

**Waterfront and Commercial Real Estate
Cruise Terminal Development and Operations**

REQUEST FOR PROPOSALS



June 27, 2024

RAMP ID # 215665

June 27, 2024

Prospective Proposer:

SUBJECT: REQUEST FOR PROPOSALS FOR CRUISE TERMINAL DEVELOPMENT AND OPERATIONS

The City of Los Angeles Harbor Department (Harbor Department) invites the submittal of proposals from qualified entities (Developer, Developers, Proposer or Proposers) to develop and operate the Inner and Outer Harbor cruise terminals at the Port of Los Angeles, as identified in this Request for Proposals (RFP).

Instructions and forms to be used in preparing the proposal are included in the RFP.

The schedule for this RFP will be as follows:

Schedule of Events	
RFP Released	Thursday, June 27, 2024
Site tour	Tuesday, July 23, 2024, at 10am
Questions due ¹	Tuesday, August 6, 2024, by 3pm
Responses posted	Tuesday, September 10, 2024
Proposals due	Tuesday, November 12, 2024, by 3pm

If your firm cannot agree to the requirements exactly as set forth in this RFP, please do not submit a proposal. Upon the release of the RFP, all communications with Harbor Department must be with the Contracts and Purchasing Division only.

For questions regarding this RFP, please contact Tanisha Herr by email at THerr@portla.org. Questions must be submitted by 3pm, Tuesday, August 6, 2024. Responses will be posted on the [Harbor Department's website](#) and the Regional Alliance Marketplace for Procurement (RAMP), at www.rampla.org, on Tuesday, September 30, 2024. 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 to ensure their proposal is complete and responsive.

In addition to providing information requested in this RFP, it should be noted that there are administrative documents that must be submitted with the proposal. Please refer to the Business Enterprise Programs and Contract Administrative Requirements section of this RFP. **In order for your proposal to be deemed responsive, these documents MUST be included with your proposal.**

All consultants and subconsultants must be registered on RAMP at the time proposals are due. If selected for award, for-profit companies and corporations must comply with RAMP's demographic reporting requirements, per the Mayor's Executive Directive 35.

Sincerely,



Tanisha Herr
Contracts and Purchasing Division

¹ As noted in Section 7, the Harbor Department requests Proposers to review and submit clarification questions/markups, if any, on the commercial terms included in the attached Bid Term Sheet by the deadline specified above. Refer to Section 7 for additional details.

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1 INTRODUCTION

1.1 Overview

The Waterfront and Commercial Real Estate Division of the City of Los Angeles Harbor Department (Harbor Department) is undertaking the implementation of its 2018 Port Master Plan² and is inviting qualified entities to submit proposals for the development of a new cruise terminal and redevelopment of an existing terminal at the Port of Los Angeles (Port).

This RFP is soliciting firms to submit proposals for the operations and construction of a new Outer Harbor Cruise Terminal and associated berths and operations and redevelopment of the existing Inner Harbor Cruise Terminal and its associated berths. The selected Proposer will operate and maintain the Inner and Outer Harbors for the duration of the new ground lease to be executed between the Harbor Department and the selected Proposer (refer to template in Exhibit A). The terminals are available for a long-term leasehold of up to 66 years with the Harbor Department.



² Port of Los Angeles, *2018 Port Master Plan*, September 2018. <https://www.portoflosangeles.org/about/port-master-plan>

1.2 The Port of Los Angeles

The Port of Los Angeles is America's Port®, the nation's premier gateway for international commerce and the busiest seaport in the Western Hemisphere. Located in San Pedro Bay, 25 miles south of downtown Los Angeles, the Port encompasses 7,500 acres of land and water along 43 miles of waterfront.

The Port features both passenger and cargo terminals, including cruise, container, automobile, breakbulk, dry and liquid bulk, and warehouse facilities that manage billions of dollars worth of cargo each year. One of the world's busiest seaports and leading gateway for international trade in North America, the Port of Los Angeles has ranked as the number one container port in the United States each year since 2000. In 2023, the Port handled a total of 8.6 million container units.

