

CITY OF LOS ANGELES HARBOR DEPARTMENT
Port of Los Angeles

TEMPORARY ENTRY AND USE PERMIT

TEUP No. 1784

The City of Los Angeles, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board"), hereby grants permission to Fenix Marine Services, Ltd., a Delaware corporation, and Center for Transportation and the Environment, Inc., a Georgia corporation ("Assignees") to occupy and use certain lands and facilities within the Harbor District owned or under the control of City, subject to the following terms and conditions:

1. Premises. Assignees are permitted under this Temporary Entry and Use Permit ("TEUP") to use the areas at Berth 301 described as twenty-four thousand, four hundred and fifty (24,450) square feet of backland as delineated and more particularly described on Exhibit A ("Premises").

2. Permitted Use. The Premises shall be used for the demonstration of a zero-emission hybrid hydrogen fuel cell/battery electric top pick, including the installation of a wireless charging station and mobile hydrogen fueling system ("Permitted Use"); provided, however, that the rights hereby granted to use the Premises for said purposes shall not be exclusive, and whenever the Premises, or any part thereof, are not required in whole or in part for the use of Assignees for the stated purposes, the Executive Director shall have the right to and may make other assignments to any other person or entity to use such Premises, or any part thereof. Assignees are prohibited from conducting any marine terminal operations, including but not limited to container and/or chassis storage, on the Premises. Assignees shall not use the Premises in any manner, even if the use is a Permitted Use, that will cause cancellation of any insurance policy covering the Premises or adjacent premises; provided, however, Assignees may, in City's sole discretion, remain if they pay the increase in City's insurance costs caused by their operations. No offensive or refuse matter, or any substance constituting any unnecessary, unreasonable, or unlawful fire hazard, or material detrimental to the public health, shall ever be permitted by Assignees to be or remain on the Premises, and Assignees shall prevent any such material or matter from being or accumulating upon the Premises. Assignees further agree not to keep on the Premises, or permit to be kept, used, or sold thereon, anything prohibited by any policy of fire insurance covering the Premises or any structure erected thereon.

3. Effective and Termination Dates. This TEUP shall commence and become effective on the date of its execution by the Executive Director of the Harbor Department ("Executive Director"), and by the Secretary of the Board, after approval by the Board ("Effective Date"). This TEUP shall terminate twelve (12) months after the Effective Date ("Termination Date"). Termination Date shall also mean the date of termination of this TEUP upon the expiration of any renewal, by revocation as set forth in Section 4, for a conflict of interest as set forth in Section 18, for Assignees' misrepresentation as set forth in Section 19, by operation of law, or for any other reason.

4. Assignment Revocable. This TEUP shall be revocable at any time prior to the Termination Date by Executive Director, at his or her sole option, upon the giving of at least fifteen (15) days' written notice to Assignees stating the date and time upon which this TEUP shall terminate. Assignees understand and agree that Assignees have the interest only of a licensee and has no other interest in the Premises. Assignees understand and agree that the City reserves the unqualified and unconditional right at any time without any more notice to Assignees than set forth in this Section 4 to withdraw the Premises from Assignees' use. Assignees understand and agree that, notwithstanding any expenditures they may have made in preparation for its use of the Premises, such withdrawal from use by City does not entitle Assignees or any other person to any damages. Neither City, nor any Board member, officer, or employee thereof, shall be liable in any manner to Assignees because of such revocation.

5. Compensation.

(a) Assignees shall not pay to the City any monetary compensation for the use of the Premises pursuant to this TEUP.

(b) Assignees may be required to pay a fee or deposit for the issuance of any Harbor Engineer Permit pursuant to Section 7 of this TEUP.

(c) Assignees may incur additional charges if City provides utilities, equipment, or labor, including but not limited to security provided by the Los Angeles Port Police, where necessary to support the Permitted Use. Use of the Premises for purposes not expressly permitted under the provisions of this TEUP, whether approved in writing by Executive Director or not, may also result in additional charges, including charges required under the Port of Los Angeles Tariff No. 4, as it may be amended or superseded ("Tariff"). Assignees agree to pay such additional charges.

(d) Notwithstanding any other provision of this TEUP, Assignees' obligation to pay all compensation to City shall be absolute and unconditional and shall not be affected by any circumstance including, without limitation, any set-off, counterclaim, recoupment, defense, or other right or claim which Assignees may have against City.

