharf improvements and associated ground improvements at the Berths 57–60 transit shed would reuse the existing materials (corrugated metal roofing and siding) to the extent feasible. Where the severity of deterioration requires replacement of a distinctive feature, the new feature would match the old in design, color, texture, and, where feasible, materials
- In the case of the Berth 57 transit shed, the new interior "buildings" would not obscure or destroy the interior truss work, allowing these features to read as

original features of the building. The new interior structures would not reach the ceiling, thus allowing the open, floor-to-ceiling height of the interior spaces to read visually as they do today (i.e., not obscure the clerestories). The new construction would also retain a significant amount of open interior space, particularly in the center of the building, where long interior vistas are possible (i.e., new construction will be relegated to the side aisles of the structure). The buildings would be differentiated from the old but also compatible with the massing and scale of the building. Therefore, industrial shed-like architecture with exposed steel structures and metal siding would be an appropriate architectural motif for the new construction.

- New additions and adjacent or related new construction would be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

### 1.4.3 Floating Docks (Berth 57)

Phase I would also develop an 18,500-square-foot, 12-slip floating dock in the East Channel adjacent to Berth 57 to accommodate existing small SCMI research vessels and to allow sufficient capacity for additional small research vessels.

### 1.4.4 Wharf Improvements and Associated Ground Improvements (Berths 57–60)

In order to accommodate the proposed project elements at Berths 57–60, construction would involve first upgrading the adjacent wharf and the existing retaining wall to current seismic code. There are two potential options for the wharf improvements and associated ground improvements.

The first option involves installing 127 new 72-inch diameter steel pipe piles (superpiles) with 20 feet of spacing along the footprint of the existing building. The superpiles would be installed in-water and would carry virtually all of the seismic loads, leaving the existing structure to carry only gravity loads. In addition, to retain the existing aesthetic appearance, the new superpiles would be set back from view, and the existing viewable rows of piles would be replaced with new concrete piles that would be indistinguishable from the existing condition, which would allow the new wharf to retain the same general appearance. Similar to the existing wharf design, the first row of concrete piles, end caps, and decking along the westernmost edge of the wharf would be reconstructed using approximately 16-inch-square concrete piles spaced about 15 feet apart with a concrete deck resting directly above. As such, these new features would match the old in design, color, texture, and materials, and would conform to the guidance provided by the Secretary's Standards. When detailed plans of the replacement piles are available, they would be reviewed by a qualified consulting architectural historian to ensure compliance with the Secretary's Standards. Work would include removing the roof of the existing transit sheds, demolishing 18,288 square feet of existing concrete slab, installing silt curtains, driving the piles, pouring new pile caps and deck slab, and replacing the

roof. Exterior façade removal and reinstallation along the entire length of Berths 58–60 would be required.

The second option involves the installation of 252 new 60-inch-diameter steel pipes (in groups of four), which would be located along the back face of the existing seawall, outside of the water, spaced 40 feet apart. The four-pile groups would be installed with a 5-foot-thick concrete pile cap to minimize the displacement of the wharf structure during a seismic event. A 6-inch-thick topping slab acting as a “drag-slab” would extend across the existing deck to tie in the existing wharf structure to the new pile clusters. The existing viewable rows of piles would be replaced with new concrete piles that would be indistinguishable from the existing condition, which would allow the new wharf to retain the same general appearance. Similar to the existing wharf design, the first row of concrete piles, end caps, and decking along the westernmost edge of the wharf would be reconstructed using approximately 16-inch-square concrete piles spaced about 15 feet apart with a concrete deck resting directly above. As such, these new features would match the old in design, color, texture, and materials, and would conform to the guidance provided by the Secretary’s Standards. When detailed plans of the replacement piles are available, they would also be reviewed by a qualified consulting architectural historian to ensure compliance with the Secretary’s Standards. Work would include removing the roof of the existing transit sheds, demolishing 6,300 square feet of existing concrete slab, installing silt curtains, driving the piles, pouring new pile caps and deck slab, and replacing the roof.

Both options would require removal and replacement of the transit shed’s roof and western façade, which are considered character-defining features of these historic buildings. In order to comply with the Secretary’s Standards, the existing corrugated metal siding and roofing would be removed, stored, and reinstalled to the extent feasible and where such materials and features are currently in good condition, or would be replaced in-kind if such materials are deteriorated beyond repair.

Prior to initiating the wharf improvements, the SP Bait Company would relocate operations either across the East Channel or to Fish Harbor. However, the barge would remain in its current location as permitted under the current lease.

### **1.4.5 Demolition of SCMI Facilities (Berth 260)**

Upon completion of the conversion of Berth 57 into new SCMI marine research and educational space, SCMI would be relocated from its Berth 260 location to Berth 57. The existing SCMI building and parking lot at Berth 260 in Fish Harbor on Terminal Island would be vacated. The facilities to be demolished include an existing office and research building, a storage warehouse, a workshop, and shop storage. The floating docks would remain. After structure demolition, the site would be graded and restored as required by LAHD’s agreement with SCMI. Any future development associated with this site would be subject to separate environmental review in accordance with CEQA.

## 1.4.6 Transit Shed Upgrades for Marine Research Facility and Business Incubator Space (Berths 58–60)

Under Phase II, Berths 58–60 would be converted to provide approximately 120,000 square feet for marine research facilities and approximately 60,000 square feet of marine business incubator space. These facilities would include office space, which could be utilized for temporary office space for NOAA, until Berths 70–71 are developed. The storage areas at the end of Berth 60 utilized by the water taxi service would be relocated within the general vicinity of Berth 60 to better accommodate the proposed Project.

The seawater circulation and life support system would be expanded to Berths 58–60 during Phase II, as described further in Section 2.3.4.8 of the Draft EIR. In order to achieve the conversion of Berths 58–60, construction would first involve wharf upgrades and ground improvement to meet current seismic code. Upon completion of the wharf and ground improvements, the next steps would involve upgrading the existing transit shed at Berths 58–60 to meet current seismic code, as well as renovating the building in conformance with the Secretary's Standards for buildings eligible for listing or listed on the NRHP. Conversion of Berths 58–60 would occur much as it would for Berth 57 in that tenant improvements would be constructed within the envelope of the existing transit shed.

The repairs and upgrades to the transit shed at Berths 58–60 would be designed to meet the Secretary's Standards' requirement for new work to be compatible with, yet architecturally differentiated from, the old, including plan review by a qualified consulting architectural historian for compliance with the Secretary's Standards. The building parameters discussed above for the Berth 57 transit shed would be applicable to the Berth 58–60 transit shed repairs.

## 1.4.7 Berths 70 and 71 (Westway Terminal)

Once remediation and restoration activities at Berths 70–71 are completed, the proposed Project would develop Berths 70–71 with a 50,000-square-foot facility for NOAA that would include office and laboratory space. The NOAA building would be designed in accordance with the Secretary's Standards, including plan review by a qualified consulting architectural historian for compliance with the Secretary's Standards.

The two-story building would be subordinate to the six-story Municipal Warehouse No. 1 building. The building design would reference the adjacent building's maritime industrial character, materials, and massing. As an example, appropriate design cues would be taken from the adjacent Municipal Warehouse No. 1 building, such as a rectilinear form with flat roof or monitor roof shapes, exposed exterior walls painted a light color, expressed pilasters, repetitively punched openings, and symmetrically arranged elevation. The use of overly elaborate architectural styles that purposely depart from the simple, maritime industrial character of the area would

be avoided, as would large amounts of landscaping, because landscaping is not characteristic of the area.

The Westway Terminal Administration Building (also known as the Pan-American Oil Company Pump House) would be adaptively reused by a future occupant. The Mission Revival style character of the Westway Terminal Building would be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize this building, stucco wall cladding, or stepped Mission parapet, would be avoided.

Deteriorated historic features of the Westway Terminal Building would be repaired rather than replaced, to the extent feasible. Where the severity of deterioration requires replacement of a distinctive feature, the new feature would match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features would be substantiated by documentary, physical, or pictorial evidence, to the extent available.

In addition, Berths 70–71 along the Main Channel would be made available for berthing of research vessels, with a maximum vessel length of approximately 250 feet. There are no plans to relocate current vessels in the NOAA fleet to the proposed project site, but there is a possibility that future built vessels could be home ported at City Dock No.1. Furthermore, full functioning of the site would include the regular docking of NOAA vessels home-ported in other locations but passing through Los Angeles as part of research expeditions.

Redevelopment of Berths 70–71 would also involve development of an 80,000-square-foot steel-reinforced concrete wave tank on the land side, which would be enclosed within its own five-story, 100,000-square-foot building. The wave tank would be constructed to allow the study of tsunamis, rouge waves, and the generation of wave energy, as well as vessel and platform, and coastal engineering studies. The wave tank building would include an internal crane mechanism for moving tank baffles and actuators and equipment within the building.

The base of the building would be above the mean high tide mark, which would allow for a depth of approximately 10 feet below the existing grade elevation. The first story would comprise the foundation, the next two stories would house the wave tank, the fourth story would include walkways and view platforms, and the final story would provide clearance for cranes to maneuver the wave tank baffles.

The building would be designed to be compatible with the historic materials and features of nearby historic structures to the extent feasible given its required size. For example, the design of the wave tank would reference motifs, massing, and materials of other large-scale buildings in the immediate vicinity to help maintain the industrial maritime character of the district.

## 1.4.8 Marine Research Facility Support Structures

The proposed urban marine research center is intended to support marine research and entrepreneurial business development to address the next generation of ocean-

driven challenges and opportunities such as tidal, wind, and biomass energy; aquaculture and sustainable fisheries; shoreline dynamics; and tsunamis, rouge waves, remote sensing, coastal resource management, marine pollution, marine biochemistry and pharmacology, underwater robotics, and climate change and sea-level rise. The proposed Project would not only support marine research being conducted by Southern California universities and colleges and state and national marine-related agencies, but is also intended to accommodate visiting researchers from around the nation and world.

Research would be selected, undertaken, and managed by the tenants/subtenants of City Dock No. 1. Research topics are anticipated to evolve and change over time, as new information and environmental concerns are identified. Similarly, equipment storage needs, seawater circulation system, life support system, and seawater volume needs are anticipated to fluctuate over time based on research being conducted.

#### 1.4.8.1 Marine Research Seawater In-Take, Life Support, and Treatment Systems

Initially, the seawater system, and associated life support and water treatment systems, and water would only serve Berth 57, but the intake/discharge infrastructure would be designed with enough capacity to eventually serve Berths 58–60 and 70–71 once those upgrades and new construction are completed in Phase II. The current combined volume of all Berths 57–60 and 71 marine research tanks is estimated at approximately 1,000,000 gallons.

