

## Transmittal 2

**5.3 Additional Compensation.** In consideration of the provisions of this Agreement, and as a condition precedent to the effectiveness of this Agreement, City, in its sole and absolute discretion, shall receive as additional compensation either (a) Tenant's conveyance of all right, title and interest, including, without limitation, the fee interest in the current casual hall owned by Tenant and utilized by the Los Angeles-Long Beach Longshore Joint Port Labor Relations Committee ("JPLRC" or "Subtenant"), comprised of Tenant and the International Longshore and Warehouse Union, Local 13 ("ILWU 13") and located at 826 Eubank, Wilmington, California 90744 ("Current Casual

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Hall"), or (b) Tenant's irrevocable consent to opening for public use (at Tenant's sole cost and expense) the current dispatch hall owned by Tenant and utilized by the JPLRC and located at 343 N. Broad Avenue, Wilmington, California 90744 ("Current Dispatch Hall") at times and dates to be agreed upon by City and Tenant in writing. Without further action of Board or Council, Executive Director shall provide written notice of City's election within one hundred eighty days (180) days following the Effective Date. In the event City elects Tenant's conveyance of the Current Casual Hall (i) such conveyance shall occur within fifteen (15) months of the Construction Phase Completion Date; and (ii) promptly after such election Tenant and Executive Director shall execute and deliver a transfer agreement in the form of Exhibit "E" attached hereto and incorporated herein by reference ("Current Casual Hall Transfer Agreement"), without further action of Board or Council, and said conveyance shall be made by Tenant to City pursuant to the terms and conditions of said Current Casual Hall Transfer Agreement. In the event City elects Tenant's opening of the Current Dispatch Hall for public use, such opening shall not commence until transfer of the Current Casual Hall as provided in the Current Casual Hall Transfer Agreement.

Notwithstanding anything to the contrary set forth herein, in the event that this Agreement is terminated for any reason whatsoever prior to the Construction Phase Completion Date, including, without limitation, Tenant's default, or Tenant's delivery of a Section 3.3.8 Termination Notice, Tenant shall have no further obligations or liabilities under this Section 5.3, including, without limitation, any obligation to transfer the Current Casual Hall to the City or make the Current Hiring Hall available for public use.

5.3.1. Subject to satisfaction of the Access Conditions (as defined below), from and after the Effective Date until the date the City makes its election whether or not to accept the transfer of the Current Casual Hall as provided in Section 5.3 above, City, its agents, employees, consultants and contractors shall have a license to enter the Current Casual Hall to conduct any investigations, inspections and tests of the Current Casual Hall as City deems reasonably necessary in order to determine the condition and suitability of the Current Casual Hall for City's intended use (collectively, "Current Casual Hall Investigations"). For purposes hereof, the term "Access Conditions" means (i) City has provided Tenant at least three (3) days' prior notice of its intent to enter the Current Casual Hall together with a description of the investigation or testing City intends to perform on the Current Casual Hall, and (ii) City shall have obtained a policy of commercial general liability insurance ("City Insurance Policy") covering any and all liability of City and its employees, agents, contractors, suppliers, consultants or other related parties with respect to or arising out of any investigative activities on the Current Casual Hall. Such Insurance Policy shall name Tenant as an additional insured and shall have liability limits of not less than One Million Dollars (\$1,000,000), combined single limit per occurrence, for bodily injury, personal injury and Current Casual Hall damage liability. Such insurance policy shall be in form and substance reasonably satisfactory to Tenant, and shall be issued by an insurance company that is licensed to do business in the State of California and is otherwise satisfactory to Tenant. City shall deliver to Tenant a certificate or other evidence

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All Current Casual Hall Investigations made by City will be at City's sole cost and expense and will be performed without causing any damage to the Current Casual Hall. City shall restore the Current Casual Hall in a timely manner at City's sole cost to the condition that existed immediately prior to the Current Casual Hall Investigations. Tenant understands, and it is agreed, that the Current Casual Hall Investigations may include surveying and engineering studies and a Phase I environmental site assessment certified to City. City will promptly provide Tenant, with a copy of any report or evaluation ("Current Casual Hall Investigations Reports") with respect to the Current Casual Hall. To the maximum extent permitted by law, City agrees to keep confidential and not to disclose the results of its Current Casual Hall Investigations or the contents of any Current Casual Hall Investigations Reports. In conducting such Current Casual Hall Investigations, City shall take reasonable steps not to interfere with the normal operation of the Current Casual Hall.

City assumes all risks associated with the Current Casual Hall Investigations and hereby agrees to indemnify, defend and hold Tenant and any and all of its members, boards, officers, agents and employees harmless against any and all claims, actions, suits, demands, losses, liabilities, damages, costs and/or expenses (including, without limitation, reasonable attorneys' fees and costs) on account of any act, omission or negligence by City or City's agents or employees in connection with the Current Casual Hall Investigations. The foregoing indemnity shall not include any claims, demands, causes of action, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorneys' fees and expenses) that result from the mere discovery, by City, including, its consultants or representatives, of existing conditions on the Current Casual Hall during such inspections or tests conducted pursuant to the terms of this Agreement. The provisions of this Section 5.1.1 shall survive termination of this Agreement.

#### **5.4 Requirements Applicable to Tenant's Payment of Compensation.**

5.4.1 Tenant's obligations to pay 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.

5.4.2 Tenant shall render its payments at City's 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

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a check (drawn on a bank located in the State of California) or via electronically transmitted funds.