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DATE: Friday, June 18, 2021

SUBJECT: AMENDMENT #2 – REQUEST FOR PROPSALS FOR LEASING
OPPORTUNITY FOR OPERATION OF A MARINE TERMINAL AT
BERTHS 121-127

The Port of Los Angeles' Leasing Opportunity for Operation Of A Marine Terminal At Berths 121-127 Request for Proposals is amended through this notification as described below:

The final draft Permit, per Section 2.4.1 of the RFP, is attached.

It is the responsibility of all proposers to review the Port's website for any RFP revisions or answers to questions prior to submitting a proposal in order to ensure their proposal is complete and responsive.

PERMIT NO. _____

GRANTED BY THE CITY OF LOS ANGELES

TO

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THIS PERMIT ("Agreement") is made and entered into this ____ day of _____, 20____, by and between THE CITY OF LOS ANGELES, a municipal corporation ("City") acting by and through its Board of Harbor Commissioners ("Board"), and _____, a _____, _____ ("Tenant") (individually referred to as "Party" and collectively referred to as "Parties").

ARTICLE 1

Section 1. Agreement.

For good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, City hereby delivers, and Tenant hereby accepts, the non-exclusive use of the Premises hereinafter described, subject to the terms and conditions of this Agreement.

Section 2. Premises.

2.1 Real Property and Improvements; Definition of "Premises." The premises subject to this Agreement are those lands and improvements identified on Exhibits "A" and "B" attached hereto and incorporated herein as if set forth in full ("Premises"). Exhibit "A" states and describes the real property subject to this Agreement, and its square footage, and includes Drawing No. _____ (which drawing is on file in the office of the Chief Harbor Engineer of the Harbor Department ("Harbor Engineer")). Exhibit "B" identifies and describes all improvements on the Premises, and their ownership. Should Exhibit "A" and/or Exhibit "B" be modified in accordance with Applicable Law after the Effective Date, such exhibits shall be renumbered such that, for example, after any such modification and renumbering, Exhibit "B" becomes "Exhibit "B-1." Upon Executive Director's transmittal to Tenant, such modified and renumbered exhibit shall be deemed to be incorporated into this Agreement without further action of the Board or Council, and supersede any earlier issued iterations of that exhibit.

2.2 Acceptance and Surrender. Tenant has inspected the Premises and agrees that they are suitable in all respects for use and occupancy, and for undertaking the Permitted Uses. No officer, agent or representative of City has made any representation or warranty concerning the Premises, and Tenant does not rely on any such representation or warranty for any purpose. Tenant shall surrender the Premises upon the expiration or earlier termination of this Agreement in conformance with the terms and conditions of this Agreement. Tenant acknowledges and agrees that it is taking possession of the Premises in its "AS IS" condition subject only to Section 104. Tenant acknowledges and agrees that it is entering into this Agreement based solely upon its own due diligence and inspections of the Premises.

Section 3. Effective Date; Term.

3.1 Effective Date. This Agreement is effective on the last to occur of the date of its approval pursuant to City's Charter, and execution by the Executive Director of the Harbor Department ("Executive Director") which execution shall occur following approval as to form and legality of this Agreement by the Office of the Los Angeles City Attorney ("Effective Date"). For the avoidance of doubt, the Effective Date of this Agreement is _____.

3.2 Term. The Term of this Agreement shall be three (3) years, and shall commence on the Effective Date and expire on the third anniversary of the Effective Date ("Expiration Date"), unless sooner terminated in accordance with this Agreement.

Section 4. Rent and Other Tenant Payments.

4.1 Definitions.

4.1.1 Compensation Year. "Compensation Year" means "calendar year." The first compensation year commences on January 1 of the calendar year in which the Effective Date occurs; provided that, unless the Effective Date falls on January 1, the compensation payable for the first partial year shall be prorated in accordance with Section 103.2.3.

4.1.2 Tariff Charges. "Tariff Charges" means all charges due and owing by Tenant under the Tariff on account of Tenant's use and occupancy of the Premises. Tenant's obligation to pay Base Rent and Additional Rent to City for the use of the Premises shall be as prescribed in this Agreement. When there is any conflict between the provisions of this Section 4 and the provisions of the Tariff, this Agreement shall at all times prevail.

4.1.3 Base Rent. "Base Rent" means the monetary sum, in U.S. Dollars, Tenant shall pay to City for its use and occupancy of the Premises per Compensation Year (excluding Additional Rent), which total amount shall be determined based upon: (i) all Twenty-Foot Equivalent Unit Container Charges (referred to subsequently in this Agreement as "TEU charge(s)," including the "minimum annual guarantee (referred to subsequently as the "MAG")," as defined herein; and (ii) applicable wharfage and dockage charges prescribed by Tariff and all Tariff charges payable by Tenant other than wharfage

and dockage, and (iii) the West Basin ICTF compensation, as defined below and (iv) any other charges whatsoever as provided elsewhere in this Agreement other than charges specified herein above. For purposes of the Base Rent adjustments required by Section 4.3, the elements of Base Rent subject to such adjustments shall be: (a) the MAG, and (b) the West Basin ICTF compensation.

4.1.4 Additional Rent. "Additional Rent" means all monetary sums, in U.S. Dollars, Tenant shall pay to City for applicable, impositions, taxes, liens, and fees imposed on the Premises, or Tenant's use and/or occupancy of the Premises, including but not limited to late fees, and any additional monetary payments which Tenant is required to pay to City as more fully set forth in this Agreement.

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

The rate to be charged per TEU shall be established according to the total number of TEUs chargeable to Tenant per acre, per annum, based upon a sliding efficiency scale, as set forth on Exhibit "C" in a section of such exhibit entitled "TEU/Acre Rate Schedule," and which is incorporated herein by reference. TEUs which are handled on the Premises and which are controlled by any other assignee of City shall also be counted in determining Tenant's efficiency bracket, but only if such TEUs are not included in the cargo volume credited to any other tenant of City at other Premises within the Port of Los Angeles. For purposes of determining Tenant's "efficiency bracket" in accordance with Exhibit "C," Parcel 1 and Parcel 3 as depicted on Exhibit "A" are excluded. The total acreage of the Premises for purposes of determining Tenant's efficiency bracket and the MAG is 159.57 acres.

If Tenant pays to City the full amount of TEU charges and Tariff charges required by this Section 4, it shall be excused from paying to City dockage (Tariff Item 400, et seq.) ~~and~~, wharfage (Tariff Item 500, et seq.), and storage and demurrage (Tariff Item 700, et seq.) on containerized cargo only during the Term, provided that Tenant's obligation to pay dockage, wharfage and all other applicable Tariff charges on non-containerized cargo shall be neither limited nor excused by this Section 4.1.5.

In the event that Tenant shall violate the conditions set forth at subsection (g) of this Section 4 concerning use of Parcel No. 1 shown on Exhibit "A", Parcel No. 1 shall be added to Tenant's total included acreage for purposes of determining the MAG and assessing TEU charges.

4.1.6 Minimum Annual Guarantee ("MAG"). Commencing on the Effective Date, and thereafter at the beginning of each and every Compensation Year during the term of this Agreement, Tenant guarantees to City a minimum annual payment per acre, which is referred to in this Agreement as the "minimum annual guarantee" or "MAG." The MAG is the aggregate minimum annual payment of TEU charges per acre, as defined above, which Tenant must make to City each year for the use of the Premises. In addition to TEU charges, wharfage and dockage charges paid by Tenant pursuant to Section 4.1.9, shall be counted toward the MAG.

4.1.6.1 Calculation of the MAG. The MAG shall be calculated on a per acre basis, with the subject acreage determined by excluding Parcel No. 1 and Parcel No. 3 on Exhibit "A", and comprised of 159.57 acres, provided that, in accordance with the provisions set above in Section 4.1.5, Parcel No. 1 shall, upon violation of the conditions concerning use of such Parcel No. 1, be added to Tenant's total included acreage for purposes of calculating the MAG.

4.1.7 Full Payment of the MAG. If Tenant has not generated sufficient TEU charges to pay City the MAG by the end of each compensation period ("MAG deficiency"), Tenant shall within thirty (30) days of the end of each compensation period pay such additional sums as are necessary to assure that City has been paid the MAG.

4.1.8 Deficient Payments. If Tenant has been required to make up a MAG Deficiency, or if Tenant has received a notice of delinquency from City for failure to pay amounts due to City within thirty (30) calendar days of invoice, City may require Tenant to pay the MAG in monthly installments at the beginning of each month for the balance of the compensation period and for any succeeding compensation period(s) as City may

require; provided, that Tenant's obligation to pay monthly installments of the MAG shall cease if Tenant's payment of TEU charges exceed the MAG in any compensation period and all outstanding delinquency has been cured. Each payment shall be in the amount of one twelfth (1/12th) of the MAG or such adjusted amount as is necessary to assure that City will receive full payment of the MAG by the end of the compensation period.

4.1.9 Tariff Charges Payable by Tenant. For the use of the Premises, Tenant shall also pay to City Tariff charges as provided herein below.

4.1.9.1 Applicable Wharfage and Dockage Charges. Non-containerized cargo, whether or not transported on container vessels, and non-container vessels of Tenant and its invitees shall be subject to wharfage and dockage charges at the rates set forth in the Tariff. During each compensation period of the term of this Agreement, Tenant shall pay to City fifty percent (50%) of wharfage charges for all non-containerized cargo and fifty percent (50%) of dockage charges upon non container vessels accruing at the Premises. Such wharfage and dockage charges paid to City shall count toward the MAG, as provided above in subsection (e) of this Section 4.

4.1.9.2 Other Tariff Charges Payable by Tenant. Tenant shall collect and remit to City one hundred percent (100%) of all Tariff charges accruing upon the Premises other than charges expressly exempted from payment in this Section 4.

4.1.10 Compensation for West Basin ICTF. For the use of the Premises, Tenant shall also pay to City, in addition to all other amounts payable hereunder, a separate per acre charge for the use of the West Basin Intermodal Container Transfer Facility, the 23.61-acre area shown as Parcel No. 1 on Exhibit "A." This charge shall be referred to as the "West Basin ICTF compensation." Tenant shall pay Forty-Five Thousand Dollars (\$45,000) per acre, a total of One Million Sixty-One Thousand One Hundred Dollars (\$1,061,100) per year, subject to the conditions set forth in this subsection. This separate West Basin ICTF compensation shall be applicable on condition that the said Parcel No. 1 of Exhibit "A" shall be used exclusively for the collection and movement of cargo by rail; Tenant shall not permit containers to remain on this parcel for any time longer than reasonably required for such rail transportation. If acreage within the said Parcel No. 1 is used in violation of this condition, Parcel No. 1 shall no longer qualify for the West Basin ICTF compensation established hereunder, and such Parcel No. 1 shall, upon written notice issued by City, thereupon automatically be added to the "included acreage" subject to the provisions of subsections (d) and (e) of this Section 4.

4.2 Base Rent; Adjustments Thereof. As consideration for rights granted in this Agreement, Tenant as of the Effective Date shall pay to City in the manner set forth herein without abatement, deduction or offset, except as provided herein, Base Rent pursuant to the TEU rates, MAG and West Basin ICTF compensation as set forth in Exhibit "C," attached hereto and incorporated herein by reference, provided that on each anniversary of the Effective Date, the MAG, and West Basin ICTF compensation, shall be adjusted as of each Annual Adjustment Date automatically and without further notice in amounts that are one hundred and three percent (103%) of such MAG and West Basin ICTF compensation then in effect. Base Rent shall be paid when due, whether or not an invoice for same has been received, paid monthly on or before the first day of each month.

4.4 Reconciling Rent for Final Measurements. Rent shall be adjusted to reflect any changes in City's final measurement of the Premises, or any improvements thereon, which are made pursuant to Subsection 102.3 (Modifications of Premises and Documents), without further action of Board or the Council; provided however, that in no event shall the Rent be adjusted below the Rent provided in Section 4.2, above. Executive Director shall provide written notice to Tenant of the revised Rent, the transmittal of which shall make the revised Rent effective, without further action of Board or Council.

4.5 Additional Rent.

4.5.1 Payment; Definition of Rent. In addition to Base Rent and any other consideration under this Agreement, Tenant shall pay to City all Additional Rent, as listed below, when due. Base Rent and Additional Rent shall collectively be referred to herein as "Rent." All Rent shall be paid to City at the address to set forth in Subsection 103.2.2 (Payments), or at such other place as City may from time to time designate.

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

4.5.3 Taxes and Impositions. Tenant shall timely pay all Taxes imposed with respect to this Agreement, the use or the operation of the 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 Premises. Without waiving any rights or remedies against Tenant, 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. Tenant shall pay as Additional Rent such assessments, fees, and charges as shall be set by the Board. Notwithstanding this Subsection 4.5.3, 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.

4.5.4 Utilities and Services. As between City and Tenant, Tenant shall be solely liable for and shall pay all charges for services furnished to the 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 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 Executive Director in his or her reasonable discretion, 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, such sums shall be Additional Rent payable by Tenant to City.

4.5.5 Rent for Non-permitted Uses. Use of the Premises for purposes not expressly permitted herein, whether approved in writing by the Executive Director or not, 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.

4.5.6 Rent on New Improvements. Tenant shall not be charged Rent for the rental value of any additions, improvements, or alterations to the structures on the

Premises authorized by City and made by Tenant, at Tenant's sole expense unless and until title to said additions, improvements, or alterations revert to City pursuant to the terms of this Agreement or by operation of law.

4.5.7 Other Amounts. Tenant shall pay as Additional Rent any amounts due and owing from Tenant that arise from or are related to its undertaking of the Permitted Uses or its occupancy of the Premises, including without limitation, service charges for services provided by the Harbor Department.

4.5.8 City's Net Return. The Parties intend that Rent provide City with a "net" return for the Term, free of any expenses or charges with respect to the Premises, except as specifically provided in this Agreement. Accordingly, Tenant shall pay as Additional Rent and discharge, before delinquency (but subject to the terms of this Agreement, including any applicable cure periods), each and every item of expense, of every kind and nature whatsoever, including impositions or other amounts customarily paid by a tenant or otherwise payable by Tenant in accordance with the terms of this Agreement.

4.6 Compensation for Office Space. Of the twenty thousand eight hundred nineteen (20,819) square feet of the office building located at 2001 John S. Gibson Blvd., the parties agree that ten thousand four hundred ten (10,410) square feet comprises Class A office space which Tenant may use at the rates set forth in the Tariff and which shall constitute Additional Rent. Tenant shall be entitled to the use and occupancy of the remaining ten thousand four hundred nine (10,409) square feet of office space at this location without additional charge. Tenant shall be entitled to the occupancy and use of all office space within the premises at no additional charge.

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

4.8 Payment Procedure. City shall invoice Tenant for charges due City as provided by this Agreement and Tenant shall remit payment for such charges to City. If this Agreement terminates through no fault of Tenant, Tenant shall, on or before thirty (30) days thereafter, with or without notice from City, pay all monies due City.

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

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

Section 5. Uses.

5.1 Permitted Uses. The Premises shall be used for the following purposes and no others: the loading and unloading of containers on and from rail cars and truck chassis and for the docking and mooring of vessels owned, operated, or chartered by Tenant or vessels of Tenant's customers and for the assembling, distributing, loading and unloading of containers, goods, wares and merchandise on and from such vessels over, through and upon such Premises and from and upon other vessels. Tenant shall not use or permit the Premises, or any part thereof, to be used for any other purpose without the prior written approval of Board, and subject to such restrictions, limitations and conditions as may be imposed by Board ("Permitted Uses").

5.2 Limitations on Use. Tenant shall not use or allow the 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. Such restrictions, limitations and conditions include, without limitation, those matters comprising Exhibit "D" attached hereto and incorporated herein as if set forth in full.

5.3 Operating Covenant. Tenant shall manage and operate the Premises, or cause them to be managed and operated, as in a manner consistent with the manner and standard by which comparable facilities are managed and operated, and shall perform maintenance and capital improvements necessary to maintain the Premises in a manner comparable to that in which comparable facilities are maintained all in compliance with all terms and conditions of this Agreement.

Section 6. Notices.

All notices or other writings required to be given in writing under this Agreement, including the service of legal pleadings, shall be given by personal service, mail or Express Mail. In case of service by mail, the notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the party and person on whom it is to be served, at the address set forth below.