Seawater storage tanks necessary for Berth 57 marine research operations would be installed as part of Phase I. Additional seawater storage tanks would be added as additional research and business incubator facilities are developed in Phase II in order to address the needs of those additional operations. Life support systems, such as water filtration, protein skimmers, and ozone treatment systems would also be constructed and installed, as applicable, to all City Dock No. 1 facilities, with space reserved for additional components to be added as build out of the center proceeds. Chillers and heaters would be installed for seawater systems that require specific temperature requirement.

The exact seawater system(s), life support, and treatment systems to be utilized at the facilities would be designed to meet the needs of the research planned to be conducted within each section of the proposed City Dock No. 1 facility, for which specific detailed needs are currently unknown. However, it is anticipated that the seawater systems would comprise a combination of both flow-through and recirculating capabilities. Depending on the system that is ultimately developed, the quantity of discharge, and the types of activities that occur and species handled in the research laboratories, different discharge and filtration requirements may be needed for either ocean or sewer discharge. Conservative intake and discharge estimates for each type of seawater system are included to ensure potential impacts of both potential marine research facility seawater systems were evaluated and addressed in the Draft EIR.

### 1.4.8.2 Seawater In-Take and Discharge

The seawater intake and discharge locations for the Berths 57–60 and 70–71 research facilities are proposed to be located at the southern end of City Dock No.1, slightly extending out past the rip-rap, or under the Berths 57–60 wharves, as deemed most appropriate for the final seawater system design. It is anticipated that the seawater systems would comprise a combination of both flow-through and recirculating capabilities. The intake flows would be limited to 0.5 feet per second or less, which is the velocity identified in the U.S. Environmental Protection Agency (EPA) guidelines as a rate that generally allows fish to pull away from the intake structure and results in *de minimus* impingement levels. The intake pipe size would be designed to acquire the volume of water needed, while ensuring a velocity of 0.5 feet/second or less. The in-take would be located in an area without nearby sensitive habitat, would operate at low flows and velocities, and would be screened to minimize entrainment and impingement. Should a combination of recirculation and flow-through system be used, seawater in-take volume would be significantly less.

The discharge rate for flow-through systems would use the same rate as the in-take. The discharge location would be to the west of the proposed in-take location at the southern end of City Dock No.1, or under the Berths 57–58 wharves, as deemed most appropriate for the final seawater system design.

### 1.4.8.3 Flow-Through Seawater Systems

Flow-through seawater systems would take in seawater and circulate it through the marine tanks. After circulation through the tanks, the seawater would be filtered and treated for discharge back to the harbor. This type of system minimizes the need for: (1) seawater storage tanks; (2) life support treatment systems, such as protein skimmers and ozone treatment; (3) seawater discharge to the sewer; and (4) electricity usage. Based on the experience of the existing SCMI operation, it is currently anticipated that filtering systems would be adequate to treat seawater from the flow-through system for ocean discharge.

To ensure a healthy environment for marine life, it is anticipated that the water in all tanks would need to be turned over twice daily. This would result in the need to intake and discharge 2,000,000 gallons per day, twice the volume of the City Dock No. 1 research facility tanks, every 24-hour period.

In-take seawater may be chilled, or heated, as appropriate for the tanks and research being conducted. Water that is higher or lower than ambient harbor water temperatures would be managed during discharge to achieve ambient water temperatures prior to discharge to the harbor. Seawater used in tanks that house nonnative species would either be discharged to the sewer or processed through enhanced treatment systems, as necessary to eradicate any nonnative species and prevent their introduction into harbor waters.

#### 1.4.8.4 Recirculating Seawater Systems

Recirculating seawater systems would take in seawater, circulate it through tanks, and then filter and treat the water to remove biological waste created by marine organisms maintained in the tanks through filtration, protein skimmers, and ozone treatment. The water would then be recirculated through the tanks. New seawater would be introduced on an ongoing basis as needed to maintain the appropriate water quality, and re-used seawater would be discharged. The turnover rates of seawater for recirculation systems vary based on the treatment systems used and marine organisms maintained. Based on the experience of local aquariums an annual turnover rate of between 6 and 10 is anticipated, resulting in daily intake and discharge volumes of between 16,438 and 27,397 gallons, respectively. Maximum marine research facility sanitary seawater discharge, based on a 100% recirculating seawater system with a 10 times per year turnover rate, would be 27,397 gallons/day. However, should a combination of recirculation be used, seawater discharge volume would be significantly less.

Used seawater would require treatment prior to discharge to the sanitary sewer or harbor. Should sanitary sewer discharge be involved, discharges would need to be scheduled to avoid negative impacts on the Terminal Island Treatment Plant, and would be sampled and monitored to ensure compliance with industrial waste discharge requirements for sanitary sewer discharge. In addition, filters used in the recirculated seawater cleansing process must be backwashed to maintain the cleansing ability. The backwash would require discharge to the sanitary sewer. Recirculation systems minimize water in-take and are able to better control fluctuations in water quality. However, recirculation systems are space intensive, requiring a large footprint for storage tanks and life support/treatment systems, and are energy intensive. In addition, due to the re-use of water, biological wastes are concentrated, and discharged water requires a greater level of treatment than flow-through systems for harbor discharge, resulting in additional space needs and energy resources.

As in the case of the flow-through system, in-take seawater may be chilled, or heated, as appropriate for the tanks and research being conducted. However, water temperature would not be a consideration for seawater discharged to the sanitary sewer.

#### 1.4.8.5 Wave Tank Seawater In-Take and Discharge

A separate seawater intake and treatment system would be developed for the wave tank during Phase II. The proposed wave tank has a total proposed volume of approximately 14,361,600 gallons, and the in-take is proposed to be located along the Berths 70-71 wharf in the main channel.

The gallon per day seawater in-take for filling the proposed wave tank would largely be dependent upon the time allocated to initially fill the tank. A 90-day tank fill time would require 159,574 gallons/day. The in-take flows would be limited to 0.5 feet per second or less. After the initial filling of the wave tank, ongoing seawater in-take

needs would be minimal because discharges from the wave tank would be infrequent and intermittent.

Once filled, the seawater in the wave tank would be chemically treated to eliminate marine growth within the tank and retained in stasis except on rare occasions when lower water levels would be needed for a study. On such occasions water may be discharged from the tank. Upon completion of the study, seawater would be needed to again fill the tank. Prior to discharge, chemically treated water would be filtered to ensure that chemicals used to treat the water are removed prior to discharge to the harbor or would be discharged to the sanitary sewer. Discharges would be tested and monitored to ensure compliance with all applicable discharge requirements. The wave tank harbor discharge location would be adjacent to the in-take location along the Berths 70–71 wharf in the main channel.

### **1.4.9 Waterfront Promenade**

The SPWP EIS/EIR (POLA 2009) assessed the construction of a continuous waterfront pedestrian promenade throughout the waterfront project site. Extending the promenade through a marine laboratory facility could pose special challenges because the waterfront would be utilized for vessel loading on a routine basis by forklifts, cranes, and other heavy equipment at unpredictable intervals. The approximately 6,000-linear-foot promenade would be constructed along the edge of the wharf in such a manner as to maintain public access without creating a safety hazard or otherwise unduly impeding the work that is necessary at a marine laboratory. As such, as part of the proposed Project, the proposed location of the promenade would be along East 22<sup>nd</sup> Street and Signal Street, and along the existing wharf that runs the perimeter of City Dock No. 1, to the extent feasible. The south end of Berth 60 would be developed to accommodate a public viewing area and platform.

### **1.4.10 Signal Street Improvements**

Signal Street would be repaved and realigned as part of the proposed Project. As part of the realignment, a total of approximately 195 diagonal parking spaces would be provided along one side of the street. The proposed Project would add 15 spaces adjacent to the Berth 56 Learning Center building, 40 new spaces adjacent to the Berth 57 transit shed, and 155 spaces adjacent to Berths 58–60. In addition, the existing heavy rail tracks that are embedded within Signal Street would be removed (approximately 8,000 lineal feet), and the area that is disturbed during the rail removal would be repaved.

### **1.4.11 Utility Improvements**

The proposed Project would provide new utility connections to the proposed buildings as well as the existing buildings to allow for the proposed project elements described above. All connections would be located within the proposed project site and would connect with the existing infrastructure located under Signal Street. In addition to the general utility connections, the proposed Project would potentially

upgrade the existing sewer pump servicing the proposed project site. This upgrade to the sewer pump would provide additional capacity to accommodate the proposed Project under full buildout as well as additional future projects if needed.

## 1.4.12 Sustainable Design Project Features

The proposed Project is intended to showcase LAHD's commitment to sustainability. The proposed Project would incorporate a number of sustainable elements focusing on the effort of LAHD to create a green Port. These are analyzed as part of the proposed Project within the Draft EIR. Additionally, the proposed Project would incorporate several features to enhance the final design of the proposed Project. Although not required to mitigate a significant impact, these design measures would further minimize the proposed Project's effect on surrounding uses and environmental resources. The following proposed project elements and design measures are consistent with LAHD's Sustainability Program and policies.

- Use recycled water if available for all landscaping and water feature purposes to decrease the proposed Project's use of potable water.
- Include drought-tolerant plants and shade trees in the planting palette.
- Require Leadership in Energy and Environmental Design (LEED™) certification for all new buildings as feasible by implementing and ensuring consistency with LAHD's Green Building Policy; LEED Certification (minimum Silver) is required for all new development over 7,500 square feet.
- Follow LAHD sustainable engineering design guidelines in the siting and design of new development.
- Employ LAHD sustainability measures during construction and operation and use recycled and locally derived materials for proposed project construction, while achieving recycling goals for construction and demolition debris.
- Implement energy efficient design features in the final design to help ensure energy needs are minimized to the extent feasible during construction and operation of the proposed Project.
- Implement water quality and conservation design features in the final design to help ensure water quality impacts are minimized during construction at the water's edge and in the water and operationally through the use of construction best management practices (BMPs) and bioswales.
- Implement aesthetic design features. Public art would be integrated into the proposed project area and would include sculptural pieces. Views of the waterfront would be created through the construction of the waterfront promenade around the edge of the site. The proposed Project would also implement the San Pedro Waterfront Development Design Guidelines to improve efficiency and reduce glare.
- Implement pedestrian access features. Pedestrian access to the waterfront and throughout the proposed project site would be improved through development of a waterfront promenade. The proposed Project would also be designed to

accommodate the extension of the Waterfront Red Car Line, which was previously approved under the SPWP in 2009.