As noted in the Harbor Department's 2018 Master Plan, the Harbor Department is governed by a five-member Board of Harbor Commissioners (Board), whose members are appointed by the Mayor and approved by the Los Angeles City Council. Public lands and water are held in trust by the City of Los Angeles under the State Tidelands Trust. A self-supporting department of the City of Los Angeles, the Harbor Department does not receive taxpayer revenue. Operating as a landlord port with more than 200 leaseholders, the Harbor Department instead generates its revenues from leasing and shipping service fees. The Harbor Department's jurisdiction is limited to the Harbor District, which includes property in San Pedro, Wilmington, and Terminal Island.

1.3 LA Waterfront

Set against the picturesque backdrop of America's Port®, the aptly titled LA Waterfront® consists of more than 400 acres and 8 miles of prime waterfront property that connects visitors and local harbor communities to the waterfront with active and vibrant recreational and commercial attractions. Over the past 17 years, the Harbor Department has invested over \$600 million in enhancing the LA Waterfront infrastructure, with miles of public promenade and walking paths, acres of open spaces and scenic views, and California's largest water feature. Through its public and private partners, the LA Waterfront is home to a marine aquarium, a battleship museum, an indoor craft marketplace, a blue economy campus and new opportunities for authentic retail dining and entertainment attractions. The LA Waterfront is a unique location to play, dine, shop, and explore, attracting over 2 million visitors annually³.

³ <https://www.lawaterfront.org/>

2 DEVELOPMENT OPPORTUNITY

2.1 Project Objectives

Consistent with the goals identified in the 2018 Master Plan and those identified in the draft 2023 San Pedro Waterfront Connectivity Plan⁴, the Harbor Department invites firms to submit proposals for terminal development that would enable the Harbor Department to meet the following objectives:

- Develop economically prosperous cruise terminals which meet both present and future port demands while delivering outstanding operations and customer service for cruise passengers;
- Develop cruise facilities to accommodate the largest ships presently serving the west coast market, with potential to expand and reimagine operations in response to changing future market conditions, including the deployment of larger ships;
- Generate sufficient revenue from cruise operations, parking, and ancillary services to support the phased development of four cruise berths and related terminal facilities at the existing Inner Harbor Cruise Terminal and the proposed Outer Harbor Cruise Terminal;
- Construct an Outer Harbor Cruise Terminal which aligns with the waterfront revitalization aspirations envisioned by the San Pedro Waterfront Connectivity Plan;
- Optimize utilization of Port land with infrastructure investments which promote increased cruise business and visitor growth;
- Attract and accommodate increased passenger volume from new cruise lines through the development of the proposed Outer Harbor Cruise Terminal and associated berths and redevelopment of the Inner Cruise Harbor Terminal; and
- Develop aesthetically attractive terminals which meet the adopted LA Waterfront Guidelines.⁵

⁴ Port of Los Angeles, *San Pedro's Waterfront Connectivity Plan*, August 2023.
<https://kentico.portoflosangeles.org/getmedia/3f956586-d934-49bd-83cf-582058bf7f85/20230830-Draft-San-Pedro-Waterfront-Connectivity-Plan>

⁵ Port of Los Angeles, *LA Waterfront Design Guidelines*, February 2014.
https://kentico.lawaterfront.org/getmedia/a3d7ba69-e923-4a54-8fad-f6f0ee996313/la_waterfront_design_guidelines_2014

2.2 Site Description

The existing Inner Harbor Cruise Terminal is located at 100 Swinford Street, San Pedro at the north end of the Cruise District of the LA Waterfront. The existing World Cruise Center, referred to as the Inner Harbor Cruise Terminal site, consists of 48 acres, including parking, two cruise berths, two terminal buildings, and a baggage handling structure. This area is generally bounded by Swinford Street to the North, the Main Channel to the East, Downtown Harbor to the South, and Harbor Boulevard to the West. The Inner Harbor Cruise Terminal has two existing berths, Berths 90-92 and Berth 93. The wharf at Berths 90-92 is 1,400 linear feet with water depths of ~37 feet. Berth 93 is 1,200 linear feet with water depths of ~35 feet. Berths 87-89 are currently occupied by the USS Battleship Iowa and will not be part of the development.