6. Premises Satisfactory to Assignees / Required Modifications. Assignees have inspected the Premises and agree that they are suitable for the Permitted Use. No officer or employee of City has made any representation or warranty with respect to the Premises, except as described in writing and attached hereto as an addendum, if any, and in entering into this TEUP, Assignees agree they rely only on the provisions of the TEUP. Assignees are required to install fencing (i.e. temporary construction fencing and/or removable k-rails) along the southern and western boundary lines of the Premises for the duration of this TEUP. Such fencing, and any other modification, improvement, or addition to the Premises and any equipment installation or removal required by the Fire Department, Department of Building and Safety, South Coast Air Quality Management District, Regional Water Quality Control Board, U.S. Coast Guard, Environmental Protection Agency, or any other agency in connection with Assignees' operations, shall be constructed, installed, or removed at Assignees' sole expense. Assignees shall obtain a Harbor Engineer Permit from the office of the Chief Harbor Engineer, Engineering Division, of City's Harbor Department ("Chief Harbor Engineer") and shall comply with the requirements of Section 7 of this TEUP before making any other modification, improvement, or addition to the Premises.

7. Alterations on Premises. Assignees shall not construct on or alter ("Alteration") the Premises, including a change in the grade, without first obtaining City's written approval and a Harbor Engineer Permit. Assignees shall submit to City a complete Application for Port Permit that attaches a complete set of drawings, plans, and specifications reflecting the proposed Alteration. Where applicable, the drawings, plans, and specifications must be prepared and stamped by a licensed engineer registered in the State of California. All projects in the Harbor District are subject to review by City's Harbor Department pursuant to the California Environmental Quality Act (CEQA) and the certified Port Master Plan. City's Chief Harbor Engineer shall have the right to reject or order reasonable changes in said drawings, plans, and specifications. Assignees, at their own expense, shall obtain all permits necessary for such Alteration, including a Harbor Engineer Permit, prior to the commencement of such Alteration. All Alterations by Assignees pursuant to this TEUP shall be at Assignees' sole expense. Assignees shall keep the Premises free and clear of liens for labor and materials and shall hold City harmless from any responsibility in respect thereto. Assignees shall give written notice to the Chief Harbor Engineer, in advance, of the date it will commence any Alteration. Immediately upon the completion of the Alteration, Assignees shall notify the Chief Harbor Engineer of the date of such completion.

8. Signs and Lighting.

(a) Assignees shall not erect or display, or permit to be erected or displayed, on the Premises any signs or advertising matter of any kind without first obtaining the written consent of Executive Director. If Assignees obtain consent, Assignees shall also comply with the requirements of Section 7 of this TEUP prior to erecting or displaying any signs or advertising matter on the Premises. Assignees shall further post, erect, and maintain on the Premises such signs as Executive Director may direct. All signs erected or displayed on the Premises shall comply with the regulations set forth in Section 14.4.1 *et seq.* of the Los Angeles Municipal Code.

(b) Assignees acknowledge that the Premises may lack adequate lighting for a Permitted Use and that Assignees are responsible for installing temporary or permanent lighting as it may deem necessary to perform any labor, or to protect any property stored or located on the Premises, or to otherwise use the Premises for any Permitted Use. Assignees shall comply with the requirements of Section 7 of this TEUP prior to installing any lighting. Any lighting installed shall meet Illuminating Engineering Society / American National Standards Institute (IES/ANSI) standards.

9. Immediate Access to Repair / Maintain Premises. Assignees are aware that City's Department of Water & Power, other utility, or other maintenance or service from or on behalf of City, may need to service or repair certain facilities on the Premises. If such repair is necessary, Assignees agree to relocate, at their expense, all of their equipment and other personal property to provide such personnel adequate access. Assignees agree to complete such relocation within twenty-four (24) hours of receiving notice from City except in case of emergency. Assignees agree neither the department servicing the Premises nor City shall be responsible for any loss Assignees may suffer as a result of such maintenance or repair.

10. Premises Subject to Tariff. Assignees accept the Premises and shall undertake the Permitted Use set forth in Section 2 of this TEUP subject to each and every term and condition provided herein, and to each and every rate, term, and condition of the Tariff, as applicable to Premises and/or the Permitted Use. Assignees represent and warrant that they have received, read, and understand the rates, terms, and conditions of the Tariff. Except as otherwise set forth in this TEUP, Assignees are 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 TEUP and a Tariff provision. In the event of such conflict, this TEUP shall at all times prevail.