## 1.5 Project Phasing and Construction Plan

The proposed Project involves a comprehensive plan for the reuse of City Dock No. 1 that would be built out in two phases. Phase I, which is anticipated to begin in late 2012 and conclude in 2016, would include the conversion of Berths 56 and 57 into a new SCMI facility and development of an interpretive center open to the public. The majority of the remaining proposed project elements would be constructed under Phase II, which is anticipated to commence construction in 2013 and conclude around 2024. Within this overall schedule, construction activities would be phased so as to minimize disruption to existing operations, which would continue to operate during the entire construction period, and to surrounding operations.

## 1.6 Monitoring and Reporting Procedures

Mitigation measures will be implemented in accordance with the LAHD Environmental Management Division's (LAHD/EMD) Environmental Compliance Plan program. Prior to release of bid specifications, construction plans shall be provided to LAHD/EMD for review and approval. Operational mitigation measures will be monitored by LAHD/EMD and any specified responsible parties designated by LAHD/EMD.

This MMRP for the Project will be in place through both phases of the Project, including design, construction, and operation, and will help ensure that project objectives are achieved. LAHD shall be responsible for administering the MMRP and ensuring that all parties comply with its provisions. LAHD may delegate monitoring activities to staff, consultants, or contractors. All construction contractors shall submit an Environmental Compliance Plan for Construction Management and EMD approval prior to beginning construction activities. This plan shall document how the contractor intends to comply with all measures applicable to the contract including application of Best Management Practices (BMPs). All mitigation measures and leasing policy requirements will be included in leases and lease amendments. LAHD also will ensure that monitoring is documented through periodic reports and that deficiencies are promptly corrected. The designated environmental monitor will track and document compliance with mitigation measures, note any problems that may result, and take appropriate action to rectify problems.

## 1.7 Mitigation Monitoring and Reporting Program Implementation

Pursuant to AB 3180, this MMRP was prepared and is accompanied by the associated report forms utilized to verify compliance with individual mitigation measures. This MMRP identifies each mitigation measure by discipline, the entity (organization) responsible for its implementation, the report/permit/certification

required for each measure, and an accompanying LAHD MMRP form used to certify completion. Certain inspections and reports may require preparation by qualified individuals, and these are specified as needed. The timing and method of verification for each measure is also specified.

# 2.0

## MITIGATION MONITORING AND REPORTING PROGRAM SUMMARY

Table 2-1. Mitigation Monitoring and Reporting Program Summary for the City Dock No. 1 Marine Research Center Project

Mitigation Measures	Timing and Methods	Responsible Parties
<p><b>3.2 Air Quality</b></p> <p><b>MM AQ-1: Implement Harbor Craft Engine Standards.</b> All harbor craft used during the construction phase of the proposed Project will, at a minimum, be repowered to meet EPA Tier 2. Additionally, where available, harbor craft will meet EPA Tier 3 or cleaner marine engine emission standards unless one of the following circumstances exists, and the contractor is able to provide proof of its existence:</p> <ul style="list-style-type: none"> <li>▪ A piece of specialized equipment is unavailable in a controlled form within the state of California, including through a leasing agreement.</li> <li>▪ A contractor has applied for necessary incentive funds to put controls on a piece of uncontrolled equipment planned for use on the proposed Project, but the application process is not yet approved, or the application has been approved but funds are not yet available.</li> <li>▪ A contractor has ordered a control device for a piece of equipment planned for use on the proposed Project, or the contractor has ordered a new piece of controlled equipment to replace the uncontrolled equipment, but that order has</li> </ul>	<p><b>Timing:</b> Throughout all construction phases.</p> <p><b>Methods:</b> This measure shall be incorporated into the LAHD contract specifications for all construction work to reduce the impact of construction diesel emissions. The contractor(s) shall submit an Environmental Compliance Plan for review and approval by LAHD prior to the beginning of any construction activity. The contractor shall adhere to these specifications and Compliance Plan throughout construction phases. Enforcement shall include oversight by the LAHD Project/Construction Manager or designated building inspectors to ensure compliance with contract specifications.</p> <p>Harbor craft will meet EPA Tier 3 or cleaner marine engine emission standards unless one of the following circumstances exists, and the contractor is able to provide proof of its existence:</p> <ol style="list-style-type: none"> <li>1. A piece of specialized equipment is unavailable in a controlled form within the state of California, including through a leasing agreement.</li> </ol>	<p><b>Implementation:</b> LAHD through Construction Contractor</p> <p><b>Monitoring and Reporting:</b> Environmental Management Division, Construction Management Division</p>

<i>Mitigation Measures</i>	<i>Timing and Methods</i>	<i>Responsible Parties</i>
<p>not been completed by the manufacturer or dealer. In addition, for this exemption to apply, the contractor must have attempted to lease controlled equipment to avoid using uncontrolled equipment, but no dealer within 200 miles of the proposed Project has the controlled equipment available for lease.</p> <p>The analysis conservatively reflects the use of engines that meet EPA Tier 2 standards.</p> <p><b>MM AQ-2: Implement Fleet Modernization for Construction Equipment.</b></p> <ul style="list-style-type: none"> <li>▪ Tier Specifications:             <ol style="list-style-type: none"> <li>a. From the start of construction through <u>December 31, 2014</u>: All off-road diesel-powered construction equipment greater than 50 hp, except marine vessels and harbor craft, will meet Tier-3 off-road emission standards at a minimum. In addition, all construction equipment greater than 50 hp will be retrofitted with a CARB-verified Level 3 Diesel Emission Control Strategy (DECS). Any emissions control device used by the contractor will achieve emissions reductions that are no less than what could be achieved by a Level 3 DECS for a similarly sized engine as defined by CARB regulations.</li> <li>b. From <u>January 1, 2015</u>: All off-road diesel-powered construction equipment greater than 50 hp, except marine vessels and harbor craft, will meet Tier-4 off-road emission standards at a minimum. Any emissions</li> </ol> </li> </ul>	<ol style="list-style-type: none"> <li>2. A contractor has applied for necessary incentive funds to put controls on a piece of uncontrolled equipment planned for use on the Project, but the application process is not yet approved, or the application has been approved, but funds are not yet available.</li> <li>3. A contractor has ordered a control device for a piece of equipment planned for use on the Project, or the contractor has ordered a new piece of controlled equipment to replace the uncontrolled equipment, but that order has not been completed by the manufacturer or dealer. In addition, for this exemption to apply, the contractor must attempt to lease controlled equipment to avoid using uncontrolled equipment, but no dealer within 200 miles of the Project has the controlled equipment available for lease.</li> </ol> <p><b>Timing:</b> Throughout all construction phases.</p> <p><b>Methods:</b> This measure shall be incorporated into the LAHD contract specifications for all construction work to reduce the impact of construction diesel emissions. The contractor(s) shall submit an Environmental Compliance Plan for review and approval by LAHD prior to the beginning of any construction activity. The contractor shall adhere to these specifications and Compliance Plan throughout construction phases. Enforcement shall include oversight by the LAHD Project/Construction Manager or designated building inspectors to ensure compliance with contract specifications.</p> <p>The construction equipment measures shall be met, unless one of the following circumstances exist and the contractor is able to provide proof that any of these circumstances exists:</p> <ol style="list-style-type: none"> <li>1. A piece of specialized equipment is unavailable within 200 miles of the Port of Los Angeles, including</li> </ol>	<p><b>Implementation:</b> LAHD through Construction Contractor</p> <p><b>Monitoring and Reporting:</b> Environmental Management Division, Construction Management Division</p>

<i>Mitigation Measures</i>	<i>Timing and Methods</i>	<i>Responsible Parties</i>
<p>control device used by the contractor will achieve emissions reductions that are no less than what could be achieved by a Level 3 DECS for a similarly sized engine as defined by CARB regulations.</p> <p>A copy of each unit's certified tier specification, BACT documentation, and CARB or SCAQMD operating permit will be provided at the time of mobilization of each applicable unit of equipment. The above "Tier Specifications" measures will be met, unless one of the following circumstances exists, and the contractor is able to provide proof that any of these circumstances exists:</p> <ul style="list-style-type: none"> <li>▪ A piece of specialized equipment is unavailable within 200 miles of the Port of Los Angeles, including through a leasing agreement. If this circumstance exists, the equipment must comply with one of the options contained in the Step-Down Schedule as shown in Table 3.2-14. At no time will equipment meet less than a Tier 1 engine standard with a CARB40-verified Level 2 DECS.</li> <li>▪ The availability of construction equipment will be reassessed in conjunction with the years listed in the above Tier Specifications on an annual basis. For example, if a piece of equipment is not available prior to January 1, 2015, the contractor will reassess this availability on January 1, 2015.</li> <li>▪ Construction equipment will incorporate, where feasible, emissions-savings technology such as hybrid drives and specific fuel economy standards.</li> </ul>	<p>through a leasing agreement. If this circumstance exists, the equipment must comply with one of the options contained in the Step-Down Schedule as shown in Table 3.2-14. At no time will equipment meet less than a Tier 1 engine standard with a CARB40-verified Level 2 DECS.</p> <ol style="list-style-type: none"> <li>2. The availability of construction equipment will be reassessed in conjunction with the years listed in the above Tier Specifications on an annual basis. For example, if a piece of equipment is not available prior to January 1, 2015, the contractor will reassess this availability on January 1, 2015.</li> <li>3. Construction equipment will incorporate, where feasible, emissions-savings technology such as hybrid drives and specific fuel economy standards.</li> </ol>	