In case of service by Express Mail, the notice or other paper must be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with Express Mail postage paid, addressed to the party and person on whom it is to be served, at the address set forth below. In case of service by another method of delivery providing for overnight delivery, the notice or other paper must be deposited in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the party and person on whom it is to be served, at the address set forth below.

Unless changed by notice in writing from the respective parties, notices or other paper shall be addressed to the party and person on whom it is to be served as follows:

To City (or its Los Angeles Harbor Department):

Port of Los Angeles
P.O. Box 151
San Pedro, California 90733-0151
Attention: Executive Director

With copies to: Office of City Attorney—Harbor Department
425 S Palos Verdes Street
San Pedro, California 90731
Attention: General Counsel
e-mail address: jsidley@portla.org, and sotera@portla.org

and to:

Real Estate Division
P.O. Box 151
San Pedro, CA 90733-0151
Attention: Director of Real Estate
e-mail address: mkatnich@portla.org

To Tenant:

Attention: _____

Service of any such notices or other paper shall be complete at the time of personal service or deposit as described above. Nothing herein shall preclude or render inoperative service of such notices or other paper in the manner provided by Applicable Law. All notice periods under this Agreement refer to calendar days unless otherwise specifically stated.

ARTICLE 1 – Sections 6 to 99, intentionally omitted.

ARTICLE 2 – STANDARD PROVISIONS

Section 100. Applicability of Article 2.

Notwithstanding anything in this Agreement to the contrary, in the case of any inconsistency between Article 1 and Article 2 of this Agreement, the provisions of Article 1 shall control.

Section 101. Definitions.

All capitalized terms used and not defined in Article 1 or Article 2 shall have the meaning ascribed to them in the Glossary of Defined Terms attached hereto and incorporated herein as Attachment 1, attached hereto and incorporated herein as if set forth in full.

Section 102. Limitations and Conditions Related to Premises.

102.1 Compliance with Applicable Laws; Tenant Non-Compliance. At all times in its use and occupancy of the Premises and in its conduct of operations thereon, Tenant, at its sole cost and expense, shall comply with all Applicable Laws, and with any and all directives issued by Executive Director under authority of any such Applicable Law. Tenant shall make, at Tenant's sole cost and expense, any and all alterations, improvements, and changes to the Premises or its improvements, whether structural or nonstructural, that are required by Applicable Law, on the Effective Date or as may be enacted or amended during the Term. Such Applicable Laws include, without limitation, those matters comprising Exhibit "F," attached hereto and incorporated herein as if set forth in full. City shall have no liability to the Tenant or any third party if this Agreement and/or the transaction of which this Agreement is a component does not comply with any Applicable Laws or any third-party compliance or approval process. City is not liable or responsible to Tenant or any third party for any damages to Tenant or the third party if this Agreement is terminated due to a violation of Applicable Laws or as a direct or indirect result of any third-party compliance or approval process.

102.2 Reservations. This Agreement and the Premises are and shall be at all times subject to the reservations and exclusions listed below, and additional reservations City may reasonably require after the Effective Date, or which any Applicable Laws may require after the Effective Date ("Reservations") of which Tenant shall receive advance written notice. Such Reservations shall not unreasonably interfere with the conduct of Tenant's business on the Premises as authorized in this Agreement. The determination of unreasonable interference shall be made solely by the Executive Director in his or her discretion. In the event of any Reservation,

Tenant shall receive no compensation or abatement of rent unless otherwise provided in this Agreement.

102.2.1 Utilities, and other Rights-of-Way. Rights-of-way for sewers, storm drains, pipelines (public or private), conduits for telecommunications, cable, fiber optic, 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, service, inspect, maintain, replace, repair, enlarge or otherwise utilize the Premises for such purpose.

102.2.2 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.

102.2.3 Telecommunication and Utility 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 and utility equipment.

102.2.4 Homeland Security. Access, temporary occupancy and other rights reasonably necessary to comply with homeland security or related requirements of Applicable Law or directives of the 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.

102.2.5 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.

102.2.6 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.

102.2.7 Mineral Rights Excluded. Rights-of-way over, on, under, and through the Premises, as Board or City requires, to drill and explore new, or to maintain existing, oil, gas, or mineral wells. 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, are excluded from the Premises, without, however, the right of surface entry on the Premises.

102.2.8 City's Right of Access and Inspection. City, by and through its officers, employees, agents, representatives, and contractors, shall have the right at all reasonable times and in a reasonable manner, upon notice to Tenant, to enter upon the Premises for the purpose of inspecting the same or for doing any act or thing which City may be obligated or have the right to do under this Agreement, or otherwise, and no abatement of Rent shall be claimed by or allowed to Tenant by reason of the exercise of such rights. In the exercise of its rights under this Section, City, its officers, employees, agents, and contractors shall not unreasonably interfere with the conduct of Tenant's business on the Premises as herein authorized.

102.3 Modification of Premises and Documents.

102.3.1 Final Measurement. The Premises may be subject to final measurement by City. To the extent that the final measurements differ from Exhibit "A," the Harbor Engineer shall: (i) revise Exhibit "A" to reflect the correct measurements of the Premises and any improvements thereon; (ii) renumber the revised Exhibit "A" as Exhibit "A-1," and (iii) transmit Exhibit "A-1" to Tenant. Upon City's transmittal to Tenant, such revised and renumbered Exhibit "A-1" shall be deemed to: (i) be incorporated into this Agreement without further action of the Board or the Council; and (ii) supersede Exhibit "A."

102.3.2 Modifications. Subject to compliance with Applicable Laws, addition or deletion of Premises on which Tenant pays Rent, not to exceed a cumulative total of ten percent (10%) of the originally designated Premises, may be made by mutual written agreement of the Parties (with City acting through its Executive Director) as detailed herein, 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 and absolute discretion. Such addition or deletion shall be by written amendment and shall specify appropriate adjustments in Rent. Unless the modification involves an amount in excess of the Executive Director's contracting authority, as that amount may be amended from time to time, the amendment shall not require approval by the Board or the Council. If, on the other hand, the modification involves an amount within the Executive Director's authority, he or she shall make such modification in his or her sole and absolute discretion and shall transmit the amendment memorializing the

modification to Tenant. Any such amendment shall revise and replace the following:
(i) Section 2 (Premises) (ii) Section 4 (Rent and Other Tenant Payments), and
(iii) Exhibits "A," and/or "B," as necessary to conform to these modifications.

102.4 Temporary Assignments; Gate and Rail Access. By issuing this Agreement, City does not grant to Tenant the sole or exclusive right to use the Premises. Whenever the Premises, excepting an office building occupied by Tenant, if any, are not being used, in whole or in part, by Tenant for the Permitted Uses, or if City requires the Premises on a project or emergency basis, the Executive Director shall have the right, to make temporary assignments to other persons, firms and/or business entities to use the Premises, or any part thereof, as provided in the Tariff. Any direct charges accruing against Tenant from the use of the Premises by a temporary user, and the allocated costs of utilities that Tenant furnishes to such temporary user, shall be paid by such temporary user. All Tariff charges which accrue from such other user's use of the Premises except Tenant's cranes shall accrue solely for City's benefit except as expressly provided in Section 4.

Executive Director, upon written notice transmitted both to Tenant and the occupier of premises pursuant to Permit No. 999 issued and amended by City ("999 Occupier"), may direct Tenant and the 999 Occupier to reasonably coordinate joint use of the truck lane gates for terminal ingress and egress and the West Basin ICTF on Parcel No. 1 as depicted on Exhibit "A." Any such coordination and subsequent joint use by and between Tenant and the 999 Occupier shall be undertaken at the sole cost, expense and risk of Tenant and the 999 Occupier, as may be agreed to among the Tenant and the 999 Occupier, and expressly without involvement of, or liability to, City. Any such coordination and subsequent joint use shall neither waive nor alter any of the terms and conditions of this Agreement or Permit No. 999, as amended.

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

102.6 Maintenance Areas. Tenant shall not conduct or permit any maintenance of mobile or portable equipment on the Premises except in full compliance with all Applicable Laws attendant to the Premises and its use, including without limitation, all Environmental Laws and Mitigation Measures as hereinafter defined. Tenant shall not conduct maintenance activities on unpaved portions of the Premises, if any.

102.7 Responsibility for Financing. The procurement and/or maintenance of any financing required in connection with the use of the Premises, including, without limitation, development and operation, shall be the sole responsibility, cost and expense of Tenant.

102.8 Tenant to Supply Necessary Labor and Equipment. Tenant shall, at its sole cost and expense, provide all equipment and labor necessary 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.

102.9 Liens; Indemnity. Except where contested by Tenant in good faith in a court of competent jurisdiction, and except for non-delinquent 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 Premises, including any liens arising out of any labor performed for, or materials furnished to or on behalf of, Tenant on the Premises. Tenant shall at all times defend, hold harmless 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 Premises, or from additions or alterations made to any improvements on the Premises, or the repair of the same, by or at the direction of Tenant, and the costs of defending against any such claim, including attorneys' fees. If a mechanic's or other similar lien 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: (i) cause the same to be discharged of record within thirty (30) days after the date of filing the same; or, (ii) otherwise free the Premises from such claim, or lien and any action brought to foreclose such lien; or, (iii) promptly furnish City with a bond in the amount of one hundred and twenty five percent (125%) of the lien, 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.

102.10 Tenant Electronic Equipment. Tenant shall coordinate with the Harbor Department and any other applicable Governmental Agencies prior to installing any electronic, radio or telecommunications equipment to ensure that their operations do not interfere with public safety communications or radio frequencies of other tenants or City.

102.11 Property of Tenant. All property brought onto the Premises by Tenant, or in the care, custody or control of Tenant, to undertake the Permitted Uses, or otherwise, shall be and remain the property of Tenant, 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.

102.12 Quiet Enjoyment. City covenants that, so long as this Agreement has not expired or terminated in accordance with its terms and Applicable Laws attendant to the Premises and its use, and Tenant is not in default under any provision of this Agreement, Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term, so long as the Premises are used in compliance with the State Tidelands Trust. By such covenant, City makes no representation or warranty as to the condition of title of the Premises or the suitability of the Premises for the Permitted Uses. Tenant's sole remedy for breach of this Subsection 102.12 shall be an action for specific performance.

Section 103. Additional Provisions Related to Rent.

103.1 Premises Subject to Tariff. Tenant accepts the Premises and shall undertake the Permitted Uses subject to each and every of the applicable rates, terms, and conditions of the Tariff in its form on the Effective Date, or as it may be temporarily amended, or permanently amended, or superseded during the Term. 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. Executive Director, in his or her 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.

103.2 Requirements Applicable to Tenant's Payment of Rent.

103.2.1 Tenant's Obligation to Pay; No Right of Set-Off. Notwithstanding any other provision of this Agreement, Tenant's obligations to pay Rent to City according to the terms and conditions of this Agreement 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.

103.2.2 Payments. Whether invoiced by City or not, Tenant shall render its payments due and payable under this Agreement to the City of Los Angeles Harbor Department Administration Building, P.O. Box 514300, Los Angeles, CA 90051-4300, or any other place that City from time to time may designate in writing. All payments due to City under this Agreement 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.

103.2.3 Proration of Payments. If any payment by Tenant is for a period shorter than one calendar month, the Rent 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 Rent then due and payable. 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.

103.2.4 Annual Financial Statements. Tenant and any guarantors of this Agreement shall provide annual audited financial statements to City.

103.2.5 Force Majeure Not Applicable. Any Force Majeure provision or principle, including, without limitation, the provisions of Section 109 (Force Majeure), shall not apply to any of Tenant's Rent Payment Obligations.

103.2.6 Deposits.

103.2.6.1 Security Deposit. As a condition precedent to the effectiveness of this Agreement, on or before the Effective Date, Tenant shall, deposit with Executive Director a sum equal to three monthly installments of Base Rent ("Security Deposit"), which sum shall increase automatically with every increase in Rent under this Agreement. Said Security Deposit shall be in cash or a standby irrevocable letter of credit, or equivalent, in a form approved by City and, if applicable, the City's City Attorney. Letters of credit shall be self-renewing from year-to-year and shall remain in full force and effect for a minimum period of ninety (90) days following the Expiration Date or any earlier termination of this Agreement. Notwithstanding the foregoing, the irrevocable letter of credit may be subject to termination upon sixty (60) days written notice, provided that, Tenant shall first give City notice in writing of its intent to terminate the letter of credit and provide a replacement irrevocable letter of credit to the City so that there is no lapse in coverage.

Said deposit may be used to cover delinquent Rent, and other obligations under this Agreement including, but not limited to, any obligation to repair, maintain, or restore the Premises. This deposit shall not, in any way, reduce Tenant's liabilities under this Agreement unless specifically stated in writing by City and approved by the Board. Should all or part of such deposit be applied against Rent due and unpaid, or other obligations due and unpaid, Tenant shall immediately make another deposit in an amount equal to the amount so used, so that at all times during the term of this Agreement said deposit shall be maintained in the sum stated above, or as increased, in addition to the automatic increases set forth above, as may be reasonably required in writing by Executive

Director. Upon the expiration or earlier termination of this Agreement, the Executive Director may release any standby letter of credit, or its equivalent, and refund the remainder of the Security Deposit to Tenant, provided that Tenant is in compliance with all the terms and conditions of this Agreement. City shall have the right to apply the Security Deposit against Rent due and unpaid, or other obligations due and unpaid. Tenant shall not use any part of the security deposit to pay any Rent due hereunder.

103.2.7 Interest on Past Due Obligations. Any amount owed by Tenant to City under this Agreement which is not paid when due shall bear interest at the rate of ten percent (10%) per annum, or the prime rate plus four and one-half percent (4.5%) per annum, whichever is greater, from the due date of such amount (but not greater than the maximum interest rate permitted by law) until payment in full. The payment of interest on such amounts shall not excuse or cure any Default by Tenant under this Agreement. If the interest rate specified in this Agreement is higher than the rate permitted by law, the interest rate is hereby decreased to the maximum legal interest rate permitted by law.

Section 104. Tenant's Environmental Obligations During Term of Agreement.

104.1 Term Contamination; Baseline Condition; Remediation. During the Term, Tenant shall maintain the Premises free of Term Contamination, subject to Sections 102.2 (Reservations), and 102.4 (Temporary Assignments). On the Expiration Date or at the earlier termination of this Agreement, as to Environmentally Regulated Material, Tenant shall surrender possession of such Premises to City in (a) the Baseline Condition or (b) the environmental condition that fully complies with the guidelines of, orders of, or directives of the Governmental Agency or Agencies that have assumed jurisdiction of the Premises, whichever of the two is stricter as determined by Executive Director in his or her reasonable discretion, and in conformance with Harbor Department's remediation procedures, and free of encumbrances, such as deed or land use restrictions, except those that may be imposed as a result of the presence of Environmentally Regulated Material despite Tenant's compliance with the foregoing requirement.

104.1.1 Baseline Report; Presumption of Term Contamination. The Parties acknowledge and agree that a Baseline Report shall be generated implementing the scope of work attached hereto as Exhibit "G" and that, upon Executive Director's transmittal of such Baseline Report to Tenant, such Baseline Report, shall be deemed to replace the scope of work attached and to constitute Exhibit "G," and incorporated herein as if set forth in full. Such Baseline Report depicts the Environmentally Regulated Material on, below and/or emanating from the Premises on the Effective Date ("Baseline Condition").

With reference to Section 104.1, as between City and Tenant, Tenant is responsible, at its sole cost and expense, for all Environmentally Regulated Material not depicted in the Baseline Report. It is presumed that any Environmentally Regulated Material not depicted in the Baseline Report 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 Environmentally Regulated Material to Tenant, but the failure of City to provide such notice shall not relieve Tenant of their obligations. Tenant may rebut such presumption by providing to City, within ninety (90) days of City's written notice, conclusive evidence demonstrating that such Environmentally Regulated Material is not Term Contamination. Otherwise, such presumption shall be deemed confirmed making Tenant solely responsible for such Environmentally Regulated Material. Whether any information submitted by Tenant rebuts the aforementioned presumption shall be within Executive Director's reasonable discretion. This provision shall survive the expiration or earlier termination of this Agreement.