The proposed Outer Harbor Cruise Terminal site is located at 3011 Dave Arian Way in San Pedro at the south end of the Outer Harbor/Warehouse District of the LA Waterfront. The Outer Harbor Cruise Terminal consists of 13 acres of backland, two existing wharves, and 20 acres of associated potential off-site parking with capacity for ~2,300 surface spaces at the northeast corner of 22nd Street and Miner Street. The backland is generally bounded by Miner Street to the North, the Main Channel to the East, open navigation waters to the South, and the former San Pedro Boatworks site at Berth 44 to the West.

The Outer Harbor Cruise Terminal area has two existing wharves, Berths 45-47, and Berths 49-51. Berths 45-47 feature a 900-foot concrete wharf with at-berth water depths exceeding 45 feet. Berths 49-51 have an 800-foot existing concrete wharf with minimum at-berth water depths of 35-45 feet. Berths 45-47 and 49-51 can potentially be extended up to 1,200 and 1,400 feet, respectively. Currently, when necessary, the Outer Harbor Cruise Terminal area is operated using temporary terminal facilities, which usually occurs between two to four times a year.

Table 2.2 1 below summarizes the key physical characteristics of the existing and proposed terminal sites.

Terminal	Status	Address	Acres and Associated Parking	No. of Wharves	Berth(s) Numbering	Water Depth (ft)
Inner Harbor	Existing	100 Swinford Street, San Pedro	~ 48 acres (~1,800 spaces)	2	87–89* <i>occupied by USS Iowa (see Section 2.7)</i>	38 -55
					90–92	37
					93	35
Outer Harbor	Proposed	3011 Dave Arian Way, San Pedro	14 acres, terminal 20 acres, parking (~2,300 spaces)	2	45–47	>45
					49-51	35-45

2.3 Existing Operating Agreement

On May 7, 2013, the Harbor Department executed an agreement with Ports America Cruise, Inc. (Ports America) to manage, maintain and operate the Inner Harbor Cruise Terminal located at Berths 91-93, the Outer Harbor Terminal, and surrounding areas. The base term of the agreement was five years with two, five-year options, for a total potential agreement term of fifteen years from the execution date, or May 2028. Subsequent to the agreement, four amendments were executed in February 2015, July 2017, November 2018, and December 2020. Ports America will continue performing its responsibilities under this agreement until such responsibilities are transitioned to the selected Proposer.

2.4 Development Scope

The Harbor Department seeks to partner with a firm for the development and operations of the Inner and Outer Harbor Cruise Terminals with the primary objective to expand cruise business capacity to meet future demand.

Proposers are expected to generally be responsible for all land and waterside development activities, financing and costs to achieve the Harbor Department's objectives and market demand and comply with all applicable regulatory requirements. This includes the preparation of all required environmental impact assessments and permitting (see Section 2.9). The development scope includes, but is not limited to, wharf infrastructure; new and redeveloped cruise terminal buildings designed for multiple uses (event/conference), where feasible, when not in use for primary cruise business; and any other physical improvement required to achieve the Harbor Department's objectives.

Proposers shall note that the Harbor Department is not expecting proposals to include development of additional parking areas beyond those currently provided or planned for development by the Harbor Department. However, Proposers may propose additional or alternative parking strategies with supporting explanation and financial justification. Please refer to Section 2.6 for additional information.

2.4.1 DIVISION OF SCOPE ELEMENTS

The leasehold agreement will obligate the Proposer to complete phased physical development at the Port for all elements except those within the Harbor Department's development scope, as further identified below in Section 2.4.1.1. The Harbor Department will be responsible for the permitting, financing, and execution of the identified Harbor Department development scope.