Mitigation Measures		Timing and Methods				Responsible Parties																																													
<p><b>Table 3.2-14. Compliance Step-Down Schedule for Non-Road Construction Equipment</b></p> <table border="1"> <thead> <tr> <th>Compliance Alternative</th> <th>Engine Standard<sup>a</sup></th> <th>CARB-Verified DECS</th> <th>PM Emissions<sup>b</sup> (g/bhp-hr)</th> <th>NO<sub>x</sub> Emissions (g/bhp-hr)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Tier 4</td> <td>N/A</td> <td>0.01</td> <td>0.3</td> </tr> <tr> <td>2</td> <td>Tier 3</td> <td>Level 3</td> <td>0.02</td> <td>2.9</td> </tr> <tr> <td>3</td> <td>Tier 2</td> <td>Level 3</td> <td>0.02</td> <td>4.7</td> </tr> <tr> <td>4</td> <td>Tier 1</td> <td>Level 3</td> <td>0.06</td> <td>6.9</td> </tr> <tr> <td>5</td> <td>Tier 2</td> <td>Level 2</td> <td>0.08</td> <td>4.7</td> </tr> <tr> <td>6</td> <td>Tier 2</td> <td>Level 1</td> <td>0.11</td> <td>4.7</td> </tr> <tr> <td>7</td> <td>Tier 2</td> <td>Uncontrolled</td> <td>0.15</td> <td>4.7</td> </tr> <tr> <td>8</td> <td>Tier 1</td> <td>Level 2</td> <td>0.2</td> <td>6.9</td> </tr> </tbody> </table> <p><sup>a</sup> Equipment less than Tier 1, Level 2 will not be permitted.  <sup>b</sup> Stated emission levels are for engine hp ratings to 176 bhp and above. Emission levels for engine bhp ratings below 176 hp are marginally higher (0.02–0.08 g/bhp-hr depending on hp, Tier, and Vehicle Diesel Emission Control (VDEC) level).                      g/bhp-hr = grams per brake horse power hour</p>							Compliance Alternative	Engine Standard <sup>a</sup>	CARB-Verified DECS	PM Emissions <sup>b</sup> (g/bhp-hr)	NO <sub>x</sub> Emissions (g/bhp-hr)	1	Tier 4	N/A	0.01	0.3	2	Tier 3	Level 3	0.02	2.9	3	Tier 2	Level 3	0.02	4.7	4	Tier 1	Level 3	0.06	6.9	5	Tier 2	Level 2	0.08	4.7	6	Tier 2	Level 1	0.11	4.7	7	Tier 2	Uncontrolled	0.15	4.7	8	Tier 1	Level 2	0.2	6.9
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Mitigation Measures	Timing and Methods	Responsible Parties
<p><b>MM AQ-3: Implement Additional Fugitive Dust Controls.</b> The calculation of fugitive dust (PM10) from proposed project earth-moving activities assumes a 61% reduction from uncontrolled levels to simulate three times per day watering of the site and use of other measures (listed below) to ensure compliance with SCAQMD Rule 403 (SCAQMD 2005).</p> <p>The construction contractor will reduce fugitive dust emissions by 74% from uncontrolled levels (SCAQMD 2007a). The proposed project construction contractor will specify dust-control methods that will achieve this control level in a SCAQMD Rule 403 dust control plan and will include holiday and weekend periods when work may not be in progress.</p> <p>Measures to reduce fugitive dust include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>▪ Active grading sites will be watered every two hours.</li> <li>▪ Contractors will apply approved non-toxic chemical soil stabilizers according to manufacturer's specifications to all inactive construction areas or replace groundcover in disturbed areas (previously graded areas inactive for ten days or more).</li> <li>▪ Construction contractors will provide temporary wind fencing around sites being graded or cleared.</li> <li>▪ Trucks hauling dirt, sand, or gravel will be covered in accordance with Section 23114 of the California Vehicle Code.</li> <li>▪ Construction contractors will install wheel washers where vehicles enter and exit unpaved roads onto paved roads, or wash off tires of vehicles and any equipment leaving the construction site. Pave road and road shoulders.</li> <li>▪ The use of clean-fueled sweepers will be required pursuant to SCAQMD Rule 1186 and Rule 1186.1 certified street sweepers. Sweep streets at the end of each day if visible soil is carried onto paved roads on site or on roads adjacent to the site to reduce fugitive dust emissions.</li> </ul>	<p><b>Timing:</b> Throughout all construction phases.</p> <p><b>Methods:</b> This measure shall be incorporated into the LAHD contract specifications for all construction work to reduce the impact of construction diesel emissions. The contractor(s) shall submit an Environmental Compliance Plan for review and approval by LAHD prior to the beginning of any construction activity. The contractor shall adhere to these specifications and Compliance Plan throughout construction phases. Enforcement shall include oversight by the LAHD Project/Construction Manager or designated building inspectors to ensure compliance with contract specifications.</p>	<p><b>Implementation:</b> LAHD through Construction Contractor</p> <p><b>Monitoring and Reporting:</b> Environmental Management Division, Construction Management Division</p>

Mitigation Measures	Timing and Methods	Responsible Parties
<ul style="list-style-type: none"> <li>▪ A construction relations officer will be appointed to act as a community liaison concerning onsite construction activity including resolution of issues related to PM10 generation.</li> <li>▪ Traffic speeds on all unpaved roads will be reduced to 15 mph or less.</li> <li>▪ Temporary traffic controls such as a flag person will be provided during all phases of construction to maintain smooth traffic flow.</li> <li>▪ Construction activities that affect traffic flow on the arterial system will be conducted during off-peak hours to the extent practicable.</li> <li>▪ The grading contractor will suspend all soil disturbance activity when winds exceed 25 mph or when visible dust plumes emanate from a site; disturbed areas will be stabilized if construction is delayed.</li> </ul> <p><b>MM AQ-4: Implement SCAQMD's Super-Compliant Architectural Coating Standard and Use of Low VOC Products.</b> Architectural coatings used on site will meet SCAQMD's super-compliant VOC standard of 10 grams of VOC per liter. The use of water-based or low VOC cleaning products, where feasible, will result in further VOC reduction. The reductions associated with the use of water-based or low VOC cleaning products were conservatively excluded from emission calculations.</p>	<p><b>Timing:</b> Throughout all construction phases and operations.</p> <p><b>Methods:</b> This measure shall be incorporated into the LAHD contract specifications for all construction work and improvements during operation to reduce the impact related to architectural coatings and the use of VOC products. The final design plans shall include specifications for use of super-compliant VOC architectural coatings and cleaning products. The contractor shall adhere to these specifications throughout construction phases. Enforcement shall include oversight by the LAHD Project/Construction Manager or designated building inspectors to ensure compliance with contract specifications.</p>	<p><b>Implementation:</b> LAHD through Construction Contractor (during construction) and tenant (during operations)</p> <p><b>Monitoring and Reporting:</b> Environmental Management Division, Construction Management Division</p>

Mitigation Measures	Timing and Methods	Responsible Parties
<p><b>MM AQ-5: Implement the Clean Trucks Program for Construction Haul Trucks.</b> Heavy duty diesel trucks used for hauling must meet the EPA 2007 emission standards for on road heavy duty diesel engines (EPA 2006) by 2012. The CTP applies to heavy duty trucks used during construction activities.</p>	<p><b>Timing:</b> Throughout all construction phases  <b>Methods:</b> This measure shall be incorporated into the LAHD contract specifications for all construction work to reduce the impact of construction diesel emissions. The contractor(s) shall submit an Environmental Compliance Plan for review and approval by LAHD prior to the beginning of any construction activity. The contractor shall adhere to these specifications and Compliance Plan throughout construction phases. Enforcement shall include oversight by the LAHD Project/Construction Manager or designated building inspectors to ensure compliance with contract specifications.</p>	<p><b>Implementation:</b> LAHD through Construction Contractor  <b>Monitoring and Reporting:</b> Environmental Management Division, Construction Management Division</p>
<p><b>MM AQ-6: Implement Best Management Practices.</b> The following types of measures are required on construction equipment (including on-road trucks), as determined feasible and appropriate:</p> <ul style="list-style-type: none"> <li>▪ Use diesel oxidation catalysts and catalyzed diesel particulate trap;</li> <li>▪ Maintain equipment according to manufacturers' specifications</li> <li>▪ Restrict idling of on-road heavy-duty trucks to a maximum of five minutes when not in use</li> <li>▪ Install high-pressure fuel injectors on construction equipment vehicles</li> <li>▪ Re-route construction trucks away from congested streets or sensitive receptor areas</li> </ul> <p>LAHD will implement a process by which to select additional BMPs to further reduce air emissions during construction. LAHD will determine the BMPs once the contractor identifies and secures a final equipment list and project scope. LAHD will then meet with the contractor to identify potential BMPs and work with the contractor to include such measures in the contract. BMPs will be based on BACT guidelines and may</p>	<p><b>Timing:</b> Throughout all construction phases.  <b>Methods:</b> This measure shall be incorporated into the LAHD contract specifications for all construction work to reduce the impact of construction diesel emissions. The contractor(s) shall submit an Environmental Compliance Plan for review and approval by LAHD prior to the beginning of any construction activity. The contractor shall adhere to these specifications and Compliance Plan throughout construction phases. Enforcement shall include oversight by the LAHD Project/Construction Manager or designated building inspectors to ensure compliance with contract specifications.</p>	<p><b>Implementation:</b> LAHD through Construction Contractor  <b>Monitoring and Reporting:</b> Environmental Management Division, Construction Management Division</p>

<i>Mitigation Measures</i>	<i>Timing and Methods</i>	<i>Responsible Parties</i>
<p>also include changes to construction practices and design to reduce or eliminate environmental impacts.</p>		
<p><b>MM AQ-7: Implement General Mitigation Measure.</b> For any of the above mitigation measures, if a CARB-certified technology becomes available and is shown to be as good as or better in terms of emissions performance than the existing measure, the technology could replace the existing measure pending approval by LAHD. For construction, measures will be set at the time a specific construction contract is advertised for bid.</p>	<p><b>Timing:</b> Throughout all construction phases and on annual checks during operations.  <b>Methods:</b> This measure shall be incorporated into the LAHD contract specifications for all construction work. The contractor(s) shall submit an Environmental Compliance Plan for review and approval by LAHD prior to the beginning of any construction activity. The contractor shall adhere to these specifications and Compliance Plan throughout construction phases. Enforcement shall include oversight by the LAHD Project/Construction Manager or designated building inspectors to ensure compliance with contract specifications.</p>	<p><b>Implementation:</b> LAHD through Construction Contractor  <b>Monitoring and Reporting:</b> Environmental Management Division, Construction Management Division</p>
<p><b>MM GHG-1: Solar Panels.</b> The Port shall review the feasibility of including the City Dock site on their Inventory of Potential PV Solar Sites at POLA from their December 2007 Climate Action Plan. This measure is not quantified.</p>	<p><b>Timing:</b> Prior to approving building design  <b>Methods:</b> LAHD shall review the feasibility of including the City Dock site on their Inventory of Potential PV Solar Sites at POLA prior to initiation of construction of buildings. If listed as a potential PV solar site, LAHD will undertake a final evaluation regarding installation of PV solar panels during the building design process.</p>	<p><b>Implementation:</b> LAHD through Engineering and Construction Contractors  <b>Monitoring and Reporting:</b> Environmental Management Division, Engineering Division, Construction Management Division</p>
<p><b>3.3 Biological Resources</b></p>		
<p><b>MM BIO-1. Avoid Marine Mammals.</b> Via the construction contract and the development permit the LAHD will require that pile driving activities for construction of the proposed Project include establishment of a safety zone and monitoring of the area surrounding the operations for pinnipeds by a qualified marine biologist. The monitor will have the authority to halt operations unless, in the opinion of the Port's project engineer (Engineer), halting operations would be unsafe. The safety zone will extend out to 500 meters from the site of the pile driving, wherever that activity is taking place.                      Before pile driving is scheduled to commence, observers on</p>	<p><b>Timing:</b> Throughout all construction phases.  <b>Methods:</b> This measure shall be incorporated into LAHD contract specifications for all construction work. The construction contractor shall instruct construction personnel as part of normal construction procedures. LAHD shall arrange for the presence of an EMD approved biologist(s) to monitor during construction activity.</p>	<p><b>Implementation:</b> LAHD through Construction Contractor  <b>Monitoring and Reporting:</b> Environmental Management Division, Construction Management Division</p>