104.1.2 Prior Occupancy. If prior to the Effective Date, the Premises, or portions thereof, were occupied by Tenant, or an Affiliate of Tenant, or by an assignor or transferor to Tenant, under an entitlement or agreements separate from this Agreement ("Tenant Prior Occupancy"), as between City and Tenant, Tenant is solely responsible for any and all Environmentally Regulated Material released on the Premises during such Tenant Prior Occupancy, whether or not such Environmentally Regulated Material is depicted in the Baseline Report. Such responsibility is in addition to Tenant's responsibility for Term Contamination.

104.1.3 Specific Tenant Obligations for Term Contamination. As between City and Tenant, Tenant shall, at its sole cost and expense, remediate all Term Contamination in accordance with Section 104.1. If Applicable Law requires Tenant to report Term Contamination to a Governmental Agency, Tenant shall so report and thereafter, if such Governmental Agency asserts jurisdiction over such Term Contamination, Tenant shall, at its sole cost and expense as between City and Tenant, manage the Term Contamination consistent with Applicable Laws and the directives of the Governmental Agencies with jurisdiction, if any. If a schedule for such Term Contamination management is not prescribed by Applicable Laws, or the directives of the Governmental Agencies with jurisdiction if any, the Harbor Department shall reasonably prescribe such schedule in consultation with Tenant. Whether a Governmental Agency asserts jurisdiction over Term Contamination or not, Tenant shall characterize (including sampling and analysis) all Term Contamination in conformity with Applicable Laws and the reasonable directives of Executive Director. Tenant shall provide copies of remediation-relevant documents

(including work plans, reports, remedial action plans, and progress reports) for Harbor Department review and approval prior to implementing field investigations, studies, or cleanups. Tenant shall provide copies to City of all communications between Tenant (and any third-parties acting for or on its behalf), and any Governmental Agency with jurisdiction regarding all Term Contamination. If Tenant fails to wholly or partially fulfill any obligation set forth in this Subsection 104.1.3, 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, defend and hold harmless City, and Tenant shall pay for and/or reimburse City for any and all costs (including any administrative costs or legal costs) City incurs as a result of any such action it takes.

104.1.4 Bonds. In addition to any other requirement to provide security under this Agreement, Tenant also agrees to provide City a surety bond to assure restoration of the Premises, including removal of Environmentally Regulated Material, if at any time City demands such bond. The bond required herein shall be in a form acceptable to the City Attorney, and the amount shall be determined in the sole discretion of Executive Director after Tenant has had the opportunity to provide its opinion as to the amount, supported by a detailed estimate of an independent contractor experienced in the demolition of improvements and/or in hazardous material clean up and who has been in such business for at least three (3) years.

104.2 Presence and Use of Environmentally Regulated Material During the Term.

104.2.1 Tenant is Owner and Operator; Indemnity. Except for Environmentally Regulated Material comprising the Baseline Condition, and subject to Section 104.1, as between City and Tenant, Tenant is responsible at its sole cost and expense for full compliance with 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 land, on the owner of any improvements on land, on the user of land, or on the user of the improvements on land. For purposes of CERCLA (the Comprehensive Environmental Response, Compensation and Liability Act of 1980) and all other Applicable Laws, Tenant shall be considered the owner and operator. Except for Environmentally Regulated Material comprising the Baseline Condition, and subject to Section 104.1, 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, defend 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, penalties, and penalties/or judgments, including attorneys' and experts' fees and costs that result from Environmentally Regulated Material outside of the Baseline Condition, or Tenant's non-compliance with any Applicable Law during the Term regarding the use, storage, handling, distribution, processing, and/or disposal of Environmentally Regulated Material. City shall provide Tenant with not less than thirty (30) days' notice to comply with any claims, damages, fines, and penalties, or 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 thirty (30) days, then City, at its sole option, may pay such claims, damages, fines, and penalties resulting from Tenant's noncompliance with any of the Applicable Laws, and Tenant shall indemnify and reimburse City for any such payments.

104.2.2 Use of Environmentally Regulated Material. 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 Premises, except for: (i) limited quantities of standard office and janitorial supplies containing chemicals categorized as Environmentally Regulated Material; (ii) Environmentally Regulated Material set forth in Exhibit "H," (which Exhibit "H" shall be prepared by Tenant and subject to the reasonable written approval of Executive Director transmitted to Tenant, upon which transmittal such exhibit shall be deemed attached hereto and incorporated herein as if set forth in full), which are necessary for Tenant to undertake the Permitted Uses; and (iii) Environmentally Regulated Material handled in conformity with all state and federal environmental regulations. Tenant shall handle all such Environmentally Regulated Material in strict compliance with Applicable Laws in effect during the term of this Agreement or any holdover. Tenant shall provide City with a report including an updated Exhibit "H" which reflects all additional Environmentally Regulated Material necessary for Tenant to undertake the Permitted Uses only if there are changes to Exhibit "H."

104.3 Other Environmental Obligations.

104.3.1 Compliance Obligation; Notice. Tenant shall comply (and shall immediately remedy any incident of non-compliance) with:

104.3.1.1 Applicable Laws. Tenant shall immediately upon receipt provide City with copies of any notices or orders or similar notifications received

from any Governmental Agency regarding compliance with Applicable Laws relative to obligations under Section 104;

104.3.1.2 All applicable environmental policies, rules and directives of the Harbor Department as set forth on in Exhibit "H" attached hereto and incorporated herein as if set forth in full, compliance of which is subject to substantiation by Tenant, supported by writings and backup, as reasonably requested in writing by Executive Director; and

104.4 Waste Disposal. In discharging its obligations under this Section 104, if Tenant disposes of any soil, material or groundwater contaminated with Environmentally Regulated Material, Tenant shall maintain, and shall provide to Executive Director within thirty (30) days of its receipt of original documents, 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. Tenant shall supply copies of such records to the City promptly upon City's request. The name of the City of Los Angeles, the Port of Los Angeles, or the Harbor Department shall not appear on any manifest document as a generator of such material.

104.5 Laboratory Testing. In discharging its obligations under this Section 104, all analyses performed by or on behalf of Tenant shall be conducted at a State of California Department of Health Services certified testing laboratory certified for such analyses by the Los Angeles Regional Water Quality Control Board or other similar laboratory of which the Harbor Department shall approve in writing. By signing this Agreement, Tenant hereby irrevocably directs any such laboratory to provide City, within thirty (30) days, upon written request from City, copies of all of its reports, test results, and data which that are prepared in accordance with the requirements of this lease and/or regulatory agencies. Should Tenant fail to provide City with the requested information within thirty (30) days, City has the right to obtain such information directly from the laboratory. 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 Subsection 104.5, "Tenant" includes agents, employees, contractors, subcontractors, and/or invitees of the Tenant.

104.6 Survival of Obligations. Except as otherwise provided in this Section 104, this Section 104 and the obligations herein shall survive the expiration or earlier termination of this Agreement.

Section 105. Alteration of Premises by Tenant.

105.1 Alterations Require City Authorization. Other than maintenance and repair undertaken in compliance with Section 107, Tenant shall make no improvements, alterations, additions, modifications, or changes to the Premises, including but not limited to the construction of works or improvements or the changing of the grade of the Premises, or which affect the structural integrity of the Improvements on the Premises, or which substantially change the value or utility of the Improvements ("Alteration") without obtaining the Executive Director's prior written authorization to undertake such Alteration and a Harbor Engineer Permit. No Alterations shall be made for the purpose of altering the Permitted Uses unless approved in advance in writing by the Harbor Department Executive Director, which approval shall be in the Harbor Department's Executive Director's sole and absolute discretion. Tenant, at its sole cost and expense, shall procure any and all entitlements and permits (whether issued by Harbor Department or otherwise) necessary to undertake an Alteration, and, as between City and Tenant, shall design and construct the Alteration (unless otherwise directed by Executive Director) in accordance with Applicable Law. Tenant shall reimburse City for any reasonable costs City incurs in connection with Tenant's pursuit of an Alteration within thirty (30) days' written request by Executive Director. City reserves the right to inspect the design and/or construction of any Alteration upon reasonable notice. Tenant shall require by contract that its construction contractors and subcontractors comply with all Applicable Laws. Tenant shall undertake at its sole cost and expense any corrective actions requested by Executive Director as a result of such inspections. Executive Director may, without being so obligated, direct Tenant to remove any Alterations made in violation of this Section 105.1 at Tenant's sole cost and expense.

105.2 Notice of Commencement and Completion of Work. Tenant shall give thirty (30) days advance written notice to the Chief Harbor Engineer, in advance, of the date it will commence any construction. Within thirty (30) days following completion of the Alteration's construction, Tenant shall file with the Chief Harbor Engineer, in a form acceptable to the Chief Harbor Engineer, a set of "as-built" plans for such, Alteration. Tenant shall also provide to the Chief Harbor Engineer 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.

105.3 Tenant's Cost for Governmental Agency Requirements. Any modification, improvement, or addition to the Premises and any equipment installation required by any Governmental Agency in connection with Tenant's undertaking of the Permitted Uses shall be constructed or installed at Tenant's sole cost and expense.

Section 106. Utilities.

106.1 Generally. Tenant shall maintain on the Premises as-built drawings that identify the precise location of any pipelines, utilities or similar improvements of any type, that Tenant places on the Premises, or which were placed on the Premises by others and accepted by Tenant for use of the Premises, whether placed above or below ground, (which for the purposes of this Section 106, are collectively referred to as “utilities”).

106.2 Locating Utilities. 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 Premises by Tenant, or placed by others and accepted by Tenant for use of the Premises, to precisely locate the position of such items if the Harbor Department considers the as-built drawings as insufficient to locate such items. Any work necessary to locate such items or any damage that may result from the location being incorrectly described, whether incurred by Tenant or the Harbor Department, 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 time shall be commercially reasonable. The subsurface exploration shall verify the vertical as well as the horizontal location of all utilities and substructures. Documentation reflecting the results of said exploration shall be filed with the Chief 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 utilities or any other substructure placed on the Premise by Tenant, or placed by others and accepted by Tenant for use of the Premises, the Harbor Department shall have the right to enter the Premises to identify the precise location of any utilities or improvements of any type that Tenant has placed on the Premises, or that were placed by others and accepted by Tenant for use of the Premises, whether placed above or below ground. Tenant shall be solely responsible for City Costs associated with the right set forth in this Subsection 106.2 and shall pay City, as Additional Rent, within thirty (30) days of receiving an invoice for payment from City.

106.3 Relocation of Utilities; Harbor Department Right to Relocate. At any time during the term of this Agreement, the Executive Director shall have the right to make any change in the route or location of any utility constructed or maintained on the 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 Executive Director determines that any such change or relocation is necessary, the

Executive Director 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 completion the work of relocating the pipelines, the Harbor Department shall have the right to enter the Premises and relocate the utility. Tenant shall be solely responsible for City Costs associated with the right set forth in this Subsection 106.3 and shall pay City, as Additional Rent, within thirty (30) days of receiving an invoice for payment from City.

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

Section 107. Maintenance and Repair.

107.1 Generally. Except for those items identified on in Exhibit "J" attached hereto and incorporated herein as if set forth in full (which Exhibit "J" may be amended by the Executive Director, in the Executive Director's reasonable discretion), and as set forth in Subsection 107.6 (City Maintenance Obligations) at all times, Tenant, at its sole cost and expense, shall keep and maintain the Premises, and all buildings, works and improvements of any kind thereon, including without limitation the paving, the improvements existing on the Premises as of the Effective Date as depicted on Exhibit "B," in good and substantial repair and condition, whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements, or the age of such portion of the Premises or improvements thereon, 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, or updated to current standards for such 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 Premises by a temporary user pursuant to Subsection 102.4 (Temporary Assignments).

107.2 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. Notwithstanding, in an emergency as determined by City (including but not limited to an immediate threat of physical harm to persons and/or material damage to the Premises and/or structural or foundational damage to any improvements thereon), City shall have the right, but not the obligation, to undertake immediate repairs to the Premises and any structures thereon without notice. Tenant

shall reimburse City for City's Costs 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 City's costs incurred pursuant to this Subsection 107.2 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.

107.3 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 Premises free and clear of rubbish, debris, litter, and graffiti at all times. Tenant shall perform annually, at a minimum, before the commencement of the rainy season, inspections and cleaning of any storm water catch basins (including filters), maintenance holes, and drains, and, to the extent applicable to this Agreement, maintaining the submerged land underlying any water berthing area at the 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 Premises in a safe, clean and sanitary condition in accordance with all Applicable Laws.

107.4 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, which have been or may be installed on the Premises shall be maintained and repaired by Tenant, at its cost, in an operative condition at all times.

107.5 City Inspections. Upon City's request, Tenant shall provide personnel to accompany City's representatives on periodic inspections of the Premises to determine Tenant's compliance with this Permit. Notwithstanding the foregoing, nothing obligates City to make such determinations and City shall not incur any liability for not making such inspections and determinations.

107.6 City Maintenance Obligations. In addition to the improvements listed in Exhibit "J," City shall be responsible for the maintenance and repair of all roofs and fire safety systems on improvements owned by City as reflected on Exhibit "B" but only to the extent such maintenance and repair was not caused by the Tenant. To the extent that the Harbor

Department maintains any utilities utilized by Tenant, the Harbor Department shall assess a maintenance fee to cover the cost of such maintenance which assessment shall be Additional Rent.

Section 108. Default and Termination.

108.1 Tenant's Default.

108.1.1 Event of Default. The occurrence of any of the following shall constitute a material breach and 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) business days after written notice of the failure from City to Tenant;

(b) Tenant's failure to comply with any term, provision, or covenant of this Agreement other than paying Rent, and does not commence to cure such failure within thirty (30) days after delivery of written notice of the failure from City to Tenant or does not cure the failure within ninety (90) days after delivery of such notice. An extension may be granted by the Executive Director to cure such failure, as Tenant commences to cure within thirty (30) days of delivery of the notice and diligently proceeds to cure such default to completion.

(c) Tenant's abandonment of the Premises, including but not limited to (i) Tenant's absence from or failure to use the Premises or any substantial portion thereof for three (3) consecutive days (excluding Saturdays, Sundays, and California legal holidays) while in default of any provision of this Agreement; or (ii) if not in default, Tenant's absence from or failure to use the Premises or any substantial portion thereof for a period of thirty (30) consecutive days unless Tenant, prior to the expiration of any such period of thirty (30) consecutive days, notifies the Executive Director in writing that such nonuse is temporary and obtains the written consent of the Executive Director to such nonuse;

(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; and/or

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

(e) The undertaking of a use other than a Permitted Use on the Premises if Tenant fails to discontinue such use within three (3) calendar days after delivery of written notice from City to Tenant demanding that Tenant cease and desist such unpermitted use.

108.1.2 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 Subsection 108.1.2 shall be deemed Additional Rent.

108.1.2.1 Termination of Agreement. City may terminate this Agreement and recover possession of the Premises. Once City has terminated this Agreement, Tenant shall immediately surrender the Premises 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 two percent (2%);

(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 Premises for a new tenant (whether for the same or a different use), brokerage commissions, and any special concessions made to obtain a new tenant;

(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 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 or one hundred fifty percent (150%) of the fair market rental at the time of the Termination, whichever is greater.

108.1.2.2 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.

108.1.2.3 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 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.

108.1.3 Form of Payment After Default. If Tenant fails to pay any amount due under this Agreement within three (3) 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.

108.1.4 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, including any rights City may have to recover possession of the property.

108.1.5 Cross Default. A material breach of the terms of any other permit, license, lease or other contract held by Tenant and City shall constitute a material breach of the terms of this Agreement and shall give City the right to terminate this Agreement for cause in accordance with the procedures set forth in this Section 108.

108.2 City's Defaults.

108.2.1 Event of Default. City's failure to perform any of its obligations under this Agreement, if City fails to commence to cure the failure within sixty (60) 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 it cannot be cured in ninety (90) days, in which case if City fails to diligently cure within a reasonable amount of time, shall constitute a default.

108.2.2 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.

108.3 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. 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 6 (Notices) 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. Notwithstanding the foregoing, nothing herein contained shall preclude or render inoperative service of notice in the manner provided by law.

Section 109. Force Majeure.