2.4.1.1 Harbor Department Development Scope

- Dredging required at terminals;
- Installation of AMP Infrastructure that provides 12MVA of power for Berths 49-51 at the Outer Harbor Cruise Terminal and other new berthing elements; and

- Parking for the Outer Harbor Cruise Terminal located off-site on a 17-acre site, which is proposed to provide over 2,300 ground-parking stalls, at the northeast corner of 22nd Street and Miner Street.

2.4.1.2 Required Proposer Scope / Project Phasing

The Harbor Department's preferred phasing for project development is described in the sections below and outlined in Table 2.4-1 – Project Phasing. Documentation of existing conditions of building structures and all wharf structures will be provided to all proposers through the Due Diligence Documents (see Section 3.2).

In total, the Harbor Department is seeking the following requirements:

- New terminal building(s) and site vehicular and pedestrian access and circulation improvements at the Outer Harbor (Outer Harbor Cruise Terminal); and
- Four (4) total berths, consisting of two (2) berths at the Outer Harbor and two (2) berths at the Inner Harbor.

Phase I

Phase I terminal requirements consist of the development of a new cruise terminal building(s) designed for multiple uses – where feasible – servicing Berths 49-51 (see Section 2.8). Proposals for the Outer Harbor Cruise Terminal would necessitate the construction of new structures for adequate terminal space and site vehicular and pedestrian access and circulation improvements to accommodate over 8,000 cruise ship passengers (i.e., over 4,000 passengers per cruise ship) at two berths, on the 13-acre vacant backland.

The Harbor Department's preferred Phase I development requirements consist of the following scope at Berth 50:

- The construction of landside and optional wharf expansion improvements that include, but are not limited to, one (1) cruise berth and adequate terminal building space that can accommodate, at minimum, 1,200' Length Over All (LOA) cruise ships and 4,000+ passengers. Terminal building space may be developed under Phase I as one building to serve both Phase I and Phase II, as described below, or as a separate building to serve only Phase I.

Phase II

The Harbor Department's preferred Phase II development requirements consist of the following scope at Berth 46:

- Construction of landside, unless otherwise addressed in Phase I, and waterside improvements, that include, but are not limited to, one (1) cruise berth and adequate terminal building space that can accommodate, at minimum, 1,200' LOA cruise ships and 4,000+ passengers.

For illustrative cruise berth designs for each terminal development, refer to Appendix A.

2.4.1.3 Additional Scope Elements (Optional)

Optional future development, which is in addition to preferred Phases I and II, may consist of the following scope elements:

- Landside and waterside improvements at the Inner Harbor.
 - Proposals may include improvements to the existing Inner Harbor Cruise Terminal buildings and baggage handling tent.
- Densified parking at the Inner and/or Outer Harbors (see Section 2.6).

2.4.2 PROJECT DESIGN CONSIDERATIONS

Terminal buildings are expected to be designed to maximize the expansive views and aesthetic attractiveness of the Inner and Outer Harbor Cruise Terminals, consistent with the Port's adopted *LA Waterfront Design Guidelines*. The functionality and design of the terminals should be flexible to accommodate a variety of additional non-cruise revenue-producing uses during the periods when cruise ships are not present including but not limited to filming, conferences, and events. Design should include open space elements and areas that maintain public access during non-operational periods, to the extent possible. Design may also include ancillary commercial uses that support public access, increased site utilization, site visitation, and the primary use. Some of the key design goals for terminal development identified in the *LA Waterfront Design Guidelines* include:

- Unify the LA Waterfront through improvements to the public realm;
- Create an active, high-quality, varied, and accessible environment at the water;
- Ensure strong visual and physical connections between the waterfront and upland areas, including Wilmington and San Pedro;
- Encourage low impact, sustainable design within the public realm; and
- Use high-quality materials that are well suited for the waterfront location and require low periodic maintenance.