<i>Mitigation Measures</i>	<i>Timing and Methods</i>	<i>Responsible Parties</i>
<p>shore or in boats will survey the safety zone to ensure that no marine mammals are present. If marine mammals are observed within the safety zone, driving will be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor will wait at least 15 minutes, and if no marine mammals are seen, it may be assumed that the animal has moved beyond the safety zone. This 15-minute criterion is based on a study indicating that pinnipeds dive for a mean time of up to about 4 minutes; the 15-minute delay will allow a more than sufficient period of observation to be reasonably sure the animal has left the vicinity.</p> <p>If pinnipeds enter the safety zone after pile has begun, pile driving will continue. The monitor will record the species and number of individuals observed and make note of their behavior patterns. If animals appear distressed, and if it is operationally safe to do so, the monitor will inform the Engineer that pile driving will cease until the animal leaves the area. In certain circumstances pile driving cannot be terminated safely and without severe operational difficulties. Therefore, if it is deemed operationally unsafe by the Engineer to discontinue pile driving activities, and a pinniped is observed in the safety zone, pile driving activities will continue <u>only</u> until the Engineer deems it safe to discontinue.</p>		
<p><b>MM BIO-2. Minimize In-water Pile Driving Noise.</b> Via the construction contract the LAHD will require the contractor to use sound abatement techniques to reduce both noise and vibrations from pile driving activities. In addition to the “soft-start technique, which will be required at the initiation of each pile driving event or after breaks of more than 15 minutes, sound abatement techniques will include, but not be limited to, vibration or hydraulic insertion techniques, bubble curtains, isolation cage technology, sound aprons, and use of a cushion block on top of the pile being driven. Use of these techniques will reduce both the intensity of the underwater sound pressure levels radiating from the pile driving location and the area in which levels would exceed the Level A and B harassment levels</p>	<p><b>Timing:</b> Throughout all construction phases.</p> <p><b>Methods:</b> This measure shall be incorporated into LAHD contract specifications for all construction work. The construction contractor shall instruct construction personnel as part of normal construction procedures. LAHD shall arrange for the presence of an EMD approved biologist(s) to monitor during construction activity.</p>	<p><b>Implementation:</b> LAHD through Construction Contractor</p> <p><b>Monitoring and Reporting:</b> Environmental Management Division, Construction Management Division</p>

Mitigation Measures for marine mammals.	Timing and Methods	Responsible Parties
<p><b>MM BIO-3. Conduct Nesting Bird Surveys.</b> Between February 15 and September 1 and prior to ground-disturbing activities, a qualified biologist will conduct surveys for the presence of nesting birds protected under the MBTA and/or similar provisions of the California Fish and Game Code within areas of the proposed project study area that contain potential nesting bird habitat. Surveys will be conducted 24 hours prior to the clearing, removal, or grubbing of any vegetation or ground disturbance. If active nests are located, then a barrier installed at a 50-foot radius from the nest(s) will be established and the tree/location containing the nest will be marked and will remain in place and undisturbed until a qualified biologist performs a survey to determine that the young have fledged or the nest is no longer active.</p>	<p><b>Timing:</b> Throughout all construction phases.  <b>Methods:</b> This measure shall be incorporated into LAHD contract specifications for all construction work. The construction contractor shall instruct construction personnel as part of normal construction procedures. LAHD shall arrange for the presence of an EMD approved biologist(s) to monitor during construction activity.</p>	<p><b>Implementation:</b> LAHD Environmental Management Division  <b>Monitoring and Reporting:</b> Environmental Management Division, Construction Management Division</p>
<b>3.4 Cultural Resources</b>		
<p><b>MM CR-1. HABS/HAER Recordation of Municipal Pier No. 1 Historic District Setting.</b> Prior to construction of the wave tank and undertaking the Berths 57-60 wharf upgrades and ground improvements, LAHD will record the existing setting of the Municipal Pier No. 1 Historic District, including recordation of the western elevation of the wharf, in accordance with the federal Historic American Building Survey/Historic American Engineering Record (HABS/HAER) program. This program consists of large-format, black and white photographs, preparation of a historic resources report, and archiving of both at local repositories of historical information.</p>	<p><b>Timing:</b> Prior to Project construction of the wave tank and Berths 57-60 wharf upgrades and ground improvements.  <b>Methods:</b> LAHD shall retain a qualified historian to record and document the historic significance of Municipal Pier No. 1 in accordance with HABS/HAER program.</p>	<p><b>Implementation:</b> LAHD Environmental Management Division  <b>Monitoring and Reporting:</b> Environmental Management Division</p>
<b>3.7 Hazards and Hazardous Materials</b>		
<p><b>MM RISK-1. Remove all hazardous materials with flashpoints below 140°F from Mike's fueling station.</b> Mike's fueling station will cease to handle hazardous materials with flashpoints below 140°F per the letter sent from LAHD to Mike Albano dated June 16, 2008, regarding the successor permit to revocable permit No. 98-14 prior to the operation of the proposed waterfront promenade. Products with a flashpoint</p>	<p><b>Timing:</b> Prior to operation of the waterfront promenade in the vicinity of City Dock No. 1.  <b>Methods:</b> LAHD will verify that products with flashpoints below 140°F have been removed from Mike's fueling station prior to opening the waterfront promenade in the vicinity of City Dock No. 1.</p>	<p><b>Implementation:</b> LAHD through permit to Mike's Marine.  <b>Monitoring and Reporting:</b> Environmental Management Division, Real Estate Division</p>

<i>Mitigation Measures</i>	<i>Timing and Methods</i>	<i>Responsible Parties</i>
<p>below 140°F will not be permitted within the project area (i.e., San Pedro Waterfront Project area). The successor permit to RP No. 98-14 to allow the operation for Mike's fueling station and continued lease of Mike's fueling station will only allow handling of products above said threshold. Prior to the operation of the waterfront promenade, Mike's fueling station will submit written confirmation identifying the complete removal of all hazardous materials on site with a flashpoint below 140°F as directed by the letter dated June 16, 2008. At the time of the written confirmation, Mike's fueling station will also provide copies of all Material Safety Data Sheets (MSDS) for each product stored in bulk on site.</p>		
<b>3.8 Land Use and Planning</b>		
<p>Implement Mitigation Measure <b>MM RISK-1</b> (see Section 3.7, "Hazards and Hazardous Materials")</p>	<p><b>Timing:</b> Prior to operation of the waterfront promenade in the vicinity of City Dock No. 1. <b>Methods:</b> LAHD will verify that products with flashpoints below 140°F have been removed from Mike's fueling station prior to opening the waterfront promenade in the vicinity of City Dock No. 1.</p>	<p><b>Implementation:</b> LAHD through permit to Mike's Marine. <b>Monitoring and Reporting:</b> Environmental Management Division, Real Estate Division</p>
<b>3.9 Noise</b>		
<p><b>MM NOI-1: Maintain Construction Equipment.</b> All construction equipment powered by internal combustion engines will be properly muffled and maintained.</p>	<p><b>Timing:</b> Throughout all construction phases. <b>Methods:</b> This measure shall be incorporated into contract specifications for all construction work to reduce noise impacts. The contractor(s) shall submit an Environmental Compliance Plan for review and approval by LAHD prior to the beginning of any construction activity. The contractor shall adhere to these specifications and Compliance Plan throughout construction phases. Enforcement shall include oversight by the LAHD Project/Construction Manager or designated building inspectors to ensure compliance with contract specifications.  The construction contractor shall ensure that the proposed pile driving equipment and measures are used during construction. LAHD shall evaluate the contractor</p>	<p><b>Implementation:</b> LAHD through Construction Contractor <b>Monitoring and Reporting:</b> Environmental Management Division, Construction Management Division</p>

<i>Mitigation Measures</i>	<i>Timing and Methods</i>	<i>Responsible Parties</i>
<p><b>MM NOI-2: Locate Equipment away from Noise-Sensitive Land Uses.</b> All stationary noise-generating construction equipment, such as air compressors and portable power generators, will be located as far as practical from existing noise-sensitive land uses.</p>	<p><b>Timing:</b> Throughout all construction phases.  <b>Methods:</b> This measure shall be incorporated into contract specifications for all construction work to reduce noise impacts. The contractor(s) shall submit an Environmental Compliance Plan for review and approval by LAHD prior to the beginning of any construction activity. The contractor shall adhere to these specifications and Compliance Plan throughout construction phases. Enforcement shall include oversight by the LAHD Project/Construction Manager or designated building inspectors to ensure compliance with contract specifications.                      The construction contractor shall ensure that the proposed pile driving equipment and measures are used during construction. LAHD shall evaluate the contractor proposals with regard to reducing pile driving noise. LAHD would subsequently perform periodic inspections to ensure that the approved equipment and methods are being followed and to monitor the noise levels for compliance with the proposed noise levels.</p>	<p><b>Implementation:</b> LAHD through Construction Contractor  <b>Monitoring and Reporting:</b> Environmental Management Division, Construction Management Division</p>
<p><b>MM NOI-3: Utilize Quiet Equipment.</b> Quiet construction equipment (such as vibratory pile driving or pneumatic tools) will be utilized where practicable. Noise limits established in the City of Los Angeles Noise Ordinance will be fully complied with.</p>	<p><b>Timing:</b> Throughout all construction phases.  <b>Methods:</b> This measure shall be incorporated into contract specifications for all construction work to reduce noise impacts. The contractor(s) shall submit an Environmental Compliance Plan for review and approval by LAHD prior to the beginning of any construction activity. The contractor shall adhere to these specifications and Compliance Plan throughout construction phases. Enforcement shall include oversight by the LAHD Project/Construction Manager or designated building inspectors to ensure compliance with</p>	<p><b>Implementation:</b> LAHD through Construction Contractor  <b>Monitoring and Reporting:</b> Environmental Management Division, Construction Management Division</p>