Except as otherwise provided in this Agreement, whenever a day is established in this Agreement on which, or a period of time, including a reasonable period of time, is designated within which, either Party is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such Party is prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of acts of God, the public enemy, or public riots; failures due to nonperformance or delay of performance by suppliers or contractors; any order, directive or other interference by municipal, state, federal, or other governmental official or agency (other than City's failure or refusal to issue permits for the construction, use, or occupancy of City's Improvements or the Premises); any catastrophe resulting from the elements, flood, fire, or explosion; or any other cause reasonably beyond the control of a Party, but excluding strikes or other labor disputes, lockouts, or work stoppages ("Force Majeure"); provided, however, that this Section 109 shall not apply to (1) the time for payment of Rent or any other monetary obligation or the obligation to pay Rent or any other monetary obligation,

(2) the insurance provisions set forth in this Agreement, or (3) to extend the term of the Agreement beyond fifty (50) years. In the event of the happening of any of such contingency events, the Party delayed by 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 Force Majeure shall use reasonable diligence to remove the cause of delay, and if and when the event 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.

Section 110. Indemnity and Insurance.

110.1 Indemnity.

110.1.1 Generally. 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 attorneys (including in-house legal counsel) and/or 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 Premises, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the Premises by Tenant, its officers, agents, employees, sublessees, licensees or invitees;

(b) Any operation conducted upon, or any use or occupation of, the Premises by Tenant, its officers, agents, employees, sublessees, licensees, or invitees under or pursuant to the provisions of this Agreement or otherwise;

(c) Any act, error, omission, willful misconduct, or negligence of Tenant, its officers, agents, employees, sublessees, licensees, 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;

(d) Any failure of Tenant, its officers, agents or employees to comply with any of the terms or conditions of this Agreement or Applicable Laws;

(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;

(f) Term Contamination, 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, 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, and 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;

(g) Any Tenant breach of this Agreement.

This Subsection 110.1.1 shall not be construed to make Tenant responsible for loss, damage, liability, or expense to third-parties to the extent caused solely by the gross negligence or willful misconduct of City.

110.1.2 Damage to or Loss of Property, Loss of Revenue. Tenant also agrees to indemnify City and pay for all damages or loss suffered by City and Harbor Department including, but not limited to, damage to or loss of property, 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 110. The term "persons" as used in this Section 110 shall include, but not be limited to, officers and employees of Tenant.

110.1.3 Survival of Obligations. The indemnity obligations in this Section 110 shall survive the expiration or earlier termination of this Agreement and shall apply regardless of the active or passive gross negligence of City and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on City.

110.2 Insurance. In addition to, and not as a substitute for, or limitation of, any of the indemnity obligations imposed by this Agreement, Tenant shall procure and maintain at its expense and keep in force at all times during the term of this Agreement the types and amounts of insurance specified on Insurance, Exhibit "K," attached hereto and incorporated by reference herein. The specified insurance shall also, either by provisions in the policies, by City's endorsement form or by other endorsement attached to such policies, include and insure City, its Harbor Department, its Board and all of City's officers, employees, and agents, their successors and assigns, as additional insureds, against the areas of risk described in Exhibit "K" and below, with respect to Tenant's acts or omissions in its operation, use and occupancy of the Premises or other related functions performed by or on behalf of Tenant in, on or about the Harbor District. The types of insurance which are required must meet the following conditions during the term of this Agreement and any holdover periods:

110.2.1 Commercial General Liability. Commercial 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 Tenant's normal limits of liability, but not less than set forth in Exhibit "K" for each accident or occurrence. Where Tenant owns watercraft, liability coverage for such craft must be provided as follows:

(a) Hull and machinery coverage for the value of each vessel which will call at the Premises during the term of this Agreement, if any; and

(b) Protection and indemnity coverage with combined single limits as set forth in Exhibit "K" per occurrence for bodily injury, illness, death, loss of or damage to the property of another, Jones Act risks or equivalent thereto internationally, and pollution liability to which it is agreed that the additional insured provisions as required and described below must be included. Pollution liability shall include coverage for bodily injury, including death and mental anguish, property damage, defense costs and cleanup costs. Such coverage 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, 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 Permit No. ___, and under any amendments, modifications, extensions or renewals of said Permit regardless of whether such operations, uses, occupations, acts and activities occur on the Premises or elsewhere within the Harbor District.

"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."

110.2.2 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 in the amounts set forth in Exhibit "K," 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.

110.2.3 Automobile Liability. Where Tenant utilizes any vehicles, Tenant shall procure and maintain automobile insurance with limits of liability not less than set forth in Exhibit "K" 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.

110.2.4 All Risk Insurance. Fire and extended coverage insurance covering a percentage of the replacement value, as set forth in Exhibit "K," of the works, buildings and improvements erected or owned by Tenant on the Premises, with such provision in the policies issued to cover the same, or in riders attached thereto, as will provide for all losses the amount stated in Exhibit "K" to be payable to Board to be held in trust for reconstruction. In the event of loss or damage by fire to any of such buildings or improvements, Tenant shall commence replacement or reconditioning of such items within ninety (90) days following any such loss. Tenant shall proceed diligently and with reasonable dispatch to take all steps and do all work required to replace or recondition such items. In the event Tenant commences such replacement or reconditioning within said period of ninety (90) days, such proceeds shall be released by Board to Tenant as payments are required for said purpose. Upon the completion of such replacement or reconditioning to the satisfaction of the Executive Director, any balance thereof remaining shall be paid to said Tenant forthwith. In the event Tenant fails to undertake such replacement or reconditioning within said period of ninety (90) days, such proceeds may be retained by City.

110.2.5 Environmental Impairment Liability Insurance. Should Tenant's operations involve the storage or use of any type of hazardous materials or pollutants, the Tenant shall 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 the amount set forth in Exhibit "K" per occurrence, which is to remain in effect at least five (5) years after the termination of the Agreement.

110.2.6 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 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.

110.2.7 Insurance Features. Such insurance procured by Tenant shall include the following features:

(a) Notice of Cancellation. For each insurance policy described above, Tenant shall give to the Board of Harbor Commissioners a ten (10) days' prior written notice of cancellation or reduction in coverage for nonpayment of premium, and a thirty (30) days' written 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 the City Attorney's Office, 425 S. Palos Verdes Street, San Pedro, California 90731.

(b) Acceptable Evidence and Approval of Insurance. Electronic submission is the required method of submitting Tenant's insurance documents. Tenant's 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 Tenant's behalf.

(c) Renewal of Policies. Prior to the expiration of each policy, Tenant 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 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, obtain such insurance for Tenant.

(d) Certified Copies of Policies. Upon request by Executive Director, Tenant must furnish a copy of the binder of insurance and/or full certified copies of any or all policies of insurance required herein. Tenant's obligation to provide such copies shall survive the Expiration Date regardless of whether Executive Director's request is made prior to or after the Expiration Date.

(e) Modification of Coverage. The Executive Director, or designee, at the Executive Director's discretion, may require 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 shall occur no less than every five (5) years of the term to ensure that the coverage amounts are consistent with industry standards at the time of the modification for the Permitted Uses of the Premises.

(f) Accident Reports. Tenant shall report in writing to Executive Director within fifteen (15) days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Fifty Thousand Dollars (\$50,000) to property, occurring upon the Premises, or elsewhere within the Harbor District, if Tenant's officers, agents or employees are involved in such an accident or occurrence 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.

110.2.8 Right to Self-Insure. The required coverage above shall provide first dollar coverage except that the Executive Director may permit a self-insured retention or self-insurance in those cases where, in the Executive Director's judgment, such retention or self-insurance is justified by the net worth of Tenant. The retention or self-insurance 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, retention, or self-insurance, Tenant shall have 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. 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; and

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

110.2.9 Increased Insurance Risks. Following the Effective Date, should an event occurring in or about the Premises cause either cancellation or increased rates with respect to any insurance that City may have on the Premises or on adjacent premises, or cause either cancellation or increased rates with respect to any other insurance coverage for the 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.

110.2.10 Other. City agrees to cause insurance policies covering City-owned property to be endorsed with a waiver of subrogation against Tenant and Tenant's parent and affiliates, for any loss or damage to such property arising from Tenant's operations or activities under this Agreement.

Section 111. Damage and Destruction to Improvements.

111.1 Notice; No Rent Abatement. Tenant shall promptly give City notice of any material damage or destruction of any or all of the improvements on the Premises ("Casualty")

generally describing the nature and extent thereof. There shall be no abatement or reduction of Rent on account of any Minor Casualty and all obligations of Tenant under this Agreement shall remain unchanged and in full force and effect. In the case of a Major Casualty, provided that the Major Casualty was not caused by the act or omission of Tenant or any of its employees, agents, licensees, subtenants, customers, clients or invitees, until the repair and restoration of the Premises is completed, Tenant shall be required to pay rent only for that part of the Premises that Tenant is able to use while repairs are being made, based on the ratio that the amount of usable rentable area bears to the total rental area in the Premises.

111.2 Minor Casualty. In the event of any Minor Casualty at any time during the Term, and regardless of whether such Minor Casualty is insured or uninsured, Tenant shall be obligated to repair, rebuild or restore the damaged improvements.

111.3 Casualty Covered by Insurance. If, during the Term of this Agreement, any buildings, structures, or improvements on the Premises are partially or totally destroyed from a risk covered by the insurance required under this Agreement, thereby rendering the Premises partially or totally inaccessible or unusable, Tenant must restore the Premises to substantially the same condition as they were immediately before destruction.

111.4 Casualty Not Covered by Insurance. If, during the Term of this Agreement, improvements on the Premises are partially or totally destroyed from a risk not covered by the fire and extended coverage insurance required under this Agreement thereby rendering said Premises partially or totally inaccessible or unusable, such destruction shall not automatically terminate this Agreement. If, however, the cost of restoration exceeds one hundred ten percent (110%) of the full replacement value of improvements, as said value existed immediately before said destruction, City may, at City's option, terminate this Agreement by giving written notice to Tenant within sixty (60) days from the date of destruction. If City elects to terminate as above provided, Tenant shall be obligated, unless otherwise directed by City, to demolish all damaged improvements and remove all debris from the Premises, and otherwise comply with the restoration and surrender obligations contained in Section 117 (Restoration and Surrender of Premises), at Tenant's sole cost. If City fails to exercise its right to terminate this Agreement, this Agreement shall continue in full force and effect for the remainder of the term specified herein and Tenant shall restore the Premises to substantially the same condition as they were in immediately before the damage or destruction.

111.5 Inapplicability of Civil Code Sections. The provisions of California Civil Code Sections 1932(2) and 1933(4), and any successor statutes, are inapplicable with respect to any

destruction of any part of the Premises; such sections provide that a lease terminates on the destruction of the Premises unless otherwise agreed between the Parties to the contrary.

111.6 Damage to Wharf. Notwithstanding the foregoing, whether or not there is insurance to cover such Casualty, Tenant shall be responsible, at its sole cost and expense, for all costs, direct or indirect, associated with repairing any damage to the wharf structure on the Premises, including, but not limited to, damage resulting from a collision between a vessel and the wharf while docking or undocking, unless such damage is due to the sole active gross negligence of City or of a third-party on the Premises pursuant to Subsection 102.4 (Temporary Assignment), or by a secondary assignee to which the Premises are assigned. The Harbor Department shall have the option of either making the repairs or requiring Tenant to make the repairs. If the Harbor Department makes the repairs, Tenant agrees to reimburse the Harbor Department for the City's costs incurred in making the repairs. All damage shall be presumed to be the responsibility of Tenant and Tenant agrees to be responsible for such damage, unless Tenant can demonstrate to the satisfaction of the Executive Director that someone other than Tenant, its officers, agents, employees, customers, contractors, subtenants, licensees or other invitees caused the damage. The sufficiency of proof presented by Tenant to the Harbor Department shall be determined by the Executive Director in the Executive Director's sole judgment.

Section 112. Assignments, Transfers and Subleases.

112.1 Assignment, Transfer and Subletting; City's Consent Required.

112.1.1 Generally. Tenant shall not, in any manner, transfer or assign this Agreement, or any portion thereof or any interest therein, ("Assignment"), voluntarily or involuntarily, without the prior written consent of the Board, nor sublet or sublease the whole or any part of the Premises, nor license or permit the use of the same, in whole or in part, without the prior written consent of the Executive Director (collectively referred to as a "Transfer"). Any attempted Transfers or Assignments in violation of this Section 112 shall entitle City to recapture the Premises, and/or to collect from Tenant all rent or other compensation Tenant received as a result of the attempted Transfer or Assignment, at its sole and absolute option and discretion. In the event that the Tenant only wants to change its entity name or business name (i.e., a mere change in name not constituting a Transfer or Assignment within the meaning of this section 112), then such name change by Tenant may be made with the approval of the Executive Director. Tenant shall promptly, and in no case later than thirty (30) days prior to a change in name, notify the Executive Director in writing of any proposed changes to its name, or contact or

delivery information, set forth in the preamble, or the notification sections, of this Agreement. Tenant shall provide City with all documents in connection with any name change within ten (10) days of City's written request for such documents. Tenant shall not change its name until Tenant receives written approval from the Executive Director for Tenant to change its name.

112.1.2 Consent Required; Payment of City's Costs. 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, shall be valid or effective for any purpose unless (i) Tenant receives the prior written consent of City and (ii) Tenant satisfies the requirements in Subsection 112.3 (Procedure to Obtain Consent to Transfer). Consent to one Transfer shall not be deemed to be a consent to any subsequent Transfer, and following any consent to a Transfer, Tenant shall remain responsible under this Agreement for any undischarged obligations of the Transferee. For purposes of this Subsection 112.1.2, 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 Subsection 112.2.2 (Partnerships)).

Tenant acknowledges and agrees that it shall be required to pay the City for all City Costs incurred to review all documents submitted in response to a request to Transfer.

112.1.3 Transfer of Assets. "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 there is 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.

112.2 Transfers of Ownership. A transfer shall include:

112.2.1 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 this Section 112.

112.2.2 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 this Section 112. 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 shall not unreasonably withhold its consent to such transfer.

112.2.3 Guarantor. If a parent or other entity or person 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 or person has, in the 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 guaranty, 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 guaranty. 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 in financial condition within the meaning of this Subsection 112.2.3.

112.2.4 Executive Director Authority to Modify. 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.

112.3 Procedure to Obtain City Consent to Transfer. 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 ninety (90) days before the

proposed effective date of the Transfer. In any event, Tenant's written request to City for consent shall hereinafter be referred to as "Transfer Notice."

112.3.1 Transfer Notice. 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, and the permissibility of the proposed Transfer under Applicable Laws or third-party consent concerning foreign investment and/or control of the Premises;

(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.

112.3.2 Limitations on City's Consent. 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 112 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 113, requesting City's consent. A material change for purposes of this Section 113 is one where the terms 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;

(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 Subsection 110.2 (Insurance) 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 Subsection 110.2;

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

(i) Tenant acknowledges and agrees that a proposed Transfer or Assignment may require the approvals of third-parties not under the control of City in order to become effective and that failure to obtain such non-City approvals may prevent or invalidate the proposed Transfer or Assignment notwithstanding any City approval of same. Tenant hereby releases and discharges City from and against any and all rights, claims, demands, damages, liabilities, accounts, reckonings, liens, attorney's fees, costs, expenses, actions and causes of action of every kind and nature whatsoever, whether in contract, tort, at law or in equity,

or otherwise, now known or unknown, suspected or unsuspected, whether intentional, negligent (including joint, sole, concurrent and gross negligence) or otherwise, and whether existing at common law, by statute or other legislative act, or by constitutional provision which exist as of the effective date of this Agreement or the date is such Transfer of Assignment that are based in whole or in part on, consist of, or which do or may arise out of, or which are or may be related to or in any way connected with the inability to obtain such non-City approvals.

112.4 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 or entities;

(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 and occupancy thereof;

(e) Whether the information provided by Tenant in connection with Subsection 112.3.1 (Transfer Notice) 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;

(g) Whether there are uncured defaults including, without limitation, unpaid Rent and, if there are, whether the proposed Transferee agrees to cure, remedy or

otherwise correct any default by Tenant existing at the time of the Transfer, in a manner satisfactory to the Board; and

(h) Whether the Transferee, its operator or any Affiliate of the Transferee or its operator is listed on any of the following lists maintained by the Officer of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of the Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of Persons with which the City may not do business under Applicable Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List, and the Debarred List.

(i) And any other factors as determined by City in its sole and absolute discretion.