11. Compliance with Applicable Laws and Environmental Obligations.

(a) At all times in its use and occupancy of the Premises and its conduct of operations thereon, Assignees, at Assignees' sole cost and expense, shall comply with all applicable federal, state, county, City, or government agency laws, statutes, ordinances, standards, codes (including all building codes), rules, regulations, requirements, or orders in effect now or hereafter in effect ("Applicable Laws") pertaining to the use or condition of the Premises and/or Assignees' operations and conduct of their business. Applicable Laws shall include, but not be limited to, all environmental laws and regulations in effect now or hereafter in effect including:

(i) The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") (42 USCS §§ 9601 *et seq.*) in its present or successor form and its implementing regulations;

(ii) The Resource Conservation and Recovery Act and Hazardous and Solid Waste Amendments of 1984 ("RCRA") (42 USCS §§ 6901 *et seq.*) in its present or successor form and its implementing regulations;

(iii) The federal Clean Water Act (33 USCS §§ 1251 *et seq.*) in its present or successor form and its implementing regulations;

(iv) The California Porter-Cologne Water Quality Control Act (California Water Code §§ 13020 *et seq.*) in its present or successor form and its implementing regulations;

(v) The federal Clean Air Act (42 USCS §§ 7401 *et seq.*) in its present or successor form and its implementing regulations;

(vi) The California Clean Air Act of 1988 (Chapter 1568, Statutes of 1988) in its present or successor form and its implementing regulations;

(vii) The California Lewis-Presley Air Quality Management Act of 1976 (California Health and Safety Code §§ 40400 *et seq.*) in its present or successor form and its implementing regulations; and

(viii) 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 (as defined in Section 11(c)), the Premises, and/or Assignees' use and/or occupancy thereof.

(b) It is the parties' intent that Assignees will make, at Assignees' sole cost and expense, any and all alterations, improvements, and changes, whether structural or nonstructural, that are required by Applicable Laws. In addition, Assignees shall comply immediately with all applicable environmental policies, rules, and directives of City's Harbor Department, known as the Port Environmental Policies. This TEUP shall be construed in accordance with California law.

(c) Assignees shall not cause or permit any Environmentally Regulated Material, as defined in this Section 11(c), 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 Premises except for limited quantities of standard office and janitorial supplies containing chemicals categorized as Environmentally Regulated Material and except as permitted, required, or necessary under Section 2 of this TEUP, if any. Assignees shall handle all such Environmentally Regulated Material in strict compliance with Applicable Laws in effect during Assignees' occupancy. The term "Environmentally Regulated Material" shall mean:

(i) Any "hazardous substance" as that term is defined in the CERCLA;

(ii) "Hazardous waste" as that term is defined in the RCRA;

(iii) 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);

(iv) Radioactive material, including any source, special nuclear, or byproduct material as defined in the Atomic Energy Act of 1954 (42 USCS §§ 2011 *et seq.*) in its present or successor form;

- (v) Asbestos in any form or condition;
- (vi) Polychlorinated biphenyls ("PCBs") and any substance or compound containing PCBs; and
- (vii) Petroleum products.

(d) Assignees shall remediate or cause the remediation of any spill, discharge, or release of any Environmental Regulated Material that occurs in, on, under, or about the Premises ("Contamination"), whether caused by Assignees or any third-party during Assignees' occupancy, including Contamination of improvements, adjacent harbor waters, soil, sediment, groundwater, or air, or of adjacent premises (including soil, sediment, groundwater, or air) and including Contamination that is considered a nuisance under Applicable Laws. Remediation shall be to the satisfaction of City, and the requirements of the applicable governmental agencies including the Regional Water Quality Control Board, by removing or effecting the removal of all Contamination including but not limited to contaminated soil, water, groundwater, sediment, or other material it may place or cause to be placed on site such that no encumbrances, such as deed or land use restrictions, be imposed on the Premises as a result of such Contamination. In fulfilling the obligations under this Section 11, Assignees shall also comply with any other conditions reasonably imposed by City. If Assignees know or have reasonable cause to believe that Contamination has occurred in, on, under, or about the Premises, Assignees shall immediately give written notice to City.