Mitigation Measures	Timing and Methods	Responsible Parties
<p><b>MM NOI-4: Notify Sensitive Receptors.</b> Cabrillo Way Marina liveboards will be notified of the construction schedule in writing prior to the beginning of construction</p>	<p>contract specifications. The construction contractor shall ensure that the proposed pile driving equipment and measures are used during construction. LAHD shall evaluate the contractor proposals with regard to reducing pile driving noise. LAHD would subsequently perform periodic inspections to ensure that the approved equipment and methods are being followed and to monitor the noise levels for compliance with the proposed noise levels.</p> <p><b>Timing:</b> Prior to initiation of construction phases. <b>Methods:</b> This measure shall be incorporated into contract specifications for all construction work to reduce noise impacts. The contractor will be required to notify Cabrillo Way Marina liveboards of potential noise impacts prior to initiation of construction activities. Enforcement shall include oversight by the LAHD Project/Construction Manager or designated building inspectors to ensure compliance with contract specifications.</p> <p>The construction contractor shall ensure that the proposed pile driving equipment and measures are used during construction. LAHD shall evaluate the contractor proposals with regard to reducing pile driving noise. LAHD would subsequently perform periodic inspections to ensure that the approved equipment and methods are being followed and to monitor the noise levels for compliance with the proposed noise levels.</p>	<p><b>Implementation:</b> LAHD through Construction Contractor <b>Monitoring and Reporting:</b> Environmental Management Division, Construction Management Division</p>
<p><b>3.11 Transportation and Circulation—Ground</b></p>		
<p><b>MM TC-1: Develop and implement a Traffic Control Plan throughout proposed project construction.</b> In accordance with the City's policy on street closures and traffic diversion for arterial and collector roadways, the construction contractor will prepare a traffic control plan (to be approved by City and County engineers) before construction. The traffic control plan will include:</p>	<p><b>Timing:</b> Prior to construction activities, to be implemented during construction. <b>Methods:</b> The construction contractor(s) shall prepare a construction traffic control plan to be approved by LAHD Engineering and the Los Angeles Department of Transportation (LADOT), detailing methods to minimize traffic congestion and access restrictions during</p>	<p><b>Implementation:</b> LAHD <b>Monitoring and Reporting:</b> LAHD Environmental Management and Engineering Divisions</p>

<i>Mitigation Measures</i>	<i>Timing and Methods</i>	<i>Responsible Parties</i>
<ul style="list-style-type: none"> <li>▪ a street layout showing the location of construction activity and surrounding streets to be used as detour routes, including special signage;</li> <li>▪ a tentative start date and construction duration period for each phase of construction;</li> <li>▪ the name, address, and emergency contact number for those responsible for maintaining the traffic control devices during the course of construction; and</li> <li>▪ written approval to implement traffic control from other agencies, as needed.</li> </ul> <p>Additionally, the traffic control plan will include the following stipulations:</p> <ul style="list-style-type: none"> <li>▪ provide access for emergency vehicles at all times;</li> <li>▪ avoid creating additional delay at intersections currently operating at congested conditions, either by choosing routes that avoid these locations, or constructing during nonpeak times of day;</li> <li>▪ maintain access for driveways and private roads, except for brief periods of construction, in which case property owners will be notified;</li> <li>▪ provide adequate off-street parking areas at designated staging areas for construction-related vehicles;</li> <li>▪ maintain pedestrian and bicycle access and circulation during proposed project construction where safe to do so; if construction encroaches on a sidewalk, a safe detour will be provided for pedestrians at the nearest crosswalk; if construction encroaches on a bike lane, warning signs will be posted that indicate bicycles and vehicles are sharing the roadway;</li> <li>▪ utilize flag persons wearing OSHA-approved vests and using a "Stop/Slow" paddle to warn motorists of construction activity;</li> <li>▪ maintain access to Metro and LADOT transit services and</li> </ul>	<p>construction.</p>	

Mitigation Measures	Timing and Methods	Responsible Parties
<p>ensure that public transit vehicles are detoured;</p> <ul style="list-style-type: none"> <li>▪ post standard construction warning signs in advance of the construction area and at any intersection that provides access to the construction area;</li> <li>▪ post construction warning signs in accordance with local standards or those set forth in the Manual on Uniform Traffic Control Devices (Federal Highway Administration 2009) in advance of the construction area and at any intersection that provides access to the construction area;</li> <li>▪ during lane closures, have contractor and/or LAHD notify LAFD and LAPD, as well as the Los Angeles County Sheriff's and Fire Departments, of construction locations to ensure that alternative evacuation and emergency routes are designed to maintain response times during construction periods, if necessary;</li> <li>▪ provide written notification to contractors regarding appropriate routes to and from construction sites, and weight and speed limits for local roads used to access construction sites; submit a copy of all such written notifications to the City of Los Angeles Planning Department; and</li> <li>▪ repair or restore the road right-of-way to its original condition or better upon completion of the work.</li> </ul>		

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## EXHIBIT L NEW CITY IMPROVEMENTS

City shall be responsible for providing the following improvements pursuant to Section 7.1.1 of the Agreement and on the schedule set forth herein.

1. Parcels 1A, 1B and 2A City Environmentally Regulated Material Remediation:  
The City shall pay a maximum of six million dollars (\$6,000,000) in remediation costs of Environmentally Regulated Material, including addressing soil, groundwater, hazardous building materials, on Parcels 1A, 1B and 2A related to both New City Improvements and Tenant Improvements. Within sixty (60) days of the date the City determines that remediation costs are estimated to exceed six million dollars, City shall notify Tenant in writing of City's finding. City and Tenant shall schedule a meeting within thirty (30) days of such written notice to discuss opportunities and strategies to move the Project forward in consideration of the City's finding.

Any increase in City funding of known estimated remediation costs of Environmentally Regulated Material, including addressing soil, groundwater, hazardous building materials, on Parcels 1A, 1B, and 2A shall require approval of the Board.

In the event that unknown contamination is encountered during construction of New City Improvements that exceeds the maximum six million dollar Environmentally Regulated Material remediation amount, City at its sole option, may proceed with remediation through its construction contract process.

Tenant shall not be responsible for any City Environmentally Regulated Material remediation costs, unless approved by Tenant in writing in advance.

2. Parcel 2A New City Improvements: Upon City's determination that Tenant is in compliance with the procedures established in Section 3.2.1 of the Agreement necessary for Tenant to accept Parcel 2A, City shall initiate the following New City Improvements:
  - (a) Signal Street Improvements: City shall improve Signal Street from 22<sup>nd</sup> Street to the Parcel 2 and 3 boundary line (north side of Parcel 3) by: (i) repaving and restriping the street; (ii) installing parking on the west side of street; (iii) installing storm drains as appropriate; (iv) undergrounding overhead power lines; and (v) removing existing heavy rail lines from street. New City Improvements are limited to improvements from street curb to street curb and do not include sidewalks.

(b) Parcel 2A Wharf and Ground Improvements: City shall rehabilitate, repair, and perform seismic upgrades to the existing approximately 625 linear feet of potentially historic timber and concrete wharf fronting Berth 57 (western edge of Parcel No. 2A) and perform associated bulkhead and ground improvements (below grade work only). The transit shed Warehouse 57 foundation, which consists of wharf and landside piles with the shed partially sitting on the existing wharf structure, shall be structurally and seismically designed to meet the then most current City of Los Angeles Building Code for the planned uses. City shall not be required to design New City Improvements to, or process New City Improvements through, the Division of the State Architect provisions governing seismic rehabilitation of schools and/or universities.

- i. Building Code Updates: New City of Los Angeles Building Codes, incorporating ASCE 7-10, applicable to the Project are anticipated to be adopted by the City of Los Angeles in mid-2014, with further updates occurring on an anticipated 5-year cycle. City shall pay a maximum of fifteen million dollars (\$15,000,000) of incremental cost increases necessitated to implement such new Building Code requirements for Parcel 2A Wharf and Ground Improvements. If City determines that such incremental cost increases necessitated for implementation of the new City of Los Angeles Building Code requirements are estimated to exceed fifteen million dollars, City shall notify Tenant in writing of City's finding. City and Tenant shall schedule a meeting within thirty (30) days of such written notice to discuss opportunities and strategies to move the Project forward in consideration of the City's finding. The City shall separately track all incremental cost increases associated with new post 2013-Building Code requirements. Consistent with the provisions of Agreement Section 3.11, the City shall work cooperatively with the Tenant in an effort to minimize overall City and Tenant construction costs.

(c) Schedule: City shall complete the Parcel 2A New City Improvements on the following schedule:

- i. Design of the Parcel 2A New City Improvements within twenty-four (24) months of the date the City determines that Tenant is in compliance with the procedures

established in Section 3.2.1 of this Agreement necessary for Tenant to accept Parcel 2A.

- ii. Construction of the Parcel 2A New City Improvements within twenty-six (26) months following completion of the design pursuant to subsection (ii) above.

3. Parcels 3 and 4 New City Improvements: Upon City's determination that Tenant is in compliance with the procedures established in Section 3.2.1 of this Agreement necessary for Tenant to accept Parcel 3 and 4, City shall initiate the following:

- (a) Within ninety (90) days of the date the City determines that Tenant is in compliance with the procedures established in Section 3.2.1 of this Agreement necessary for Tenant to accept Parcels 3 and 4, Harbor Department staff shall prepare a funding recommendation for the Parcels 3 and 4 New City Improvements detailed in Section 3(c), (d) and (e) of this Exhibit L, based upon Harbor Department's revenues and needs at the time, for Board consideration. The parties recognize and agree that nothing in this section is intended to supersede City Charter Section 603(b) or impair the authority or responsibility of the Board to control the Harbor Department's funds and their power to appropriate and expend Harbor Department funds.

- (b) In the event that the Board does not approve funding for Parcels 3 and 4 New City Improvements, the City and Tenant shall work together to identify other opportunities and strategies to move the Project forward.