112.5 Additional Conditions for Subleases. If Tenant requests consent to a Transfer consisting of a sublease of all or a portion of the Premises, the following terms and conditions shall also apply:

(a) Notwithstanding Subsection 112.3 (Procedure to Obtain Consent to Transfer), Tenant may request consent for a sublease with less than ninety (90) days' notice.

(b) City reserves the right to recapture any portion of the Premises proposed by Tenant to be subleased (with appropriate amendments to this Agreement) and to undertake the transaction with the proposed Transferee directly;

(c) Tenant in no event shall be allowed to sublet more than twenty percent (20%) of the Premises to any one sublessee unless this Agreement expressly provides otherwise;

(d) Tenant shall owe to City as Additional Rent, one hundred percent (100%) of any amount collected from the sublessee as compensation that exceeds, on a pro rata basis, based on the preceding year's Rent, the compensation due City from Tenant under Section 4 (Rent);

(e) Tenant must provide City with a copy of the Sublease Agreement; and a copy of any notice of default or breach of the sublease; and

(f) No sublessee shall further Transfer or sublet all or any part of the Premises without City's prior written consent.

112.6 Assignments for Security Purposes. Tenant's request to assign this Agreement to secure financing of improvements on the Premises will require Board approval and will be considered 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 or alterations on the Premises.

(b) Monies borrowed must be in a fixed amount. New borrowings or refinancing require further Board approval.

(c) The collateral covered by the security agreement securing Tenant's loan shall cover only Tenant's leasehold interests and interest in improvements on the Premises, not the interests of City in improvements or land, and not any improvements or fixtures which, if removed, would leave the Premises untenable. In this Subsection 112.6, "untenable" means, the removal of improvements or fixtures which, in the City's sole and absolute discretion, would leave the Premises in a condition that prevents City from renting the Premises.

(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 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 Board. 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 City may have with respect to Tenant's default of this Agreement; provided, however, that the City 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 that 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 City; (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; and (d) the proposed Transferee, its operator or any Affiliate of the proposed Transferee or its operator is not listed on any of the following lists maintained by the Officer of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of the Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of Persons with which the City may not do business under Applicable Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List, and the Debarred List.

(3) Even if the Board consents to such a proposed Transfer, the Board may first require that the Transferee and the Board agree on a new compensation for the Premises transferred. If the Board modifies the compensation, it shall take into account the then existing 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 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.

112.7 Transfer Fee. In the case of a Transfer, Tenant shall pay to City a fee ("Transfer Fee") based on the following formulas:

(a) If there are ten (10) years or more remaining on the Agreement term when the Transfer occurs (excluding any unexercised extension or renewal terms), Tenant shall pay to City an amount equal to twenty percent (20%) of the gross transaction value attributed to the Agreement (including improvements thereon owned by Tenant) and inuring to the benefit of Tenant and/or its Affiliates (as defined herein), as reasonably determined by City.

(b) If there are less than ten (10) years but more than five (5) years remaining on the Agreement term when the Transfer occurs (excluding any unexercised extension or renewal terms), Tenant shall pay to City an amount equal to fifteen percent (15%) of the gross transaction value attributed to the Agreement (including improvements thereon owned by Tenant) and inuring to the benefit of Tenant and/or its Affiliates (as defined herein), as reasonably determined by City.

(c) If there are (5) years or less remaining on the Agreement term when the Transfer occurs (excluding any unexercised extension or renewal terms), Tenant shall pay to City an amount equal to ten (10%) of the gross transaction value attributed to the Agreement (including improvements thereon owned by Tenant) and inuring to the benefit of Tenant and/or its Affiliates (as defined herein), as reasonably determined by City.

112.8 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.

112.9 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.

112.10 Indemnity in Favor of City; Tenant's Rights. In addition to and not as a substitute for the indemnities Tenant provides to City pursuant to Subsection 110.1 (Indemnity), 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 except

for claims arising from the sole gross negligence or willful misconduct of City in withholding its consent in which case Tenant's sole remedy shall be entitled only to seek specific performance.

112.11 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.

112.12 Written Certification. 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 purported Transfer.

Section 113. Records, Reports and City's Right of Inspection.

113.1 Audits. City may, at its sole discretion and with reasonable written notice to Tenant, require Tenant to provide access to all records and other information necessary to perform an audit of Rent, fees, other charges paid and payable to City, and any required information for payments by City to Tenant, including but not limited to invoices and proof of payments related to reimbursement for tenant improvements and other tenant-required investments. City shall have the right to access such records and information for three (3) years past the end of the fiscal year in which they were generated and up to three (3) years past the expiration or early termination of this Agreement. Tenant shall retain all records and other information necessary to perform an audit as described above for a minimum of five (5) years. Tenant shall produce at Executive Director's written request its annual reports, audited financial statements, including its balance sheet, income statement and statement of changes in financial position, statement of changes in retained earnings and the Section 10K filing statement required by U.S. security laws. The records of Tenant's Affiliates shall also be produced if requested by Executive Director.

113.2 City Right of Inspection. City's authorized representatives shall have access to the Premises (a) with 24-hour notice at any and all reasonable times to determine whether or not Tenant is complying with the terms and conditions of this Agreement, and (b) at any and all times, with or without notice, for fire, and police/ or homeland security purposes, to investigate any incidents involving personal injury or property damage, or for any other purpose incidental to the rights and/or duties of City. 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. Tenant shall provide personnel

to accompany City's representatives on periodic inspections of the Premises to determine Tenant's compliance with this Agreement.

113.3 ACTA. Tenant shall provide to City, the Alameda Transportation Corridor Authority ("ACTA"), or their agents, any information reasonably required to compile accurate statistical information related to the Alameda Corridor, and to enable ACTA to generate timely and accurate invoices for Alameda Corridor use fees and container charges payable by users of the Alameda Corridor. Tenant shall use its best efforts to provide such non-confidential and non-privileged information in the format requested.

113.4 Report of Accidents, Casualties or Crimes. Tenant shall give the Executive Director notice in case of accidents, crimes, fires or other adverse incidents in the Premise promptly after Tenant is aware of any such event.

Section 114. Condemnation.

114.1 Generally. The Parties agree that if during the Term there is any taking of all or any part of the Premises by Condemnation, the rights and obligations of the Parties shall be determined pursuant to this Section 114.

114.2 Total Taking. Tenant may elect to treat as a Partial Taking any Taking that would otherwise qualify as a Total Taking. If a Total Taking of the Premises shall occur, and Tenant does not elect by written notice to City, within sixty (60) days thereafter, to treat the same as a Partial Taking, then this Agreement shall terminate as of the effective date of such Total Taking, and the Rent shall be apportioned accordingly. The proceeds of the Total Taking shall be allocated between City and Tenant in accordance with their respective interests.

114.3 Partial Taking.

114.3.1 Effect on Agreement; Award. If a Partial Taking shall occur, then any award or awards shall be applied first to repair, rebuilding or restoration of any remaining part of the Improvements not so taken. Tenant shall perform such repair, rebuilding or restoration in accordance with the applicable requirements of this Agreement. The balance of any such award or awards remaining after the repair, rebuilding or restoration shall be distributed to City and Tenant as if they were proceeds of a Total Taking affecting only a portion of the Premises taken. If the Partial Talking impacts the usable area of the Premises, the City shall abate or reduce the Rent payable hereunder as a result of such

Partial Taking. No other sums payable under the Agreement shall be abated or reduced as a result of any Partial Taking.

114.3.2 Improvements. Should Tenant terminate this Agreement pursuant to this Section 114, title to all improvements, additions, alterations constructed or installed by Tenant upon the Premises and which have not already vested in City shall thereupon vest in City.

114.3.3 Waiver of CCP §1265.130. Each Party waives the provisions of the California Code of Civil Procedure Section 1265.130 allowing either Party to petition the superior court to terminate this Agreement in the event of a Partial Taking of the Premises.

114.4 Temporary Taking. If a Temporary Taking shall occur with respect to use or occupancy of the Premises for a period greater than 365 days, then Tenant shall, at its option, be entitled to terminate this Agreement effective as of the commencement date of the Temporary Taking. If the Temporary Taking relates to a period of 365 days or less, or if Tenant does not elect within sixty (60) days after the 365th day of the Temporary Taking, to terminate this Agreement, then all proceeds of such Temporary Taking (to the extent attributable to periods within the Term) shall be paid to Tenant, and Tenant's obligations under this Agreement shall not be affected in any way.

114.5 Severance Damages. The entire award of compensation paid for any severance damages, whether paid for impairment of access, for land, buildings, and/or improvements shall be the property of City, regardless of whether any buildings or improvements so damaged are owned or were constructed by City or Tenant. However, should City determine that improvements are to be restored, that portion of the severance damages necessary to pay the cost of restoration shall be paid to Tenant accompanied by evidence that the sum requested has been paid for said restoration and is a proper item of such cost and used for such purpose.

114.6 Other Condemnation. In the event of any condemnation action not resulting in a Taking but creating a right to compensation, this Agreement shall continue in full force and effect without reduction or abatement of Rent, and the award or payment made in connection with such action shall be allocated between City and Lessee in accordance with their respective interests.

114.7 Settlement or Compromise. Neither City, in its Proprietary Capacity under this Agreement, nor Tenant shall settle or compromise any Taking award affecting the interests of

the other Party without the consent by such other Party, such consent not to be unreasonably withheld. Each of City and Tenant shall be entitled to appear in all Taking proceedings affecting its respective interest, to participate in any settlement, arbitration or other proceeding involving such a Taking and to claim its Taking award under this Agreement.

114.8 Prompt Notice. If either Party becomes aware of any Taking or threatened or contemplated Taking, then such Party shall promptly give Notice thereof to the other Party.

114.9 Control of Funds after Partial Taking. In the event of a Partial Taking where Tenant is required to, or chooses to, repair, rebuild or restore the damaged improvements, the following provisions regarding control of funds shall apply:

114.9.1 Proceeds Less Than \$1,000,000. All proceeds from any Partial Taking less than \$1,000,000 shall be distributed to Tenant and shall be applied by Tenant in accordance with Subsection 114.3 (Partial Taking).

114.9.2 Proceeds Greater Than \$1,000,000.

114.9.2.1 When Fund Control Mechanism in Leasehold Mortgage Governs. If any Leasehold Mortgage permitted by City and entered into by Tenant contains a fund control mechanism providing that all proceeds from any Partial Taking in excess of \$1,000,000 shall be deposited with such Leasehold Mortgagee or a third party depository specified in such Leasehold Mortgage to be disbursed to repair, rebuild or restore the Premises, the mechanics for fund control set forth in such Leasehold Mortgage shall have priority over the corresponding mechanics for fund control set forth in Subsection 114.9.2.2, below.

114.9.2.2 When Fund Control Mechanism in This Agreement Governs. Subject to Subsection 114.9.2.1, above, if proceeds from any Partial Taking total in excess of \$1,000,000, then upon request of City all such proceeds shall be deposited with the City to be disbursed to repair, rebuild or restore the Premises in accordance with the procedures set forth in Section 112 (Damage and Destruction to Improvements), and the balance, if any, of such proceeds shall be allocated between City and Tenant in accordance with their respective interests.

114.10 Waiver. The provisions of this Agreement governing Takings are intended to supersede the application of Chapter 10, Article 2 of the California Code of Civil Procedure and

all similar Laws, to the extent inconsistent with this Agreement. Nothing in this Section 114 shall be construed to limit City's powers with respect to Takings in its Governmental Capacity.

Section 115. Marks.

115.1 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 part, 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, including the “Port of Los Angeles®” and “America’s Port®;” and (ii) imparts the color of authority of the City of Los Angeles; and/or (3) otherwise imparts association with or endorsement by the City of Los Angeles on any goods or services offered by Lessee under such name or mark.

115.2 City Approval of Lessee Name or Mark. City shall have the right of approval of names and marks coined or created by Tenant for use on the Premises to ensure that use of the Premises leased herein is consistent with that of a public venue leased by a governmental entity. City shall not approve names 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.

115.3 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 approved by City, Tenant has no right to use any of the City-Associated Marks.

Section 116. Restoration and Surrender of Premises.

116.1 Tenant’s Restoration Obligations. By the Expiration Date, or any sooner or later termination of this Agreement, Tenant shall quit and surrender possession of the Premises, and shall be obligated to, as directed by the Executive Director, in the Executive Director’s sole and absolute discretion, either (i) return the Premises to City in good and usable condition, said condition to be consistent with a first class facility of similar age as repaired, maintained, or upgraded by Tenant, or any Assignor, or Affiliate of Tenant under this Agreement or any prior permit, or by City, or (ii) demolish all Improvements on the Premises and leave the Premises in a clean level and usable condition as set forth below, or (iii) demolish some of the Improvements on the Premises, as designated by City, and leave the area of the Premises where the Improvements were demolished in a clean level and usable condition as set forth below and the

remainder of the Premises in good and usable condition as set forth above or (iv) pay the cost of restoration to City if City chooses to perform the work itself or have the work performed on its behalf. Additionally, in lieu of demolition, if the City determines that any of the improvements are historical, or eligible for listing as such, the City, in its sole discretion, may require Tenant to pay to City an amount equal to the estimated cost of demolition to be used by the City for the restoration or adaptive reuse of the historical structure or structures. If City terminates this Agreement due to Tenant's default, or if Tenant remains in possession of all or any portion of the Premises as a holdover from month to month per Section 3.3 (Holdover), Tenant is still obligated to restore the Premises as provided in this Section 117 or to pay the cost of restoration if City chooses to perform the work. As to water areas of, or adjacent to, the Premises, if any, Tenant shall remove all debris and sunken hulks from channels, slips, and water areas within, or fronting upon, 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.

116.1.1 Environmental Restoration Requirements. In addition to and not as a substitute for Tenant's compliance with Subsection 116.1., above, Tenant, at its sole cost and expense, shall restore the Premises (including the soil, groundwater, and sediment) such that, on the Expiration Date, or earlier or later termination date, the Premises shall be returned to City:

(a) Free of Term Contamination and in at least as good of a condition as the condition depicted in the Baseline Report, if there is a Baseline Report, and free of all contamination if there is no 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 and/or any liens (UCC, federal or state tax or otherwise) on the Premises, or on fixtures or equipment, or personal property left on the Premises; and

(c) Free of any and all violations and/or orders of government agencies and/or consent agreements or similar voluntary settlements with government agencies involving contamination at the site.

116.2 Restoration Procedure. Tenant, at its sole cost and expense, shall initiate and complete the procedures set forth below in Subsections 116.2.1 through 116.2.3, and comply with any other conditions reasonably imposed by the Executive Director for the restoration of the Premises. Provided that Tenant discharges its obligations under this Subsection 116.2 expeditiously and in good faith, City shall reasonably endeavor to ensure that the requirement to discharge its obligations disturbs, as little as reasonably possible, Tenant's undertaking of the Permitted Uses during the Term of this Agreement. The Executive Director may alter or delete any of the procedures set forth below at the Executive Director's sole and absolute discretion.

116.2.1 Site Vacation Plan. When requested to do so in writing by the Executive Director, Tenant shall submit to City a written plan hereinafter referred to as the "Site Vacation Plan." The Executive Director's written request shall state which, if any, of the Improvements or Structures on the Premises the City does or does not want Tenant to remove as part of the restoration of the Premises. The sufficiency of the Site Vacation Plan is subject to City's reasonable approval. The Site Vacation Plan shall comply with the then existing Harbor Department procedures for Restoration.

116.2.2 Permits for Restoration. Tenant shall obtain, at its sole cost and expense, all permits required for the completion of its restoration obligations.

116.2.3 Adequacy of Restoration. Subject to orders or directives issued by any Governmental Agency with jurisdiction which orders or directives shall take precedence over this Subsection 116.2.3, the adequacy of Tenant's execution of the Restoration Obligations shall be within the 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 Site Vacation Plan. Tenant shall submit proof of compliance and/or satisfaction of all orders, directives or voluntary agreements or settlements with any Governmental Agency with jurisdiction. The Executive Director shall determine the adequacy of the restoration using the Executive's Director reasonable discretion.

116.3 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 from all, damages, liabilities, judgments, expenses, penalties, loss of rents, and attorneys' fees and costs and consultants' fees that arise out of or are related to or involving:

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

(b) Claims, causes of action, Orders or enforcement actions pending against or in connection with the Premises, the Permitted Uses, and/or this Agreement; and

(c) The cleanup of any Contamination including, but not limited to, the cost of investigation, removal, remediation, restoration, and/or abatement.