2.5 Alternative Maritime Power

Alternative Marine Power (AMP) infrastructure is required for all cruise berths to be developed and/or operated by the Proposer, as shown in Table 2.5-1.

At the Inner Harbor Cruise Terminal, AMP is currently available at Berths 90-92 and Berth 93, which collectively provide 18MVA of power.

The Harbor Department is currently planning on financing and installing AMP Infrastructure that provides 12MVA of power for Berths 49-51 at the Outer Harbor Cruise Terminal. This service will likely be installed prior to other development activities to accommodate vessel call demand that may occur prior to further development of the site.

Presently, the Los Angeles Department of Water and Power (LADWP) is undertaking a project to provide AMP infrastructure at Berths 45-47. The project is currently in the design phase and is expected to complete construction by the end of 2032.

Proposers shall note AMP infrastructure is required for all cruise berths to be developed and/or operated by the Proposer. However, alternatives to AMP may include H2 fuel cell, battery storage, or CARB-approved air treatment.

Table 2.5-1 – Alternative Maritime Power – Responsible Party		
Harbor	Berths	Financially Responsible Party
Inner	90–92	AMP infrastructure currently available. Proposer is not expected to incur any costs associated with AMP installation.
	93	AMP infrastructure currently available. Proposer is not expected to incur any costs associated with AMP installation.
Outer	45–47	Proposer is financially responsible for AMP installation by LADWP.
	49–51	Harbor Department shall be financially responsible for AMP installation.

2.6 Parking

As noted in Section 2.6, the existing and planned parking operations will be the responsibility of the Harbor Department; however, Proposers may include the Inner Harbor Cruise Terminal parking area within the proposed leasehold premises and may propose additional or alternative parking management and revenue sharing strategies with supporting explanation and financial justification, which must include significant capital investment and densification. Currently this parking area is operated by Parking Concepts Inc. (PCI) through a management agreement that includes a percentage split of gross revenue. Further, PCI manages an adjacent 600 space parking area. Both parking areas are jointly used by cruise line customers and Catalina Express customers and each customer base absorbs excess parking in the neighboring lots during respective peak seasons.

Both covered and surface parking spaces are currently available at the Inner Harbor Cruise Terminal's World Cruise Center and shared with adjacent tenants. No on-site parking currently exists at the Outer Harbor Cruise Terminal, but the Harbor Department plans to develop off-site parking in a parking lot and open area located on a 17-acre site at the northeast corner of 22nd Street and Miner Street, which will provide over 2,300 ground-parking stalls. Proposals expecting to leave the existing surface parking as is, permanently or for some period of time, should assume the parking operation and revenue shall remain with the Harbor Department and outside the proposed leasehold area until a significant investment and densification of parking is developed.

Although not required, Proposers may consider implementing structured/densified parking, ride share operations, remote check-in, and creative transportation alternatives to transport passengers to the main terminals. Overall, Proposers may consider including both the existing and planned sites for parking and are granted discretion on the number of parking spots and designated on or off site with the understanding that the Harbor Department would prefer structured parking to be developed at the 17-acre site at the northeast corner of 22nd Street and Miner Street.

2.7 USS Battleship Iowa

The USS Battleship Iowa is owned and operated by Pacific Battleship Center and currently occupies Berths 87–89. Pacific Battleship Center’s current lease with the Harbor Department expires on May 24, 2057. Proposers shall note the USS Iowa will remain in this location and will not be part of the development.

2.8 Terminal Operations and Additional Uses

Full-service cruise operations should be included as part of the proposal, including operating and maintaining the Inner and Outer Harbor Terminals, accommodating alternate uses on non-ship days such as filming, conferences, and events, and providing for cultural, community, and educational benefits and programming.