- (c) Signal Street Improvements: In the event that the Board approves funding for Parcels 3 and 4 New City Improvements, City shall improve Signal Street from the Parcel 2 and 3 boundary line (northern boundary side of Parcel 3) to the southern boundary line of Parcel No. 4 by: (i) repaving and restriping the street; (ii) installing parking on the west side of street; (iii) installing storm drains as appropriate; (iv) undergrounding overhead power lines; and (v) removing existing heavy rail lines from street. New City Improvements are limited to improvements from street curb to street curb and do not include sidewalks.

- (d) Environmentally Regulated Material Remediation: The City shall pay a maximum of six million dollars (\$6,000,000) in remediation costs of Environmentally Regulated Material, including addressing soil, groundwater, hazardous building materials, on Parcels 3 and 4 related to both New City Improvements and Tenant Improvements. Within sixty (60) days of the date the City determines that remediation costs are estimated to exceed six million dollars, City shall notify Tenant in writing of City's finding. City and Tenant shall schedule a meeting within thirty (30) days of

such written notice to discuss opportunities and strategies to move the Project forward in consideration of the City's finding.

Any increase in City funding of known estimated remediation costs of Environmentally Regulated Material, including addressing soil, groundwater, hazardous building materials, on Parcels 3 and 4 shall require approval of the Board.

In the event that unknown contamination is encountered during construction of New City Improvements that exceeds the maximum six million dollar hazardous materials remediation amount, City at its sole option, may proceed with remediation through its construction contract process.

Tenant shall not be responsible for any City hazardous materials remediation costs, unless approved by Tenant in writing in advance.

(e) **Parcels 3 and 4 Wharf and Ground Improvements:** In the event the that the Board approves funding for Parcels 3 and 4 New City Improvements, City shall rehabilitate, repair, perform seismic upgrades to the existing approximately 1,860 linear feet of historic timber and concrete wharf fronting Berths 58-60 (western edge of Parcel Nos. 3 and 4) and perform associated ground improvements (below grade work only). The transit shed Warehouses 58-60 foundation, which consists of wharf and landside piles with the shed partially sitting on the existing wharf structure, shall be structurally and seismically designed to meet the then most current City of Los Angeles Building Code for the planned uses. City shall not be required to design City Improvements to, or process New City Improvements through, the Division of the State Architect provisions governing seismic rehabilitation of schools and/or universities.

(f) **Schedule:** In the event the that the Board approves funding for Parcels 3 and 4 New City Improvements, City shall complete:

- i. Design of the Parcels 3 and 4 New City Improvements within twenty-four (24) months of the date of Board approval.
- ii. Construction of the Parcels 3 and 4 New City Improvements within twenty-six (26) months following completion of the design pursuant to subsection (ii) above.
- iii. The City at its sole option may complete Parcels 3 and 4 Signal Street Improvements prior to Tenant seeking acceptance of Parcels 3 and 4.

4. Parcels 5, 6, 7 and 8 Environmentally Regulated Material Remediation:  
Tenant acknowledges that Parcels 5 and 6 has known soil and groundwater

contamination. Tenant further acknowledges that Parcels 7 and 8 may or may not have sediment contamination. Tenant further acknowledges that Tenant has reviewed the soil and groundwater reports related to Parcels 5 and 6 provided to the Los Angeles Regional Water Quality Control Board by the City. City shall remediate soils and groundwater contamination on Parcels 5 and 6 to standards established by the Los Angeles Regional Water Control Board for commercial uses. City shall remediate contaminated sediments on Parcels 7 and 8, if any, to standards established by the Los Angeles Regional Water Control Board. City currently estimates completion of such remediation activities within ten (10) years of the Effective Date of this Agreement. In the event soil and groundwater remediation requires significant additional time, or Regional Water Control Board remediation standards are modified, City shall notify Tenant in writing within ninety (90) days. City and Tenant shall schedule a meeting within thirty (30) days of such written notice, to discuss opportunities and strategies to move the Project forward in consideration of the soil and groundwater remediation issues identified.

5. Parcels 4A, 5, 6, 7 and 8: No New City Improvements are required.

## EXHIBIT M TENANT IMPROVEMENTS

Pursuant to Section 7.2.1 of this Agreement, Tenant shall be responsible for providing the following improvements, in compliance with applicable laws, rules and regulations, and the requirements of the Agreement, on the schedule stated herein.

### A. General Requirements

1. Compliance with Secretary of Interior Standards: Tenant acknowledges and understands that the Premises is eligible for listing in the California Register of Historical Resources as a Historic District. Further, several Existing City Improvements identified in Exhibit C are also independently eligible for listing in the California Register of Historical Resources. The Tenant acknowledges that Tenant has been provided a copy of the certified Final Environmental Impact Report SCH#2010121013 completed for the Project (FEIR) and the Final Port of Los Angeles Municipal Pier No. 1 Historic Resources Evaluation Report, prepared by ESA for the Port of Los Angeles dated February 2011.

As specifically discussed in FEIR Section 3.4 Cultural resources, all Tenant Improvements shall conform to the Secretary's Standards for buildings eligible for listing on the California Register of Historical Resources or the National Register of Historic Places and undergo plan review by a qualified consulting architectural historian. The Tenant at its sole cost shall retain a qualified consulting architectural historian to review all Tenant plans and specifications for compliance with the Secretary's Standards.

2. Compliance with Harbor Department Development Policies: Tenant acknowledges and understands that the Harbor Department has established several policies related to development activities as listed in Exhibit K-A, and generally outlined in the FEIR. Tenant shall comply with such Harbor Department policies, as applicable to the development of Tenant Improvements.
3. Public Promenade Design Approval Process: The public promenade shall be designed consistent with the Harbor Department's LA Waterfront Design Standards (available at [http://www.lawaterfront.org/images/LAWaterfront\\_Design\\_Guidelines2011.pdf](http://www.lawaterfront.org/images/LAWaterfront_Design_Guidelines2011.pdf)). Tenant shall submit public promenade design plans and specifications to the Harbor Engineer for review and approval prior to holding any public promenade design workshops as required by Section (A)(4) of this Exhibit M. Tenant shall respond to and modify the public promenade design plans and specifications as appropriate in response to any comments received during the public promenade design workshops. Tenant shall re-submit the public promenade design plans and specifications to the Harbor Engineer for final review and approval.

4. Public Promenade Design Workshops: Tenant shall hold public workshops consistent with the procedures established in the LA Waterfront Implementation Guidelines (available at [http://www.lawaterfront.org/sp\\_files/LAWaterfront\\_Implementation\\_Guidelines\\_2010.pdf](http://www.lawaterfront.org/sp_files/LAWaterfront_Implementation_Guidelines_2010.pdf)) regarding the public promenade design, once the design is initially approved by the Harbor Department as being consistent with Harbor Department LA Waterfront Design Standards.
5. Public Art: Tenant at its sole cost and expense shall comply with City requirements related to public art for Tenant Improvements.
6. Below Grade Work Coordination: Tenant understands and acknowledges that some of the Tenant Improvement transit shed warehouse redevelopment construction activities necessary for use as marine research facilities may require below grade work which is not required for City Improvements. Tenant shall be responsible for such below grade work at its sole cost and expense ("Tenant's Below Grade Work"), provided that City shall be responsible for Environmentally Regulated Material remediation to the extent required in Exhibit L. With prior written notice to City, Tenant may coordinate with City pursuant to Section 3.11 of this Agreement to incorporate some or all of Tenant's Below Grade Work into City's wharf and ground improvement construction contracts. City and Tenant agree and acknowledge that such an arrangement would require a separate development agreement which, among other terms, must include a provision for Tenant to reimburse City for all costs incurred by City to incorporate Tenant's Below Grade Work.
7. Competitive Bidding/Proposals for Tenant Improvements Receiving Rent Credits: For Tenant Improvements which will receive Rent Credits pursuant to Section 5.8 of the Agreement, Tenant recognizes and accepts that the contractor selection procedures specified herein are intended to promote pricing and responsive and responsible proposals in a fair and reasonable manner. As such, the selection of contractors for the construction of Tenant Improvements pursuant to Section 7.2 of the Agreement and for which Rent Credits are provided pursuant to Section 5.8 of the Agreement shall be based upon competitive bids or proposals as follows:
  - (i) The Tenant shall use reasonable efforts to secure the commitment to bid or propose on the construction of Tenant's redevelopment of the transit sheds and development of the public promenade on the Demised Premises from a minimum of three (3) bidders or proposers.
  - (ii) In the event that the Tenant obtains fewer than three (3) bids or proposals, it shall provide the Executive Director with a written description of its efforts to obtain competition and, if Tenant believes that it should proceed to award the bid or proposal with fewer than three (3) bidders or proposers,

the justification therefor, including why the Tenant believes the cost of such bid or proposal is reasonable.

(iii) In the event that the Tenant elects not to proceed to award the bid or proposal solely on the basis of price, it shall provide the Executive Director with a written justification of the reasons therefor.

**B. Tenant Improvements.** Upon Tenant taking possession of a parcel pursuant to Section 3.2.1 of this Agreement, Tenant shall be responsible for providing the following improvements pursuant to Section 7.2.1 of the Agreement and on the schedule set forth herein.

1. Parcels 1A: In conformance with the Minimum Investment established in Section 4.14 of this Agreement, within a maximum of six (6) years of Parcel 1A Tenant Acceptance Date, Tenant shall design, construct, and open for business or to the public the following:

(a) A signature building, certified as Leadership in Energy & Environmental Design (LEED) gold standard, to house an interpretive center, with a minimum of 5,000 square feet dedicated to marine research interpretive exhibits open to the public and public restrooms accessible to both interpretive center and public promenade users.

(b) A public promenade consistent with the Harbor Department LA Waterfront Design Standards along the entire length of Parcel 1A fronting 22<sup>nd</sup> Street, and portions of the head of East Channel not blocked by the interpretive center building.

2. Parcel 1B: Within a maximum of six (6) years of Parcel 1B Tenant Acceptance Date, Tenant shall utilize Parcel 1B to complement the Parcel 1A Tenant Improvements.

3. Parcel 2A: In conformance with the Minimum Investment established in Section 4.14 of this Agreement, and within a maximum of two years of taking possession of Parcel 2A pursuant to Agreement Section 3.2.1.3 (c), Tenant shall design, construct, and open for business or to the public the following:

(a) Demolish and remove 3,640 square foot facade on the north end of transit shed Warehouse 57.