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

116.4 No Relocation Assistance. Nothing contained in this Agreement shall create any right in Tenant or any sublessees of Tenant for relocation assistance or payment from City upon expiration or termination of this Agreement (whether by lapse of time, default, or any other reason). Tenant acknowledges and agrees that it 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.*) 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, regardless of whether any such termination is by City, Tenant's default, operation of law, or any other reason.

116.5 Failure to Restore. If City has directed Tenant to demolish or restore some or all of the improvements on the Premises, or otherwise restore the Premises, and Tenant has failed to do so, or failed to do so to the level required by this Agreement, 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 the same at Tenant's cost. In that event, Tenant agrees to pay to City, upon demand, City's Costs of any such removal, demolition, or restoration and further agrees that such City's Costs shall be deemed Additional Rent.

116.6 Rent During Restoration. Tenant shall complete restoration of the Premises before the Expiration Date, or any sooner or later termination of this Agreement, as provided in this Agreement and under Applicable Laws, including but not limited to the clean-up of any Contamination in, on or about the Premises. If, for any reason, such restoration is not completed before the Expiration Date, or any sooner or later termination of this Agreement, then Tenant is obligated to pay City Rent during such restoration period, which shall be deemed Additional Rent, in an amount equal to one hundred fifty percent (150%) of the then fair market rental value of

the Premises, as determined by Executive Director in his or her reasonable discretion, and the Harbor Department's then established rate of return as determined by City; however, said compensation amount shall not be less than the Rent paid by Tenant at the time of the Expiration Date, or as of the time of any sooner or later termination of this Agreement. Tenant also agrees to provide City a surety bond, in an amount determined by Executive Director, in his or her reasonable discretion, to assure removal of Contamination from the Premises at any time City demands such bond.

Section 117. Miscellaneous.

117.1 Titles and Captions. Unless otherwise indicated, references in this Agreement to sections, subsections, paragraphs, clauses, exhibits and schedules are to the same contained in or attached to this Agreement. Additionally, 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. Unless otherwise specified, references to Section or Subsection are to sections and subsections of this Agreement.

117.2 Exhibits and Attachments. All exhibits and attachments 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.

117.3 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.

117.4 Integrated 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, subject to the provisions of Subsection 117.31-30 (Prior Permits), supersedes all prior and contemporaneous understandings or agreements of the Parties, and cancels any and all previous negotiations, arrangements, representations, agreements and understandings, if any, between the Parties related to the subject matter of this Agreement. There are no oral agreements that

affect any of the terms of this Agreement. 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.

117.5 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 Applicable Laws.

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

117.7 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.

117.8 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.

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

cancellation of the Agreement granted hereunder, Tenant shall quit and surrender the Premises as provided in Section 116 (Restoration and Surrender of Premises).

117.10 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 Subsection 117.10, the other Party shall be entitled to recover reasonable costs and attorneys' fees incurred to enforce this Subsection 117.10.

117.11 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.

117.12 Termination by Court. If any court having jurisdiction in the matter renders a final decision which prevents the performance by City of any of its obligations under this Agreement, then either Party may terminate this Agreement by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations) shall thereupon terminate.

117.13 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.

117.14 Waiver of Claims. Tenant hereby waives any claim against City and Board and its officers, agents, or employees for damages or loss caused by any suit or proceedings directly or indirectly challenging the validity of this Agreement, or any part thereof, or by any judgment

or award in any suit or proceeding declaring this Agreement null, void or voidable or delaying the same or any part thereof from being carried out.

117.15 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 Subsection 117.16 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.

117.16 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.

117.17 Extent of Water Frontage. In case this Agreement, or any part thereof or any improvements made hereunder, shall be assigned, transferred, leased or subleased and the control thereof be given or granted to any person, firm, or corporation, or limited liability company so that such person, firm or, corporation, or limited liability company 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 without a four-fifths vote of the Board and a two-thirds vote of the City Council approving the control of 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, or limited liability company, 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.

117.18 State Tidelands Act, Grants and Trusts; City Charter. 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, the Premises and Tenant's use and occupancy thereof, 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 (1929 Cal. Stats. 1929, Ch. 651), as amended, (“Act”), and provisions of Article VI of the Charter of the City of Los Angeles (“Charter”) 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 of the Act and the Charter. Tenant further agrees that it 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.

117.19 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 Agreement, which Tenant has designated in writing as confidential, City shall 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 Laws. In the event that any action is filed by Tenant and/or by any requester of information where Tenant elects to challenge all or any part of the requested 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 and 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.

117.20 Visual Artists’ Rights Act.

117.20.1 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 Premises without first obtaining a waiver in writing, of all rights under VARA, satisfactory to the Executive Director 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.

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

117.20.3 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 for Tenant's failure to obtain the artist's waiver of VARA and failure to comply with any portion of this Subsection 117.20.3.

117.20.4 Cumulative Remedy. The rights afforded the City under this Subsection 117.20 shall not replace any other rights afforded City in this Agreement or otherwise, but shall be considered in addition to all its other rights.

~~117.21 Supervision of Business Practices. The nature and manner of conducting any and all business activities on the 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 sublessees to remedy such practices and upon failure to comply therewith within thirty (30) days of Tenant receiving such written notice, the Board may declare this Agreement terminated.~~

117.2221 Signs and Lighting. Tenant shall not erect or display, or permit to be erected or displayed, on the Premises, or upon works, buildings and improvements made by Tenant, any signs or advertising matter of any kind, including signs, without first obtaining the written consent of the Executive Director. If Tenant obtains consent, Tenant shall also comply with the requirements of Section 105 (Alterations of Premises by Tenant) prior to erecting or displaying any signs or advertising matter on the Premises. Tenant shall further post, erect, and maintain on the Premises such signs as the 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 in its current or successor form. Tenant acknowledges that the Premises may lack adequate lighting for any or all Permitted Uses and that Tenant is 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 Uses. Tenant shall comply with the requirements of Section 105 of this Agreement

prior to installing any lighting. Any lighting installed shall meet Illuminating Engineering Society / American National Standards Institute (IES/ANSI) standards.

117.2322 Ownership of Improvements. During the Term of the Agreement, title to all structures, improvements, or facilities, constructed or installed by Tenant ("Tenant Improvements") and all alterations constructed or installed by Tenant on Tenant Improvements shall belong to Tenant, but shall revert to City if Executive Director elects to have any or all of such Tenant Improvements revert to the City. Upon termination of this Agreement, all Tenant Improvements or alterations, other than machines, equipment, trade fixtures, and similar installations of a type normally removed without structural damage to the Premises, shall become a part of the land upon which they are constructed, or of the building on which they are affixed, and title thereto shall thereupon vest in City unless, however, City requests Tenant to remove some or all of said improvements, in which case Tenant shall promptly remove such improvements at Tenant's sole cost and expense. In the event of removal of any improvements, Tenant shall comply with the restoration obligations of Section 110 (Indemnity and Insurance). Notwithstanding the foregoing, in the event that the Harbor Department ascertains a need to acquire Tenant owned assets prior to title to those assets vesting in City, straight-line depreciation shall be applied to determine the purchase price.

117.2423 Promotion of Los Angeles Harbor Facilities. Tenant shall in good faith and with all reasonable diligence use its best efforts by suitable advertising and other means to promote the use of the Premises granted by this Agreement.

117.2524 Prior Permits. To the extent that Tenant and/or its predecessors or Affiliates used or occupied the Premises pursuant to prior agreements, from and after the Effective Date of this Agreement, Tenant's use and occupancy of the Premises shall be governed by this Agreement; provided, however, that any provisions which survive termination or expiration of such prior agreements by the terms of the prior agreement or operation of law shall continue in full force and effect unless specifically stated otherwise in Article 1 of this Agreement.

117.2625 No Third-Party Beneficiaries. Nothing in this Agreement shall be deemed to confer upon any Person (other than City, Tenant or Tenant's lender) 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.

117.2726 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 sublessees of Tenant.

117.2827 Proprietary Capacity. The capacity of City in this Agreement shall be as a grantor of the property rights set forth in this Agreement, 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.

117.2928 City Approvals. Any approvals or consents required from or given by City under this Agreement shall be approvals of Harbor Department acting as the City, and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect the rights or prerogatives of the City of Los Angeles as a government, including the right to grant or deny any permits required for construction in the Premises or maintenance of the Premises and the right to enact, amend or repeal Applicable Law including those relating to zoning, land use, and building and safety. No approval or consent on behalf of City will be deemed binding upon City unless approved in writing as to form by the City Attorney. Any approvals or consents required from or given by City under this Agreement shall be approvals of the Executive Director or Board, within the legal authority of the Executive Director or Board, subject to the approval of the Office of the City Attorney as to form and legality; provided, however, if the approval or consent by City is in excess of the Executive Director's legal authority, then such matter shall be approved by Board or City Council, as applicable. Except as otherwise expressly set forth in this Agreement, with respect to any matter that is subject to the approval or consent of the Executive Director, Board or City Council, as applicable, such approval or consent may be given or withheld in the Executive Director's, the Board's or the City Council's sole and absolute discretion.

117.3029 Brokers. Tenant represents and warrants that no real estate broker or real estate agent was used by Tenant in connection with this transaction and that no real estate broker, real estate agent or any third party is due any compensation related to this transaction. Tenant shall indemnify, defend and hold City harmless for any claim of any compensation due to any real estate broker, real estate agent or any third party related to this transaction.

Pursuant to Section 1938 of the California Civil Code, City hereby advises Tenant that as of the date of this Agreement the Premises have not undergone inspection by a Certified Access Specialist. Further, pursuant to Section 1938 of the California Civil Code, City notifies Tenant of the following: "A Certified Access Specialist (CASp) can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although California state law does not require a CASp inspection of the Premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of any such CASp inspection, the payment of the costs and fees for the CASp inspection and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises." Therefore and notwithstanding anything to the contrary contained in this Agreement, City and Tenant agree that (i) Tenant may, at its option and at its sole cost, cause a CASp to inspect the Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under California law, (ii) the parties shall mutually coordinate and reasonably approve of the timing of any such CASp inspection so that City may, at its option, have a representative present during such inspection, (iii) Tenant shall be solely responsible for the cost of any repairs necessary to correct violations of construction-related accessibility standards within the Premises, identified by any such CASp inspection, and (iv) any and all such alterations and repairs within the Premises to be performed by Tenant in accordance with Section 107 of this Agreement and if any alterations and repairs to other portions outside of the Premises are required as a result of Tenant's CASp inspection then Tenant shall reimburse City upon demand, as Additional Rent, for the cost to City of performing such alterations and repairs; provided, however, unless such repair or alterations relate solely to other alterations to the Premises which Tenant is obligated to, or elects to, remove upon the expiration or earlier termination of the Lease Term (in which case Tenant shall simultaneously also remove any CASp identified alterations and repairs), Tenant shall have no obligation to remove any repairs or alterations made pursuant to a CASp inspection under this Section 117.3130, unless directed to do so by the Executive Director.

represents, warrants and covenants, that either (i) it is regulated by the SEC, FINRA or the Federal Reserve (a "Regulated Entity"), or is a wholly-owned subsidiary or wholly owned affiliate of a Regulated Entity or (ii) neither it nor any person or entity (a) that directly or indirectly controls it or (b) that has a direct or indirect ownership interest in it of twenty-five percent (25%) or more or (c) for which it is acting as an agent in this transaction, either appears on any list of Specially

Designated Nationals and Blocked Persons published by the Office of Foreign Assets Control of the U.S. Department of the Treasury or has been named by any Executive Order of the United States Treasury Department as a person with whom transactions are prohibited by law.

117.3332

Asbestos Notification. Many buildings constructed during the 20th Century utilized asbestos-containing materials ("ACM"). ACM is also typically encountered in wrapped heating system insulation, structural fire-proofing, acoustical ceilings, vinyl flooring, roofing felts and other materials. Asbestos was regularly used in many other building and non-building products as well. In fact, asbestos fibers are generally present in urban air and water. When inhaled, asbestos fibers can cause certain diseases, including asbestosis, mesothelioma and lung cancer (and risks for smokers are dramatically compounded). According to experts, the health risks associated with asbestos arise when and if fibers become airborne and are inhaled, for example, as a result of maintenance or repairs conducted without proper controls. The United States Environmental Protection Agency has concluded, however, that "[t]he presence of asbestos in a building does not mean that the health of building occupants is endangered. If asbestos-containing material remains in good condition and is unlikely to be disturbed, exposure will be negligible." As a result, the applicable laws and regulations do not require wholesale removal of ACM; instead, any ACM should be maintained that are releasing or could release asbestos fibers into the air should be identified and responded to appropriately while other ACM should be maintained in good condition, with appropriate work practices followed when disturbance is unavoidable.

City hereby notifies Tenant that ACM may be present within or about the Premises:

WARNING: ENTERING THIS AREA CAN EXPOSE YOU
TO CHEMICALS KNOWN TO THE STATE OF CALIFORNIA
TO CAUSE CANCER, INCLUDING ASBESTOS,
FROM BUILDING MATERIALS.

City has no special knowledge relating to ACM. Tenant must immediately notify City of any ACM which is found or disturbed, and because any Tenant Alterations could disturb ACM or involve exposure to asbestos fibers, must obtain City's prior written approval before beginning any Tenant Alterations and must ensure that all personnel involved be properly trained and qualified to identify and handle any ACM. Tenant, and not City, shall be solely liable for compliance with any notice(s) in or about the Premises concerning ACM which are required by applicable law or regulations. Upon City's request, Tenant shall deliver to City a copy of a signed acknowledgement from Tenant acknowledging receipt of notice of the potential presence of ACM.

[Signature page follows]

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: _____, 20__

By: _____

EUGENE D. SEROKA
Executive Director

Attest: _____

AMBER M. KLESGES
Board Secretary

[TENANT]

Dated: _____, 20__

By: _____

(Print/type Name and Title)

Attest: _____

(Print/type Name and Title)

APPROVED AS TO FORM AND LEGALITY

_____, 20__

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

By: _____
_____, Assistant/Deputy

ATTACHMENT 1 - Glossary of Terms

“ACTA” means the Alameda Transportation Corridor Authority or its successor entity.

“Additional Rent” means the monetary sum, in U.S. Dollars, Tenant shall pay to City for its use and occupancy of the Premises above the Base Rent as set forth in Article 1, Section 4 of this Agreement.

“Affiliate” means, when used with reference to a specified person or entity, any person or entity that directly or indirectly controls, is controlled by or is under common control with the specified person or entity. A person or entity shall be regarded as in control of another entity if it owns or is under common ownership or directly or indirectly controls at least fifty (50%) of the voting stock or other equity interests of the other entity, or in the absence of ownership of at least fifty percent (50%) of the voting securities of an entity, if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such entity.

“Alteration” or “Alterations” means improvements, alterations, additions or changes to the Premises including, without limitation, the construction of works or improvements or the changing of the grade of the Premises, except as otherwise stated in this Agreement.

“Applicable Laws” means any and all federal, state, county or governmental agency laws, statutes, ordinances, standards, codes (including, without limitation, all building codes) rules, , consent decrees, ordinances, resolution, orders, or requirements adopted or implemented under color of law, in effect at any point during the Term, pertaining to the use, occupancy or condition of the Premises and/or Tenant’s operations and activities, including but not limited to its undertaking of the Permitted Uses.

“Assignment” means the transfer, or assignment of this Agreement, in whole or in part, in any manner including without limitation 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 there is 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 definition, 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 of, or a general partner of, a Tenant.

“Assignor” means collectively any transferor or assignor of Tenant’s interest in the Premises, or any portion thereof, including any and all entities that occupied the Premises prior to Tenant and actually or purportedly transferred or assigned its right of occupancy to Tenant either contractually or under operation of law, including any “Transfer” as defined in Article 2, Section 113, whether or not there was a written assignment or approval of the assignment by City.

“Baseline Condition” shall have the meaning set forth in Article 2, Subsection 104.2.

“Board” means the Board of Harbor Commissioners of the Harbor Department of the City of Los Angeles.

“Casualty” means damage or destruction of the improvements on the Premises.