(e) Assignees bear 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 including Contamination, regardless of whether the obligation for such compliance or responsibility is placed on the owner of the Premises, on the owner of any improvements on the Premises, on the user of the Premises, or on the user of any improvements on the Premises. For purposes of CERCLA, and any and all other Applicable Laws, Assignees shall be considered the owner and operator. Assignees agree that any claims, damages, fines, or other penalties asserted against or levied on City and/or Assignees as a result of noncompliance with any Applicable Laws shall be the sole responsibility of Assignees and that Assignees shall indemnify and hold City harmless from any and all such claims, damages, fines, penalties, and/or judgments, as well as any costs expended to defend against such claims, damages, fines, and penalties and/or judgments, including attorneys' and experts' fees. City, at its sole option, may pay such claims, damages, fines, penalties, and/or judgments resulting from Assignees' noncompliance with any of the aforementioned authorities, and Assignees shall indemnify and reimburse City for any such payments.

(f) In discharging Assignees' obligations under this TEUP, if Assignees disposes of any Contamination, within thirty (30) days of Assignees' receipt of original documents, Assignees 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. Neither City, Port of Los Angeles, nor Los Angeles Harbor Department shall appear on any manifest document as a generator of such material.

(g) In discharging Assignees' obligations under this TEUP, Assignees shall perform any tests using a State of California Department of Health Services certified testing laboratory or other similar laboratory upon City's written approval. By signing this TEUP, Assignees hereby irrevocably direct any such laboratory to provide City, upon written request from City, copies of all of its reports, tests results, and data gathered. As used in this Section 11, "Assignees" includes agents, employees, contractors, subcontractors, and/or invitees of Assignees.

(h) Assignees shall implement City's Harbor Department's environmental policies, known as Best Management Practices, in order to reduce the potential for pollutants to enter Harbor waters, as follows:

(i) Facility Operations: Clean and maintain facility regularly. Use dry cleaning methods whenever possible; avoid washing areas down. Do not allow sweepings or sediment to enter the storm drain or the Harbor. Collect wash water for disposal or direct to a clarifier. Do not encourage scavengers. Do not feed birds, feral cats, sea lions, or other scavengers. Recycle whenever possible.

(ii) Maintenance Operations: Use drip pans to prevent any drips or leaks from contacting the ground during maintenance and fueling operations. Clean spills or drips immediately using dry methods. Use spill cleanup kits to confine or contain spills. Do not hose down equipment or allow process water to enter the storm drain or the Harbor. Place tarps beneath maintenance and repair operations to prevent materials such as paint chips and metals from contacting the ground.

(iii) Material and Waste Handling and Storage: Train employees responsible for waste management on handling and disposal procedures. Store all hazardous and universal waste in accordance with all federal, state, and local regulations. Store all materials and waste inside and in secondary containment. If stored outside, store only in designated, covered, and contained areas. Store waste in covered, leak proof, labeled containers. Keep lids closed on all outdoor containers including dumpsters. Store all oily products (e.g. engines), batteries, tires, and metal off the ground and under cover when stored outdoors.

(i) Assignees shall further comply with all additional environmental conditions set forth on Exhibit B during the term of this TEUP.

(j) Except as may be otherwise provided in this TEUP, Assignees' obligations in this Section 11 shall survive the Termination Date of this TEUP.

12. Restoration and Surrender of Premises. Upon the termination of this TEUP, Assignees shall quit and surrender occupancy and use of the Premises to City and shall, without cost to City, remove any and all of its property and restore the Premises to the same or as good condition as the same were in at the time of the first occupancy thereof by Assignees unless otherwise requested by the Executive Director and with the exception of any paving that the City may construct on the Premises during the term of this TEUP. Assignees may incur additional charges and/or forfeit any deposit if Assignees fail to fully restore the Premises to the satisfaction of the Executive Director prior to the termination of this TEUP.

13. Indemnity.

(a) Except as may arise from the sole negligence or willful misconduct of City, Assignees 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 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:

(i) Any dangerous, hazardous, unsafe, or defective condition of, in, or on the Premises, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the Premises by Assignees, their officers, agents, employees, sublessees, assignees, or invitees;

(ii) Any operation conducted upon, or any use or occupation of, the Premises by Assignees, their officers, agents, employees, sublessees, assignees, or invitees under or pursuant to the provisions of this TEUP or otherwise;

(iii) Any act, error, omission, willful misconduct, or negligence of Assignees, their officers, agents, employees, sublessees, assignees, or invitees, arising from the use, operation, or occupancy of the Premises, regardless of whether any act, omission, or negligence of City, its officers, agents, or employees contributed thereto;

(iv) Any failure of Assignees, their officers, agents, or employees to comply with any of the terms or conditions of this TEUP or any Applicable Laws; or

(v) The conditions, operations, uses, occupations, acts, omissions, or negligence referred to in subdivisions (i), (ii), (iii) and (iv) above, existing or conducted upon or arising from the use or occupation by Assignees or their invitees on any other premises within the Harbor District, as defined in the Charter of City.