Redevelop the 46,500 square foot transit shed Warehouse 57, including upgrades necessary to meet City of Los Angeles Building Code requirements, including but not limited to, seismic, electrical, and fire life safety system standards for the Permitted Uses established in Section 4.1 of the Agreement. Provided, however, that for any seismic improvements, City shall be responsible for the wharf and ground

improvements to the extent required in Exhibit L. Tenant shall install renewable energy systems, including to the extent feasible solar panels.

- (b) Install within the redeveloped warehouse, any infrastructure, furniture, tanks, accessories and facilities necessary to conduct world class marine research and for business incubator/accelerator laboratory facilities, university classrooms, associated office and storage space, and a 150 seat auditorium. At the Tenant's sole option, the 150 seat auditorium may be developed at the interpretive center required pursuant to Section B(1)(a) of this Exhibit M.
  - (c) State-of-the-art saltwater and life support system to serve both Parcel 1A and 2A, and with the ability to expand to serve future parcels as they are developed.
  - (d) A public promenade consistent with the Harbor Department LA Waterfront Design Standards along the entire length of Parcel 2 fronting 22<sup>nd</sup> Street, Signal Street and the wharf fronting the East Channel.
  - (e) Public restrooms accessible to public promenade users.
  - (f) Public picnic area, with an adjacent area for food truck parking, or at the sole option of the Tenant, with an adjacent café open to the public.
4. Parcel 2B: No Tenant Improvements are required.
5. Parcel 3 Interim Use: No Tenant Improvements are required for interim use of Parcel 3 or portions thereof as set forth in Agreement Section 3.2.1.3 (f).
6. Parcels 3 and 4: In conformance with the Minimum Investment established in Section 4.14 of this Agreement, and within a maximum of two years of taking possession of Parcel 3 and 4 pursuant to Agreement Section 3.2.1.3 (e), Tenant shall design, construct, and open for business or to the public the following:
- (a) Redevelopment of the 180,000 square foot transit shed Warehouses 58-60, including upgrades necessary to meet City of Los Angeles Building Code requirements, including but not limited to, seismic, electrical, and fire life safety system standards for the Permitted Uses established in Section 4.1 of the Agreement. Provided, however, that for any seismic improvements, City shall be responsible for the wharf and ground improvements to the extent required in Exhibit L. Tenant shall install renewable energy systems, including to the extent feasible solar panels.

- (b) Install within the redeveloped warehouse, any infrastructure, furniture, tanks, accessories and facilities necessary to conduct world class marine research and for business incubator/accelerator laboratory facilities.
  - (c) Expansion of the state-of-the-art saltwater and life support system developed pursuant to Section B(2)(d) of this Exhibit M to serve Parcel 3.
  - (d) A public promenade consistent with the Harbor Department LA Waterfront Design Standards along the entire length of Parcels 3 and 4 fronting Signal Street.
  - (e) A public waterfront viewing area of the Outer Harbor at the southern boundary of Parcel 4.
  - (f) At a minimum, two access points from the Signal Street public promenade to the east channel through warehouses 58-60, with exhibit space. Tenant may limit access to the Parcel 3 wharf solely to these controlled access points.
7. Parcel 4A: Within a maximum of six (6) years of Parcel 4A Tenant Acceptance Date, Tenant shall design, construct, and operate a saltwater intake system for Parcels that Tenant has accepted.
8. Parcels 5 and 7: In conformance with the Minimum Investment established in Section 4.14 of this Agreement, and within a maximum of six (6) years of Parcels 5 and 7 Tenant Acceptance Date, Tenant shall design, construct, and open for business or to the public the following:
- (a) Redevelopment of pump house building, including the cost of remediation of hazardous building materials that maybe present in the building.  
  
If any Environmentally Regulated Material remediation undertaken by Tenant pursuant to this Section requires the offsite disposal of waste materials, as between City and Tenant, City shall retain all responsibility and liability as the owner and generator of the waste and shall select both the means and relocation site for the disposal of such materials, and "City of Los Angeles" shall be identified and appear on any manifest document as the generator of such material.
  - (b) At the Tenant's sole option, demolition and removal or restoration, of 1,950 square foot, two story office building (southeast corner),

including the cost of remediation of hazardous building materials that maybe present above ground in the building.

If any Environmentally Regulated Material remediation undertaken by Tenant pursuant to this Section requires the offsite disposal of waste materials, as between City and Tenant, City shall retain all responsibility and liability as the owner and generator of the waste and shall select both the means and relocation site for the disposal of such materials, and "City of Los Angeles" shall be identified and appear on any manifest document as the generator of such material.

- (c) Upgrade the existing approximately 700 linear feet of timber and concrete wharf fronting Parcels 5 and 6 along the Main Channel for vessel berthing related to Parcel 5 and 6 operations.
  - (d) New marine research and business incubator/accelerator laboratory facilities, marine/port related government facilities, or university classrooms, and associated office and storage space.
  - (e) Expansion of the state-of-the-art saltwater and life support system developed pursuant to Section B(2)(d) of this Exhibit M to serve Parcel 5, as appropriate to its operations.
  - (f) Public sidewalk along entire length of Parcel 5 fronting Signal Street.
9. Parcel 6: In conformance with the Minimum Investment established in Section 4.14 of this Agreement, and within a maximum of six (6) years of Parcels 6 Tenant Acceptance Date, Tenant shall design, construct, and open for business or to the public the following:
- (a) New marine research and business incubator/accelerator laboratory facilities, marine/port related government facilities, or university classrooms, associated office and storage space.
  - (b) Expansion of the state-of-the-art saltwater and life support system developed pursuant to Section B(2)(d) of this Exhibit M to serve Parcel 6, as appropriate to its operations.
  - (c) Public sidewalk along entire length of Parcel 6 fronting Signal Street.
10. Parcel 8: Within a maximum of six (6) years of Parcels 8 Tenant Acceptance Date, Tenant shall design, construct, and open for business or to the public the following:
- (a) A new wharf structure for vessel berthing related to Parcels 5 and 6 operations.

## EXHIBIT N

### SUBLEASE TEMPLATE AND BUSINESS INCUBATOR PLAN

Sections 13.4.1(a) and (b) of the Agreement allows Tenant to sublease the Demised Premises for the Permitted Uses, in compliance with the Agreement, and based upon 5-year sublease template(s) and business incubator and accelerator plan(s) approved by the Board.

#### **1. Sublease Template(s)**

No 5-year sublease templates have been approved by the Board pursuant to Section 13.4.1(a) of the Agreement.

#### **2. Business Incubator and Accelerator Plan(s)**

No business incubator and accelerator plans have been approved by the Board pursuant to Section 13.4.1(b) of the Agreement.

## EXHIBIT O

### AFFIRMATIVE ACTION PROGRAM PROVISIONS

#### Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

- A. During the performance of City 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, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
  - 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 shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. 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, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify on an electronic or hard copy form to be supplied, that the contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.

- D. 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 provisions of City contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. 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.
- F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the 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 is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing 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 has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the 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 a City contract.
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, 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.

- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, 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 from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
1. Every contract of \$5,000 or more 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.
  2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action 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.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal 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 programs are functioning, and other on-the-job training for non-apprenticeable occupations;
  2. Classroom preparation for the job when not apprenticeable;

3. Pre-apprenticeship education and preparation;
  4. Upgrading training and opportunities;
  5. Encouraging the use of contractors, subcontractors and suppliers of all racial and 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;
  6. The entry of qualified women, minority and all other journeymen into the industry; and
  7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her 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.
- P. 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 or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.

## **EXHIBIT P**

### **BUSINESS TAX REGISTRATION CERTIFICATE (BTRC) NUMBER**

The City of Los Angeles Office of Finance requires all firms that engage in any business activity within the City of Los Angeles to pay City business taxes. Each firm or individual (other than a municipal employee) is required to obtain the necessary Business Tax Registration Certification (BTRC) and pay business tax. (Los Angeles Municipal Code Section 21.09 et seq.)

All firms and individuals that do business with the City of Los Angeles will be required to provide a BTRC number or an exemption number as proof of compliance with Los Angeles City business tax requirements in order to receive payment for goods or services. Beginning October 14, 1987, payments for goods or services will be withheld unless proof of tax compliance is provided to the City.

The Tax and Permit Division of Los Angeles Office of Finance has the sole authority to determine whether a firm is covered by business tax requirements. Those firms not required to pay will be given an exemption number.

If you do NOT have a BTRC number contact the Tax and Permit Division at the office listed below, or log on to [www.lacity.org/finance](http://www.lacity.org/finance) to download the business tax registration application.

#### **MAIN OFFICE**

LA City Hall

201 N. Main Street, Rm. 101

(213) 473-5901

ORDER NO. \_\_\_\_\_

IT IS HEREBY ORDERED by the Board of Harbor Commissioners that the LEASE granted by the City of Los Angeles, acting by and through its Board of Harbor Commissioners, to ROCKEFELLER PHILANTHROPY ADVISORS, INC., for and on behalf of ALTASEA AT THE PORT OF LOS ANGELES, is hereby approved by at least a four-fifths vote in accordance with Section 654(a)(1) of the Charter of the City of Los Angeles and the Executive Director and the Secretary of the Board are hereby authorized and directed to execute and attest to the same on behalf of the City of Los Angeles upon this Order being approved by the City Council as described below.

In approving the Lease, the Board hereby adopts the Board Report accompanying the Lease and approves its findings.

The Secretary shall certify to the adoption of this Order by the Board of Harbor Commissioners of the City of Los Angeles and shall cause a copy of the same to be presented to the City Council as provided in Sections 606, 607 and 654(a)(1) of the Charter of the City of Los Angeles. In accordance with Section 607, the City Council is required to make a finding that the 50-year term of the Lease is in the best interest of the City and do so by a two-thirds vote, subject to Mayoral veto, or three-fourths vote over the veto of the Mayor. Furthermore, in accordance with Section 654(a)(1) of the Charter, City Council is required to approve the Lease by at least a two-thirds vote in order to authorize the use of Harbor District water frontage in excess of 3,000 linear feet by one person, firm or corporation.

The Lease approved by this Order shall become effective immediately upon execution by the Executive Director and Board Secretary after such Council approval of the Lease and this Order.

I HEREBY CERTIFY that the foregoing Order was adopted by the Board of Harbor Commissioners of the City of Los Angeles at its meeting of \_\_\_\_\_.

JULIE W. HUERTA  
Board Secretary

APPROVED AS TO FORM AND LEGALITY

September 5, 2013  
MICHAEL N. FEUER, City Attorney  
Janna B. Sidley, General Counsel

By Heather M. McCloskey  
HEATHER M. McCLOSKEY, Deputy