“CEQA” means the California Environmental Quality Act, Sections 21000, *et seq.* of the Public Resources Code and the CEQA Guidelines set forth at 14 California Code of Regulations Sections 15000, *et seq.*

“Charter” or **“City Charter”** means the Charter of the City of Los Angeles as it may be amended from time to time.

“Chief Harbor Engineer” means the Chief Harbor Engineer, Engineering Division of the Harbor Department, or successor designations should that title be renamed or redesignated during the Term.

“City” means the City of Los Angeles, a municipal corporation.

“City Council” means the Council of the City of Los Angeles, the legislative body of the City pursuant to Section 20 of the Charter of the City of Los Angeles.

“City Costs” or **“City’s Costs”** means the costs, determined in the City’s sole reasonable discretion, for any work performed by or for City to comply with a Tenant obligation under this Agreement including, without limitation, 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; for the processing of any approvals or consents required or requested by Tenant; for the cost of processing applications to improve the Tenant’s Premises; and, for the cost of complying with any Governmental Agencies’ orders which were the responsibility of Tenant.

“City Improvements” means those improvements on the Premises owned by the City.

“Condemnation” means the taking of property through acquisition or damage of all or part of the Premises by a Government Agency having the power of eminent domain.

“County” means the County of Los Angeles.

“Effective Date” is the date specified in Article 1, Subsection 3.1 of this Agreement.

“Environmentally Regulated Material” means any material, pollutant, 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 Premises and/or Tenant’s undertaking of the Permitted Uses. **“Executive Director”** means the Harbor Department’s Executive Director referred to in the Charter of the City of Los Angeles and any other person authorized by the Board to act for the Executive Director or the Board or the designee of the Executive Director.

“Existing Improvements” means the improvements existing on the Premises as of the Effective Date of this Agreement.

“Expiration Date” is the date set forth in Article 1, Subsection 3.2 of this Agreement.

“Governmental Agency” or **“Governmental Agencies”** means any and all federal, state, regional, county, municipal, and local governmental and quasi-governmental bodies and authorities (including the United States of America, the State of California, the City, the County of Los Angeles, and any political subdivision, public corporation, district or other political or public entity), departments or joint power authorities thereof having or exercising jurisdiction over the parties, the Premises, or such portions thereof as the context indicates or courts.

“Governmental Capacity” means City acting in its authorized capacity as the City of Los Angeles, a municipal corporation, as set forth in Article 2, Subsection 117.2827.

“Harbor Department” or **“Department”** means the Harbor Department of the City of Los Angeles.

“Harbor District” is as defined in Section 651(a) of City’s Charter or in any successor provision of City’s Charter.

“Chief Harbor Engineer’s General Permit” or **“Harbor Engineer’s General Permit”** means the permit issued by the Chief Harbor Engineer to undertake works or improvements in the Harbor District.

“Harbor Engineer” means the Chief Harbor Engineer of the Harbor Department of the City of Los Angeles or the Harbor Engineer’s designee.

“Improvement” means, unless otherwise specified, building or buildings, but may be any permanent structure or other development such as, but not limited to, a street or utilities.

“Labor Disturbance” has the meaning set forth in Article 2, Subsection 103.2.4 of this Agreement.

“Major Casualty” means any casualty, whether covered by insurance or not, whose repair would exceed ten percent (10%) of the replacement cost of the damaged or destroyed improvements.

“Minor Casualty” means any casualty, whether covered by insurance or not, which is not a Major Casualty.

“Partial Taking” means the Condemnation of all or a portion of the Premises that does not substantially impair Tenant’s use of the Premises for the Permitted Uses.

“Person” means individuals, partnerships, firms, associations, corporations, limited liability companies, trusts, and any other form of governmental or business entity, and the singular shall include the plural.

“Proprietary Capacity” is as defined in Article 2, Subsection 117.2827, of this Agreement.

“Rent” means the combined Base Rent and Additional Rent due from Tenant to City for the use and occupancy of the Premises.

“Severance Damages” means the compensation due to a property owner for the decrease in value of the remaining property where the Condemnation is for a portion of a larger property whose value has been diminished as a result of severance of the condemned property from the larger property.

“State Tidelands Act” means 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” (Stats. 1929, Ch. 651) as amended, and as it may be amended from time to time.

“Taking” means the acquisition through condemnation, inverse condemnation, or agreement in lieu of condemnation, of the Premises or any part thereof.

“Tariff” means Tariff No. 4 of City of Los Angeles’ Harbor Department as it may be amended from time to time.

“Tariff Charges” means all charges due and owing by Tenant under the Tariff on account of Tenant’s use and occupancy of the Premises.

“Tax” or “Taxes” means the aggregate of any federal, state or local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, business, premium, windfall profits, environmental, customs duties, permit fees, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, goods and services, water, school, real property, possessory interest, personal property, sales, use, transfer, registration, value added, multi-staged, alternative or add-on minimum, special, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any kind whatsoever payable, levied, imposed, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not, including in each case utility rates or rents, upon, concerning or applicable to the Premises, any fixtures, machinery, and equipment installed or maintained on the Premises, the improvements, and the use and operation of the Premises by any Governmental Authority.

“Temporary Taking” means the Condemnation of all or a portion of the Premises for a specified period of time.

“Tenant Improvements” means those improvements on the Premises which are built by the Tenant and whose ownership has not vested in City.

“Tenant’s use” and “Tenant’s use and occupancy” means, unless otherwise stated or evident from the context in which the term is used, the use of the Premises by Tenant, its employees, contractors, subcontractors, licensees, invitees, suppliers or anyone else present at the Premises pursuant to Tenant’s invitation or permission.

“Term” means the term of this Agreement, which shall commence on the Effective Date and end on the Expiration Date or earlier termination of this Agreement.

“Term Contamination” means all contamination of improvements, adjacent harbor waters, soil, sediment, groundwater or air of the Premises or the adjacent premises (including soil, sediment, groundwater or air of those adjacent premises) resulting from a spill, discharge or any other type of release of Environmentally Regulated Material that occurs on the Premises during the term of this Agreement or any holdover, whether caused by Tenant or a third-party, including any Assignor (other than invitees under a temporary assignment pursuant to Subsection 102.4 (Temporary Assignments) or third-parties whose access to the Premises has been requested by City pursuant to Subsection 102.2 (Reservations), that contaminates or threatens to contaminate improvements, adjacent harbor waters, soil, sediment, groundwater or air of the Premises or of adjacent premises (including soil, sediment, groundwater or air of those adjacent premises).

Term Contamination shall also include all contamination that is considered a nuisance under Applicable Law.

“Tidelands” means the land between the ordinary high tide and the mean low tide.

“Total Taking” means the Condemnation of all or a substantial portion of the Premises which renders the Premises unsuitable for the Permitted Uses.

“Transfer” means the transfer, assignment or subletting of the Premises as fully defined in Article 2, Section 113 of this Agreement.

“Transferee” means the person, entity or entities with whom Tenant proposes to undertake a Transfer.

“Transfer Notice” means the written notice required to be submitted by Tenant as set forth in Article 2, Subsection 112.3.1 of this Agreement.

EXHIBIT B – IMPROVEMENTS

Provided below is the terminal description and facilities to be made available to the Tenant:

- Wharf is comprised of Berths 121 to 127
 - Total length of 2,000.13 linear feet, and depth of minus 39 to 44 feet.
 - Alternative Maritime Power available – 6,600 volts, with 2 vaults per berth.
 - 50-foot gauge ship-to-shore crane rail (cranes are not owned by the Harbor Department)
 - Crane power supply is 4,160 volts
- Backland is comprised of 159.57 acres
- On-dock rail facility is available and comprised of 23.61 acres
- Administration building located on 2.89 acres at 2001 John S. Gibson Blvd comprised of 22,358 square feet plus additional area for parking
- Marine Tower is a two-story building, each floor is 2,453 square feet each, for a total of 4,906 square feet
- Maintenance and Repair building comprised of 46,400 square feet
- Gatehouse building comprised of 4,500 square feet
- Gates comprised of 16 inbound and 6 outbound truck lanes (Associated electrical operating systems are not owned by the Harbor Department)
- A depiction is available on Exhibit A.

EXHIBIT C – RENT EXHIBIT

Base Rent effective as of the Effective Date:

MAG, subject to adjustment per Section 4.3

159.57 acres X \$156,528/acre = \$24,977,173 MAG/Year

West Basin ICTF, subject to adjustment per Section 4.3

23.61 acres X \$45,000/acre = \$1,062,450/Year

TEU PER ACRE RATE SCHEDULE

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

II. INCREMENTAL TEU'S

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

III. TOTAL TEU CHARGES

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

EXHIBIT D – LIMITATIONS ON USE

Load Limits. City warrants and represents that wharfs and paving on the Premises will support the load limits, if any, specified in Exhibit “B.” Tenant shall allow no loading in excess of such limits 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 “B” 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 from exceeding the load limits.

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 Premises must confine their route to the designated Wilmington Truck Route (“Wilmington Truck Route”) as depicted on the map attached hereto as Exhibit “E.” The Wilmington Truck Route may be modified from time to time at the sole and absolute discretion of the Executive Director. The Harbor Department shall provide Tenant with notice of any modifications to the Wilmington Truck Route.

Pipelines. Tenant shall maintain on the Premises as-built drawings that identify the precise position of any pipelines, utilities or improvements of any type Tenant places on the Premises, whether placed above or below ground, if any. Upon twenty-four (24) hours’ written notice by the Executive Director, Tenant shall undertake at its sole cost and expense whatever measures are reasonably necessary, including subsurface exploration for any pipeline or any other substructure under Tenant’s control or servicing Tenant’s operation within the Premises granted herein, to precisely locate the position of such items if City considers such as-built drawings insufficient to locate such items. Tenant agrees any work necessary to locate such items or any damage that 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. The subsurface exploration shall verify the vertical as well as horizontal location of all pipelines and substructures. Documentation reflecting the results of said exploration shall be filed with the Harbor Engineer.

As to locating and location, 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 Premises, City shall have the right to enter onto the 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 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. Work performed by City or City's contractors under this provision does not alter Tenant's obligation to maintain the Premises in a safe condition, both during and after completion of the work.

After installation, and in any event for the duration of this Agreement, Tenant shall comply with pipeline testing and inspection requirements, as well as the laws and regulations under CFR Title 49, Subtitle B, Chapter 1 Subchapter D, the Pipeline Safety Act, the California Public Utilities Code, the California Public Utilities Commission regulations for pipelines, the California State Lands Commission Marine Facilities Division ("CSLC/MFD"), the State of California Bureau of Conservation/Division of Oil, Gas, and Geothermal Resources ("DOGGR"), and any other federal, state, or local agency not mentioned above, and as required by the California State Fire Marshall ("CSFM") under the Pipeline Safety Act. The City reserves the right to request tests for facilities not under the direct authority of the CSFM, the CSLC/MFD, the DOGGR, the California Public Utilities Commission, and the Federal Office of Pipeline Safety ("FOPS").

As to pipeline tests or inspections, Tenant shall comply with the following:

- (a) Within thirty (30) days from the Effective Date of this Agreement, and at least annually thereafter, Tenant shall provide the Director of Real Estate of the Harbor Department and the Director of Environmental Management of the Harbor Department with a master schedule showing dates for pipeline testing and inspection(s) in accordance with the requirements referenced in Subsection 106.3. The master schedule shall include an itemized list with corresponding line-item reference numbers for each pipeline covered under this Agreement, corresponding required test(s) or inspection(s), date(s) of test(s) or inspection(s), method(s) of test(s) or inspection(s), applicable agency, the frequency of required test(s) or inspection(s), and the California State Fire Marshall Line Number and the California State Fire Marshall Test ID Number, if applicable. If Tenant's existing pipelines are modified, or new pipelines are added to Tenant's Premises, Tenant shall follow the authorization procedure described in Subsection 106.3, and provide an updated master schedule with any addition or subtraction of pipelines. The requirements of this Subsection 106.3.1 shall cover testing or inspection requirements of all agencies mentioned in Subsection 106.3, as well as any other additional required test(s) or inspection(s).

(b) If Tenant's pipeline test(s) or inspection(s) are approved by the applicable agency requiring or overseeing the test(s) or inspections(s), Tenant shall confirm in writing to the Harbor Department approval of the test(s) or inspections(s) and/or submit documentation including master schedule reference number for pipeline(s) being reported on, date(s) of test(s) or inspection(s), method(s) of test(s) or inspection(s) and a general non-technical summary of results.

(c) Tenant shall submit a summary of its certified test or inspection approval results to the Director of Environmental Management of the Harbor Department within thirty (30) days after they have been approved by the agencies which required the pipeline testing or inspection(s), and the records of such test(s) shall be retained by Tenant for as long as is required by Applicable Law, but in any event not less than three (3) years. Records of all tests will be made available for inspection by the Executive Director.

(d) If Tenant's pipeline test(s) or inspection(s) are disapproved, and/or there are irregularities with Tenant's pipeline test(s) or inspection(s), indicating a leak or other operational deficiency, Tenant shall notify the Director of Environmental Management of the Harbor Department within three (3) days of disapproval and/or receipt of test(s) or inspection(s) results with a non-technical summary of the results including the circumstances that resulted in the disapproval or test(s)/inspection(s) irregularities as well as all test documentation produced and a description and schedule for implementation of corrective action as directed by the applicable agency requiring or overseeing the test(s) or inspection(s).

As to relocation of pipelines, at any time during the term of this Agreement, the Board shall have the right to make any change in the route or location of any pipeline constructed or maintained on the 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 relocating the pipelines, 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 within a 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 Premises and relocate the pipelines. Tenant shall be solely responsible for City Costs associated with the right set forth herein and shall pay City, as Additional Rent, within thirty (30) days of receiving an invoice for payment from City. Tenant hereby waives the provisions of the Water Resources Development Act of 1980, and as amended, pertaining to cost allocation for pipeline relocation.

DRAFT

EXHIBIT E – WILMINGTON TRUCK ROUTE

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.



EXHIBIT F – SPECIFICALLY IDENTIFIED APPLICABLE LAWS

Local Job Participation; Living Wage. In furtherance of the policies of the Board and the Council, Tenant shall strive to achieve the goals of local job participation in the use and operation of the Premises and the Living Wage Ordinance of the City of Los Angeles as defined in the City of Los Angeles Administrative Code Section 10.37. The Tenant is obligated to make that determination and shall be bound by and comply with provisions of the Applicable Law, including, but not limited to, the California Labor Code.

Business Tax Registration Certification.

(a) Tenant. Tenant represents that it has registered its business with the Office of Finance of the City of Los Angeles and has obtained and presently holds from that Office a Business Tax Registration Certificate, or a Business Tax Exemption Number, required by City's Business Tax Ordinance (Article I, Chapter 2, Sections 21.00, *et seq.*, of City's Municipal Code, or its successor). Tenant shall maintain, or obtain as necessary, all such Certificates required of it under said Ordinance and shall not allow any such Certificate to be revoked or suspended during the Term of this Agreement. See <https://business.lacity.org/start/BTRC>.

(b) Contractors. Tenant represents that it shall require its contractors and subcontractors to register their business with the Office of Finance of the City of Los Angeles and to obtain and hold from that Office a Business Tax Registration Certificate, or a Business Tax Exemption Number, required by City's Business Tax Ordinance (Article 1, Chapter 2, Sections 21.00, *et seq.* of City's Municipal Code, or its successor) for all work done on the Premises.

(c) Subtenants. Tenant represents that it shall include in all its subleases the requirement that the subtenant register its business with the Office of Finance of the City of Los Angeles and obtain and hold from that Office a Business Tax Registration Certificate, or a Business Tax Exemption Number, required by City's Business Tax Ordinance (Article 1, Chapter 2, Sections 21.00, *et seq.* of City's Municipal Code, or its successor) and further require that the subtenant maintain, or obtain as necessary, all such Certificates required of it under said Ordinance and not allow any such Certificate to be revoked or suspended during the Term of its sublease.

Nondiscrimination and Affirmative Action. Tenant agrees not to discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, religion, 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 are incorporated herein and made a part hereof.

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”), set forth at 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, set forth at 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. See <https://bca.lacity.org/service-contract-worker-retention-ordinance-scwro>.

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 California Family Code Section 5230, *et seq.* Tenant shall maintain such compliance throughout the term of this Agreement.

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, set forth at 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. See <https://bca.lacity.org/equal-benefits-ordinance-ebo>.