(b) Assignees also agree 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 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 13. The term "persons" as used in this Section 13 shall include, but not be limited to, officers and employees of Assignees.

(c) Assignees 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 Premises, damages for loss or restriction on use of rentable or useable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultants' fees, and experts' fees) which arise during or after the term of this TEUP as a result of Contamination for which Assignees are otherwise responsible for under the terms of this TEUP. This indemnification of City by Assignees 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 Contamination present in the soil or groundwater on or under the Premises.

(d) The indemnity obligations under this Section 13 shall survive the Termination Date of this TEUP 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.

14. Insurance. In addition to, and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section 13 of this TEUP, Assignees shall procure and maintain at their sole cost and expense, and keep in force at all times during the term of this TEUP, the following insurance:

(a) Commercial general liability or marine general liability insurance, including contractual liability and property damage insurance, 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 Assignees' normal limits of liability but not less than One Million Dollars (\$1,000,000) for injury or death to one or more persons out of each accident or occurrence and One Million Dollars (\$1,000,000) for bodily injury and property damage for each

occurrence / Two Million Dollars (\$2,000,000) general aggregate. Assignees shall also procure 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 Assignees for damage or destruction to the works, buildings, and improvements owned by the 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 Assignees so long as permitted by the Board's fire insurance policy, upon thirty (30) days' prior written notice thereof to Assignees at any time during the term of this TEUP.

(b) Automobile insurance with limits of liability not less than One Million Dollars (\$1,000,000) covering injuries or death resulting from each accident or claim arising out of any one claim or accident. This insurance shall cover all owned, non-owned, and/or hired automobiles.

(c) Limits for coverage required under Section 14 of this TEUP shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self insurance in those cases where, in his or her sole judgment, such retention or self insurance is justified by the net worth of Assignees. The self-insured retention or self insurance shall provide that any other insurance maintained by City's Harbor Department shall be excess of Assignees' insurance and shall not contribute to it. In all cases, regardless of any deductible, retention, or self insurance, Assignees shall have all the obligations of an "insurer" under the California Insurance Code and said insurance shall be deemed to include a defense of suits provision and a severability of interest clause.

(d) If Assignees maintain higher limits than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by Assignees. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

(e) Policies submitted pursuant to Section 14 of this TEUP shall, in addition, provide the following coverage either in the original policy or by endorsement substantially as follows:

(i) "Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that the City of Los Angeles, acting by and through its Harbor Department, the Board of Harbor Commissioners, and its officers, agents, and employees, are additional insureds hereunder, and that coverage is provided for all contractual obligations, operations, uses, occupations, acts, and activities of all the insureds, including any sole negligence of the additional insureds, under Temporary Entry and Use Permit No. 1784, and under any amendments, modifications, extensions, or renewals of said permit regardless of whether such contractual obligations, operations, uses, occupations, acts, and activities occur on the Premises or elsewhere."

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

(iii) "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 insurance company's limit of liability."

(iv) "Notice of occurrences or claims under the policy shall be made to the City's Risk Manager with copies to the Los Angeles City Attorney's Office."

(g) Assignees shall secure the payment of compensation to any employees injured while performing work or labor necessary for and incidental to performance under this TEUP in accordance with Section 3700 of the California Labor Code. Assignees shall file with City one of the following:

(i) A certificate of consent to self insure issued by the Director of Industrial Relations, State of California;

(ii) A certificate of Workers' Compensation insurance issued by an admitted carrier;
or

(iii) An exact copy or duplicate thereof of the policy certified by the Director of Industrial Relations or the insurer.

Such documents shall be filed prior to Assignees' occupancy of the Premises. Where Assignees have employees who are covered by the United States Longshore and Harbor Workers' Compensation Act ("USLHWC Act"), Assignees shall furnish proof of such coverage to City. It is suggested that Assignees consult with their insurance professional of their choosing to determine whether their proposed operation methods will render their employees subject to coverage under the USLHWC 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.

(h) All insurance procured by Assignees shall comply with the following:

(i) For each insurance policy, the Assignees shall give to the Board of Harbor Commissioners a 10-days prior notice of cancellation or reduction in coverage for nonpayment of premium, and a 30-days prior notice of cancellation or reduction in coverage for any other reason, by written notice via registered mail and addressed to the City of Los Angeles Harbor Department, Attn: Risk Manager and City Attorney's Office, 425 S. Palos Verdes Street, San Pedro, California 90731.