2.9 Environmental Assessment (EA)

The Harbor Department previously assessed the development of a cruise terminal in the Outer Harbor under the California Environmental Quality Act (CEQA). In 2009, the Harbor Department approved an Environmental Impact Report (EIR) for the San Pedro Waterfront Project, which assessed 2 cruise berths, two 100,000 square feet terminal buildings, and a 6-acre park at the Outer Harbor. However, depending on the scope of the proposed projects additional analysis may be required. Detailed environmental assessment information on the San Pedro Waterfront Project can be found on the Harbor Department’s website.⁶⁶

It is the financial responsibility of the Proposer to prepare all required environmental impact reports pursuant to CEQA and the National Environmental Policy Act (NEPA) statutes. If additional environmental assessments are needed in excess of the aforementioned EIR that was approved in 2009, the successful Proposer will be required to enter into a cost share agreement with the Harbor Department to compensate for all associated costs.

Joint project EIR/EAs may take up to 18 to 24 months and must be certified by the Board of Harbor Commissioners prior to execution of the final lease agreement. Additionally, with the exception of the items identified in Section 4.2.1.1. of this RFP, the

⁶⁶ Port of Los Angeles, *Final Environmental Impact Report San Pedro Waterfront Project*, September 2008. <https://ceqanet.opr.ca.gov/2005061041/4>

Proposer is required to obtain all required permits for project construction and operations, as identified in the CEQA and NEPA processes.

2.10 Lease Negotiations and Approvals

Term sheet negotiations with the Harbor Department are anticipated to be concluded within 6 months of the selection of a Proposer. The final lease will be subject to approval by the Board of Harbor Commissioners (Board) and the Los Angeles City Council.

The standard lease provisions are attached as Exhibit A. The proposals should take into account the lease provisions as provided herein.

Prior to Board action to consider a new lease, the project must comply with all required CEQA and NEPA assessments and compliance measures. Proposers will be expected to fund the Harbor Department's preparation and review of any environmental documentation.

The Harbor Department in its proprietary and operating capacity will actively assist the selected Proposer in processing entitlements, provided all related costs are borne by the Proposer.

The Proposer will be required to demonstrate baseline financial strength to meet the proposed lease obligations. In addition, the proposed lease will require the Proposer to furnish some form of security guaranteeing performance of the proposed lease obligations that is acceptable to the Harbor Department.

3 APPLICABLE LAWS, REGULATIONS, AND POLICIES

3.1 Regulatory Requirements

Proposals are expected to comply with all applicable laws, regulations, and policies (i.e., Port of Los Angeles' Green Building Policy), as required to receive all required entitlements to develop the project scope including, but not limited to, the following: California Coastal Act, CEQA/NEPA, Design Guidelines, labor policies, LEED requirements, and Los Angeles Building and Safety Department requirements.

After the approval of all environmental entitlements and the final lease, it is generally anticipated that all related project entitlements, such as Coastal Development Permits or building permits, which may potentially be sought concurrently with the environmental entitlements, may take 12 months to complete. Therefore, the construction phase may begin between 48 to 54 months after the execution of the non-binding term sheet as referenced above in Section 2.10, Lease Negotiations and Approvals.

3.2 Due Diligence Documents

Applicable documents and plans available to Respondents to assist in the formulation of their proposals will be provided by the Harbor Department on www.Rampla.org.

Documents include, but are not limited to: conceptual designs, cruise market studies, cruise planning studies, existing infrastructure reports, estimated project costs, which may not be relevant for current pricing, market conditions or proposed scopes of work, historic cruise financial reports, historical cruise passenger performance, historical parking performance, Sea Level Rise Report, and Port of Los Angeles' Green Building Policy. Responses to all comments and questions received from the release of the Draft RFP will also be included.

4 PROPOSAL REQUIREMENTS

4.1 Site Tour

Proposers planning to submit proposals should plan to attend the site tour. Attendance is not mandatory. The tour will begin at the Inner Harbor Cruise Terminal, which is located at 100 Swinford Street, San Pedro, CA, 90731, on Tuesday, July 23, 2024 at 10 a.m. Those planning to attend should make a reservation no later than Tuesday, July 16, 2024 by 3 p.m. To RSVP, please click the link [here](#). Only two representatives from each proposer team may attend in their own vehicle. Please be on time. No late participants will be allowed entry, nor will tour participants be allowed to roam the site unescorted.