Minority, Women, and Other Business Enterprise (MBE/WBE/OBE) Outreach Program. It is the policy of the City to provide minority business enterprises (“MBEs”), women’s business enterprises (“WBEs”), and all other business enterprises (“OBEs”) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Tenant shall assist City in implementing this policy and shall use its best efforts to afford the opportunity for MBEs, WBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including MBEs, WBEs, and OBEs, have an equal

opportunity to compete for, and participate in, any such participation opportunity which might be presented under this Agreement.

CFIUS. Any clearance required by the Committee on Foreign Investment in the United States (“CFIUS”) as set forth in the Defense Production Act of 1950 and/or 50 U.S.C. § 4565 (2020), 31 C.F.R. § 800 (2020), 31 C.F.R. § 801, and 31 C.F.R. § 802 (2020).

Applicable Law and Third-Party approval or Consent. The City shall have no liability to the Tenant or any third party if this transaction does not comply with any Applicable Laws or any third-party compliance or approval process. The city is not liable or responsible to the Tenant or any third party for any damages to the Tenant or the third party if this Agreement is terminated due to a violation of Applicable Laws or any third-party compliance or approval process.

EXHIBIT G -- BASELINE SCOPE OF WORK

Berths 121- 127 Baseline Soil and Groundwater Investigation

A baseline investigation will be performed at the Berth 121 - 127 Terminal by a Harbor Department contractor, and includes the following services:

Pre-Field Activities

- A. Prior to the start of field activities, obtain boring permits from the Los Angeles County Department of Public Health (LACDPH) for planned borings.
- B. — Notify Underground Service Alert (Dig Alert) at least 48 hours prior to commencing field work, not including the day of notification and obtain an inquiry identification number from Dig Alert. If a subsurface utility/obstruction is identified at the borehole location, contractor shall contact Harbor Department Environmental Management Division (EMD) to assist in approving an alternative location. Locations will be marked with white paint.
- C. — Prepare a site-specific health and safety plan for the field activities described in the proposal in accordance with California Code of Regulations, Title 8, Section 5192 and 29 Code of Federal Regulations 1910.120.

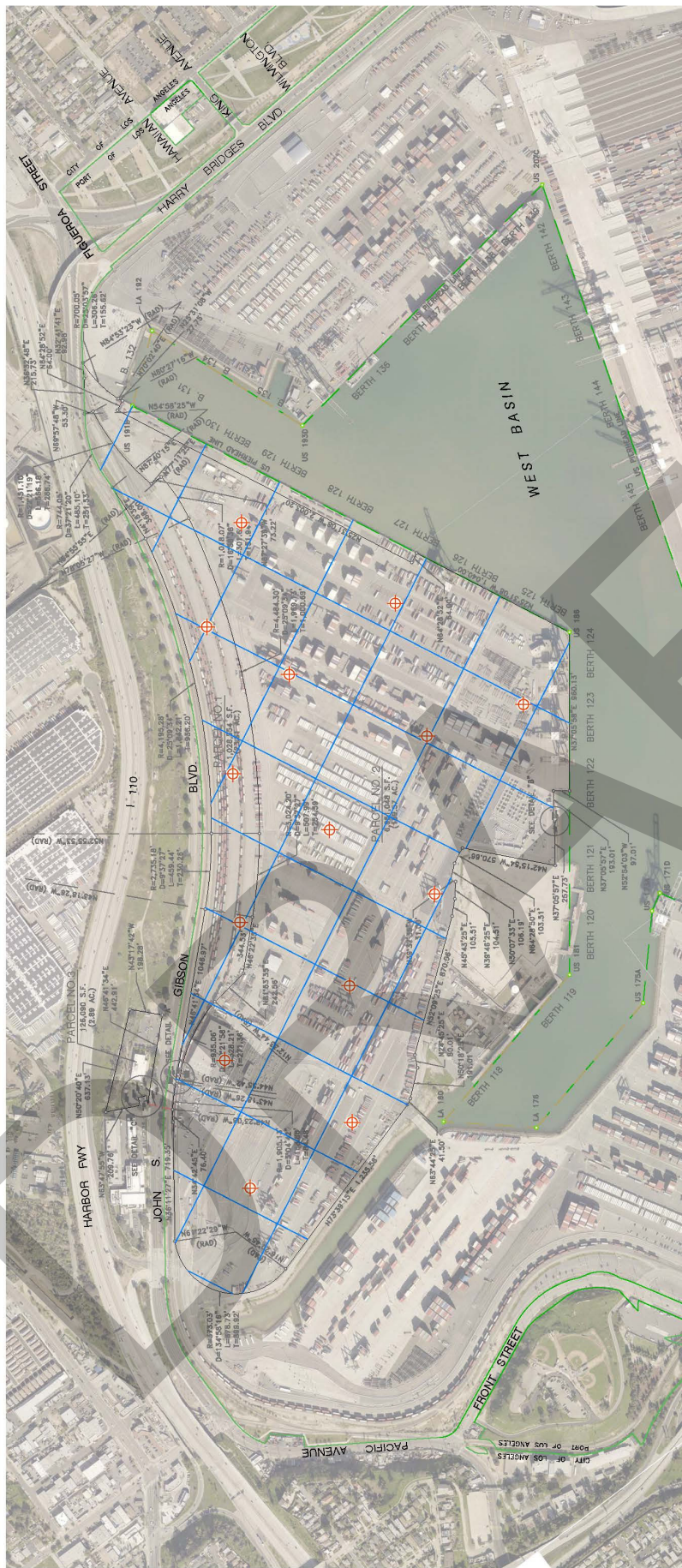
Field Investigation, Soil and Groundwater Sampling

- A. — Conduct a geophysical survey to clear the borings and to mark out all potential underground utilities.
- B. — The 2814 soil boring locations will be drilled using a truck-mounted direct-push Geoprobe drill rig and sampled at depths of approximately 1, 5, 10 feet below ground surface (bgs). Figure 1 shows the proposed boring locations. The approximate 10-foot bgs sample will be collected from the capillary fringe. A grab groundwater sample will be collected from five3 select borings evenly distributed throughout the terminal.
- C. — Soils borings will be logged using the Unified Soil Classification System (USCS), and final boring logs will be reviewed by a Professional Geologist (PG). The field geologist will perform all field work under the supervision of the PG designated for the Site.
- D. — During the soil sampling, a MiniRae photo-ionization detector (PID) will be used to monitor the presence and level of organic vapors in the borings. The PID will be calibrated prior to work each day using a designated calibration gas capable of screening for low levels of VOCs. To screen the soil for VOC vapors, a small amount of soil will be placed in a re-sealable bag, then the soil will be allowed to sit in the sun for 15 to 30 minutes prior to inserting the PID probe into the bag to obtain a head space reading.
- E. — A total of 8442 soil samples will be collected from borings. Soil samples will be collected at approximately 1, 5, and 10 feet bgs from each boring and will be submitted to a California certified fixed laboratory and analyzed for the following:
 - a. Title 22 Metals using Environmental Protection Agency (EPA) Methods 6010B/7000
 - b. Volatile organic compounds (VOCs) using EPA Method 8260B/5035.
 - c. Total petroleum hydrocarbons (TPH), including TPH as gasoline, TPH as diesel, and TPH as motor oil using EPA Method 8015B
 - d. Soil samples that are to be analyzed for VOCs and TPH-gasoline will be subsampled in the field in accordance with EPA Method 5035

- e. Polyaromatic Hydrocarbons (PAHs) using EPA Method 8310 in the sample which contains the highest PID readings in each boring
- f. PCBs using EPA Method 8082 in the one-foot sample (5 and 10 foot samples will be archived pending results of the 1-foot sample)
- F. — Equipment blank samples will be collected at a rate of one per day for the above chemical analysis.
- G. — Following drilling into the water table, a grab groundwater sample will be collected from ~~53~~ selected boring locations for the above-mentioned chemical analysis.
- H. — After sampling, the borings will be backfilled using neat cement and introduced via tremie pipe in accordance with LACDPH permit requirements.
- I. — Drilling and sampling equipment will be decontaminated after each boring event with a soap and water wash followed by two water rinses.
- J. — Investigation derived waste (IDW), including soil cuttings and decontamination water, will be accumulated into two 55-gallon Department of Transportation rated drums and left in a secure on-site location provided by the Port pending waste characterization and subsequent disposal. One soil sample will be collected from the drums to characterize the IDW for disposal and analyzed for VOCs, TPH carbon chain and Title 22 Metals after the investigation is completed. Once the IDW has been characterized, contractor will dispose of the drums and transported to an appropriate disposal facility licensed to receive the waste.

Data Interpretation and Reporting

- A. — One draft Report will be prepared that presents the findings of the investigation along with a discussion of results and will be submitted to EMD for review and comment. The sampling results for soil will be compared to Federal and State hazardous waste criteria, EPA Regional Screening Levels (RSLs) and ~~Tier 1~~ Environmental Screening Levels (ESLs) for commercial/industrial land use.
- B. — Groundwater analytical results will be compared to the Tier 1 ESLs ~~and the California Maximum Contaminant Levels (MCLs) for regulated drinking water contaminants.~~
- C. — The draft report will include summary data tables of the soil and groundwater results and a figure showing the sampling locations.
- D. — After receiving EMDs review comments, a final report will be prepared incorporating the Port's comments which will be submitted electronically.



LEGEND
 PROPOSED BORING LOCATION



FIGURE 1

BERTHS 121-127 SITE PLANNED PROPOSED BORING LOCATIONS

2050 JOHN S. GIBSON BOULEVARD
 SAN PEDRO, CALIFORNIA

211391002 I 5/21

EXHIBIT H – PORT ENVIRONMENTAL POLICIES

APPLICABLE ENVIRONMENTAL POLICIES, RULES AND DIRECTIVES OF CITY'S HARBOR DEPARTMENT

1. Port of Los Angeles Environmental Management Policy, as amended, or its successor policy. Available at: <https://www.portoflosangeles.org/environment/environmental-policy>.
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: <https://www.portoflosangeles.org/environment/water-and-sediment-quality/water-resources-action-plan>.
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 as provided copies or made copies available via the Port's website, of the above policies to the Tenant.

EXHIBIT I – ENVIRONMENTAL OPERATING CONDITIONS

1. The Tenant shall secure and deploy cargo handling equipment that is the same or cleaner than (i.e., from an air quality emissions standpoint) the existing equipment in operation at the terminal as detailed in this Exhibit “I.”
2. In addition, the tenant shall secure and deploy electrified ship-to-shore cranes connected to existing grid electrical power at the highline. The number of cranes must be identical to those currently in operation and must closely match the size, scale, and appearance of the existing cranes as detailed in this Exhibit “I.”
3. Tenant shall secure and install associated electrical operating system(s) to monitor and track all inbound and outbound gate movements by trucks in order to comply with the Port of Los Angeles Clean Truck Program as approved in the 2017 San Pedro Bay Ports Clean Air Action Plan Update.
4. Vessels calling at the terminal shall utilize shore power known as Alternative Maritime Power (AMP) or an equivalent alternative technology while loading and unloading cargo in accordance with the California Air Resources Board (CARB) Ocean-Going Vessels At-Berth Regulation. In addition, vessels must achieve 10 percent (10%) more shore power calls than required by CARB Regulation due to site specific surplus emission reductions required under Prop 1B grant funds.

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Inventory of Existing Equipment¹

Equipment ²	Model Year	Number of Equipment
Yard Tractors (LPG)	2004	53
	2007	59
	2008	43
	2011	23
Forklifts (LPG/Diesel)	2002	2
	2004	2
	2005	4
	2007	1
	2008	2
	2011	1
Top Picks (Diesel)	2002	8
	2006	4
	2007	6
	2008	15
	2011	3
	2014	1
RTGs (Diesel)	2003	8
	2004	2
	2005	5
RTGs (Diesel Hybrid)	2005	1
	2015	5
Sweepers (Diesel) ³	1991	1
Off-Road Trucks (Diesel) ³	2001	1
	2005	1
	2008	1
Ship-to-Shore Cranes ⁴	N/A	5

Notes:

¹ Cargo handling equipment at the premises are jointly shared with the adjacent premises generally located at Berths 100 to 102, and are owned by a single terminal operator.

² Inventory is based on equipment in use since 2017 by the terminal operator West Basin Container Terminal.

³ Equipment identified as “Sweepers” and “Off-Road Trucks” were confirmed to be in operation as of 2017 by the terminal operator West Basin Container Terminal.

⁴ There are five (5) 50-foot gauge ship-to-shore cranes at the two berths at the premises, which are 209 feet high at the apex with an outreach of 145 feet.

EXHIBIT J – CITY MAINTENANCE ITEMS

- I. Structural Maintenance & Repair Performed by City at City's Expense
 - 1. Wharf structure, meaning the beams, girders, subsurface support slabs, cones, decks, bulkheads and pre-stressed concrete piling, pile caps, mooring bollards, and any and all mooring dolphins but not including paving or the fendering system.
 - 2. Rock slopes
 - 3. Maintenance dredging
 - 4. High voltage infrastructure above 600 volts including:
 - i. Crane Trench
 - ii. Alternative Maritime Power (AMP), which provides shore power to ocean going vessels, associated switchgear and the energizing/de-energizing of electrical power for the switchgear
 - 5. Low voltage infrastructure, 600 volts and under, from Harbor Department switchgear to line side of service panel (i.e., incoming power), excluding refrigerated receptacle outlets
 - 6. Fire hydrant systems, exclude damage caused by terminal operations
 - 7. Underground sewer and storm drain lines, if any, excluding damage, if any, caused by terminal operations.
- II. Maintenance & Repair Performed by City at Tenant's Expense
 - 1. Fender system including framing, bracing, buckling column, and face plate.

EXHIBIT K - INSURANCE



INSURANCE ASSESSMENT REQUEST FORM

Send completed form in Word format to polariskmgmt@portla.org for processing. Please allow up to 10 business days for completed IAR to be returned. For status inquiries, contact Risk Management at 310-732-3758.

This section to be completed by Risk Management	
<input type="checkbox"/> No insurance required, only indemnification <input type="checkbox"/> Amendment does not require change to existing contract's insurance requirements	
INSURANCE REQUIREMENTS	LIMITS (Per Occurrence)
<input checked="" type="checkbox"/> General Liability <input type="checkbox"/> Deletion of railroad exclusion <input type="checkbox"/> Terminal Operator's Liability <input type="checkbox"/> Garage keepers Legal Liability <input type="checkbox"/> Host Liquor Liability <input type="checkbox"/> Explosion, collapse and underground hazards <input checked="" type="checkbox"/> Fire Legal Liability (Limits \$250K per occ)	\$5M
<input checked="" type="checkbox"/> Auto Liability (all autos) <input type="checkbox"/> On Hook Coverage	\$5M
<input checked="" type="checkbox"/> Workers' Compensation/Employer's Liability <input checked="" type="checkbox"/> USL&H <input checked="" type="checkbox"/> Waiver of Subrogation	STATUTORY
<input type="checkbox"/> Professional Liability <input type="checkbox"/> Medical Malpractice <input type="checkbox"/> Law Enforcement Legal Liability <input type="checkbox"/> Technology Errors & Omissions (E&O)	\$
<input type="checkbox"/> Railroad Protective Liability naming Pacific Harbor Line as the named insured	\$
<input checked="" type="checkbox"/> Ocean Marine Liability <input checked="" type="checkbox"/> Protective & Indemnity <input checked="" type="checkbox"/> Jones Act <input checked="" type="checkbox"/> Hull & Machinery <input type="checkbox"/> Ship Builders/Repairers Liability	\$5M
<input checked="" type="checkbox"/> Property/All Risk Insurance	100% replacement value over \$250K
<input type="checkbox"/> Environmental Impairment Liability	\$
<input type="checkbox"/> Builder's Risk (Reference Specification for exclusions)	Value of the project
<input type="checkbox"/> Fine Arts Insurance	Actual cash value
<input type="checkbox"/> Aviation/Airport Liability <input type="checkbox"/> Aircraft Liability (passenger liability per seat) <input type="checkbox"/> Unmanned Aircraft Systems Liability	\$

Date Reviewed: 5/25/2021

By: Marie Gutierrez for:
Risk Manager

RM Staff: GT

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Form IAR04092020

EXHIBIT K