(ii) Electronic submission is the required method of submitting Assignees' insurance documents. KwikComply is City's online insurance compliance system which is designed to be used by insurance brokers and agents to submit client insurance certificates directly to City. Assignees' insurance broker or agent shall obtain access to KwikComply at <http://kwikcomply.org> and follow the instructions to register and submit the appropriate proof of insurance on Assignees' behalf.

(iii) Prior to the expiration of each policy, Assignees shall show through submitting to KwikComply that the policy has been renewed or extended or, if new insurance has been obtained, submit the appropriate proof of insurance to KwikComply. If Assignees neglect or fail to secure or maintain the required insurance, or if Assignees fail to submit proof of insurance as required above, City's Harbor Department may, at its option and at the expense of Assignees, obtain such insurance for Assignees.

(iv) Executive Director, at his or her discretion, based upon recommendation of the Risk Manager of City's Harbor Department, may request that Assignees increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving written notice to Assignees.

(v) Upon request by City, Assignees must furnish a copy of the binder of insurance and/or full certified copies of any or all policies of insurance required herein. Assignees' obligation to provide such copies shall survive the Termination Date regardless of whether City's request is made prior to or after the Termination Date.

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

15. No Assignments/Sublicenses/Transfers. No transfer of this TEUP, 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 Assignees (or any entity that directly or indirectly controls or owns fifty percent (50%) or more of either Assignee), or accomplished in any other manner, whether voluntary or by operation of law, including but not limited to assignment, sublicense, transfer, gift, hypothecation, or grant of total or partial control, or any encumbrance of this TEUP (hereafter collectively referred to as "Transfer"), shall be valid or effective for any purpose. "Transfer" also shall include the involvement of Assignees or their 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 TEUP or Assignees' assets, which involvement results in a reduction of the net worth of either Assignee (defined as the net worth of either Assignee, 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 TEUP or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater. For purposes of this Section 15, the term "by operation of law" includes but is not limited to: (1) the placement of all or substantially all of either Assignee's assets in the hands of a receiver or trustee; or (2) a transfer by either Assignee for the benefit of creditors; or (3) transfers resulting from the death or incapacity of any individual who is an Assignee or of a general partner of an Assignee.

16. Assignees Name Change. Assignees shall notify City in writing within ten (10) days of making any changes to either of their names as set forth in the preamble of this TEUP and shall provide City with all documents in connection with the change.

17. Transfer of Stock. If either Assignee is a corporation and more than ten percent (10%) of the outstanding shares of capital stock of that Assignee is traded during any calendar year after filing its application for this TEUP, that Assignee shall notify Executive Director in writing within ten (10) days after the transfer date; provided, however, that this provision shall have no application in the event the stock of such Assignee is listed on either the New York Stock Exchange, NASDAQ, or the NYSE Arca Options. If more than twenty-five percent (25%) of either Assignee's stock is transferred, whether by one or by means of successive transfers, regardless of whether such Assignees is a publicly or privately held entity, such transfer shall be deemed an assignment within the meaning of Section 15. Any such transfer shall void this TEUP. Such a transfer is agreed to be a breach of this TEUP which shall entitle the Executive Director to immediately terminate this TEUP by giving written notice thereof.

18. Conflict of Interest. It is understood and agreed that the parties to this TEUP have read and are aware of the provisions of Section 1090 *et seq.* and Section 87100 *et seq.* of the Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of 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 TEUP. Notwithstanding any other provision of this TEUP, it is further understood and agreed that if such a financial interest does exist at the inception of this TEUP, City may immediately terminate this TEUP by giving written notice thereof.

19. Termination for Misrepresentations. This TEUP is granted pursuant to an application filed by Assignees with City. If the application or any of the attachments thereto contain any misstatement of fact which, in the judgment of Executive Director, affected his or her decision to grant said TEUP, Executive Director may terminate this TEUP immediately upon written notice to Assignees.

20. Notice. In all cases where written notice, including the service of legal pleadings, is to be given under this TEUP, service shall be deemed sufficient if said notice is deposited in the United States mail, in a sealed envelope, addressed as set forth below, with postage thereon fully prepaid. When so given, such notice shall be effective from the date of mailing. Unless changed by notice in writing from the respective parties, notice to the parties shall be as follows:

To City: Los Angeles Harbor Department
P.O. Box 151
San Pedro, California 90733-0151
Attention: Executive Director
Attention: Director of Waterfront & Commercial Real Estate

With a copy to: Office of City Attorney—Harbor Department
425 S. Palos Verdes Street
San Pedro, California 90731
Attention: General Counsel

To Assignees: Fenix Marine Services, Ltd.
614 Terminal Way
San Pedro, California 90731
Attention: Scott Schoenfeld

and

Center for Transportation and the Environment, Inc.
730 Peachtree Street NE, Suite 450
Atlanta, Georgia 30308
Attention: Jason Hanlin

Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law. All notice periods under this TEUP refer to calendar days unless otherwise specifically stated.

21. Construction of Agreement. This TEUP shall not be construed against the party preparing it and shall be construed without regard to the identity of the person who drafted this TEUP.

22. No Waiver. No waiver by either party at any time of any terms or conditions of this TEUP shall be a waiver at any subsequent time of the same or any other term or condition. The acceptance of compensation by City shall not be deemed a waiver of any other breach by Assignees of any term or condition of this TEUP other than the failure of Assignees to timely make any particular compensation payment so accepted. No breach of a covenant, term, or condition of this TEUP will be deemed to have been waived by City unless the waiver is in writing and executed by City.

23. Joint and Several Obligations of Assignees. If more than one individual or entity comprises Assignees, the obligations imposed on each individual or entity that comprises Assignees under this TEUP shall be joint and several.

24. Time of the Essence. Time is of the essence in this TEUP.

25. State Tidelands Act. This TEUP, the Premises, and Assignees' use and occupancy 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 (1929 Cal. Stats., Ch. 651), as amended, and Article VI of the Charter of City of Los Angeles relating to such lands. Assignees shall not undertake any use of the Premises, even a Permitted Use, which is or will be inconsistent with such limitations, conditions, restrictions, and reservations.

26. Section Headings. Section headings used in this TEUP are merely descriptive and not intended to alter the terms and conditions of the sections.

27. Integrated Agreement. It is understood that this TEUP supersedes and cancels any and all previous negotiations, arrangements, representations, agreements, negotiations, and understandings, if any, between the parties related to the subject matter of this TEUP and there are no oral agreements that affect any of the terms of this TEUP.

28. Amendments. No provision of this TEUP may be amended except by an agreement in writing signed by City and Assignees. Any such modifications are subject to all applicable approval processes set forth in City's Charter, City's Administrative Code, or other applicable law.

29. Governing Law and Venue. This TEUP is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced, and governed under 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 TEUP shall be filed and litigated in the state or federal courts located in the County of Los Angeles, State of California.

(signature page follows)

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

DATED: _____


CITY OF LOS ANGELES, by its Board of Harbor Commissioners

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

DATED: 12.14.2020

FENIX MARINE SERVICES, LTD.

By: 
Sean R Pierce, Pres/CEO Fenix Marine Services
(Print/Type Name and Title)

DATED: _____

CENTER FOR TRANSPORTATION AND THE ENVIRONMENT, INC.

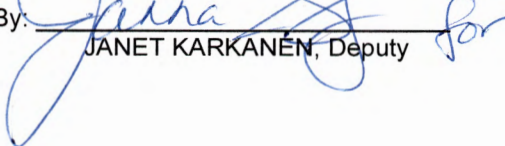
By: _____

(Print/Type Name and Title)

APPROVED AS TO FORM AND LEGALITY

Dec 16, 2020

MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By: 
JANET KARKANEN, Deputy

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

DATED: _____

CITY OF LOS ANGELES, by its Board of Harbor Commissioners

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

DATED: _____

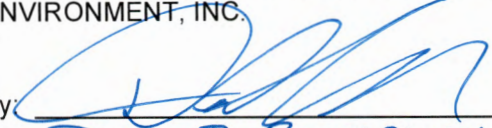
FENIX MARINE SERVICES, LTD.

By: _____

(Print/Type Name and Title)

DATED: 12-8-2020

CENTER FOR TRANSPORTATION AND THE ENVIRONMENT, INC.

By: 

DANIEL J. RANDEBAUCIT
(Print/Type Name and Title)
EXECUTIVE DIRECTOR

APPROVED AS TO FORM AND LEGALITY

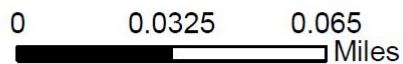
Dec 16, 2020

MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By: 

JANET KARKANEN, Deputy

TEUP No. 1784 - Premises Map



OCTOBER 2020

Exhibit A



FACILITY OPERATIONS ON PAVED AREAS*

(*Note that facilities covered by an Individual or Industrial NPDES permit, or designated as a Critical Source in the Municipal NPDES permit, will also have to comply with all permit requirements)

ENVIRONMENTAL PERMIT CONDITIONS:

1. Facility shall be cleaned and maintained regularly. All areas shall be swept at least once per week or as needed to control trash, debris, and other waste.
2. Whenever feasible, dry cleaning methods shall be used instead of washing down. If an area must be washed, spot clean to minimize the amount of water used. All wash water shall be contained; only stormwater shall be allowed to enter the storm drain system. For large areas, contain the wash water by vacuum truck or discharge to the sewer system via a permitted connection. Prior to washing, the Permittee shall:
 - o Seal off storm drains using temporary berms or covers.
 - o Sweep the area that is to be cleaned and dispose of trash and debris as solid waste.
3. Sweepings and/or sediment shall not be allowed to enter the storm drains or leave the property.
4. Facility shall be inspected weekly to ensure that no drips, leaks and spills are occurring on site. Drip pans and spill equipment shall be available onsite for emergencies. Drip pans shall be deployed at the first sign of a leak or drip, and repairs shall be made immediately. Following any release, areas shall be cleaned up immediately using dry cleaning methods.
5. Do not feed birds, feral cats, sea lions, or other scavengers.
6. All hazardous, universal, and non-hazardous wastes and materials in drums shall be stored in designated areas on spill pallets, in leak-proof, covered, and labeled containers.
7. Small quantity liquid products (such as paints, lubricants, aerosol cans) shall be stored indoors and/or in flammable lockers.
8. Parts, equipment, or materials with metal particulate, rust, grease, and/or oil shall be stored indoors, or if outdoors then elevated off the ground and covered.
9. Dumpsters, recycle bins and trash containers shall have lids that are kept closed. Leaking dumpsters and bins shall be replaced immediately.
10. No equipment or vehicle washing, repair or maintenance is allowed on site.

11/04/20

FACILITY OPERATIONS FOR TEMPORARY STORAGE ON UNPAVED AREAS*

(*not subject to industrial NPDES permit or designated as a Critical Source)

ENVIRONMENTAL PERMIT CONDITIONS

1. Facility shall be cleaned and maintained weekly, or more frequently if needed. All areas shall be inspected daily for litter/debris and other potential contaminants.
2. Sweepings and/or sediment shall not be allowed to enter the storm drains or leave the property.
3. Sediment from the site or from stockpile storage shall not leave the site via track-out by equipment or by rain. Inspect for track-out and sweep any fugitive debris back onto the site daily. Use Best Management Practices, such as straw wattles and covers for stockpiles, to prevent sediment mobilization.
4. Do not allow airborne dust to leave the site. Use clean water, if necessary, to prevent fugitive dust emissions. All other fluids are prohibited.
5. Do not feed birds, feral cats, sea lions, or other scavengers.
6. Do not store industrial hazardous, universal, and non-hazardous wastes onsite.
7. Do not store industrial materials, such as chemicals and fluids, onsite.
8. Any equipment with lubricants, oils, fuels, etc., must be parked over oil absorbent mats, containment mats, or other adequately sized containment. Check for drips and leaks daily.
9. Municipal waste dumpsters, recycle bins and trash containers shall have lids that are kept closed. Leaking dumpsters and bins shall be replaced immediately.
10. No equipment or vehicle washing, repair or maintenance is allowed onsite.
11. No painting is allowed onsite.
12. Facility shall be inspected daily to ensure that no drips, leaks and spills are occurring onsite and any needed repairs shall be made off-site immediately. Drip pans and spill equipment shall be available onsite for emergencies. Should a release of fluids occur, it shall be cleaned up immediately using dry cleaning methods and the release shall be reported to the Harbor Department.
13. Any metal parts or equipment must be stored in containment or raised off the ground and covered during a rain event.
14. Conduct a "Rain Event" inspection whenever a forecast predicts 50% chance of rain. Ensure all materials are covered and raised. Ensure all trash is picked up. Ensure trash bins are closed and do not leak. Ensure all drip and leak prevention equipment has been cleaned and/or stored so as not to come in contact with storm water. Ensure any stored equipment will not contribute metal particulates or oil and grease to the ground. Ensure dirt or mud does not mobilize off the