4.2 Proposal Questions

All questions regarding this RFP must be submitted, in writing, exclusively to Tanisha Herr, the Contract Administrator, at Therr@portla.org by no later than 3:00 p.m. on Tuesday, August 6, 2024.

Attempts to contact any other Harbor Department employee or members of the Board of Harbor Commissioners, either directly or through third-parties acting for or on the proposer's behalf, may be presumed to constitute efforts to bias or influence the competitive process with information not detailed in the RFP and not available on an equal basis to all proposers. Accordingly, such attempts shall constitute grounds to disqualify the proposer undertaking them. Any information provided by the Contract Administrator to one proposer in response to questions shall be provided to all proposers.

4.3 Proposal Submission

One (1) digital copy of your proposal in .pdf format with supporting financial calculations in .xlsx format, must be submitted on or before 3:00 p.m. PST on Tuesday, November 12, 2024, to Tanisha Herr at Therr@portla.org.

Proposers are solely responsible for the timeliness of their submittals. As such, Proposers are cautioned to budget adequate time to ensure that their proposals are delivered before the deadline set forth above.

By submitting a proposal, Proposers certify that such proposal constitutes their full and complete written response to the RFP and evidences their acknowledgement that additional written material outside of such proposal shall not be considered by the City in connection with this RFP, unless the City provides a written request that they submit

additional written materials. Absent such written request, Proposers are instructed to not submit to the City written or other materials outside of the proposal, either in a subsequent interview or otherwise.

4.4 Evaluation Process and Selection Criteria

All proposals meeting the requirements of this RFP shall be reviewed and rated by an evaluation committee according to the criteria in Exhibit F. In addition to materials provided in the proposals, the Harbor Department may utilize generally available industry information and references in its decision-making during the evaluation process.

Select Proposers may be contacted to arrange in-person interviews with the evaluation committee. The evaluation committee will make the final recommendation for the selected Proposer. All recommendations are subject to the approval of the Director of Waterfront and Commercial Real Estate, the Executive Director of the Harbor Department, the Board of Harbor Commissioners, and the Los Angeles City Council.

Proposers are advised that all documentation submitted in response to this RFP will be considered property of the Harbor Department and may become available to the public as a public record and be released without further notification. Any information that the Proposer considers confidential should not be submitted with the proposal.

The right to reject any and all proposals shall, in every case, be reserved, as shall the right to waive any informality in the proposal when to do so would be to the advantage of the Harbor Department.

4.5 Proposal Content

The following items shall be included in your proposal:

1. Submittal Cover

The submittal cover shall include the title of the RFP, submittal date, the lead respondent, principal contact, address, telephone number, fax number, email address and web site address, if applicable.

2. Transmittal Letter

The transmittal letter, not exceeding two (2) pages, shall provide a narrative that introduces the reviewers to the Proposer and its team, summarizes the Proposer's proposal and its ability to satisfy the technical and financial requirements of this RFP as well as to highlight the particular strengths of the Proposer to implement the goals identified in this RFP. The letter should be signed by an authorized principal of the Proposer.

3. Qualifications and Experience

The Qualifications and Experience section encompasses information on the entity with the legal authority to execute the appropriate real estate agreement for the proposed project, the team, their qualifications, and relevant experience. This section shall be limited to 10 pages and shall include, but is not limited to, the following:

- A brief description of the entity, including its organization structure, key personnel and financial and operational wherewithal and resources. Identify key team members implementing the project, their roles and responsibilities. Include the decision-making process and how those decisions will be communicated with the Harbor Department. Identify expectations for subcontracting and sub-consultants' function on the Proposer(s)' team;
- A description of qualifying relevant experience in the (a) development and/or redevelopment of new or existing cruise terminal(s) and berth(s); (b) operations of cruise terminal(s); and (c) accommodating alternate uses on non-ship days such as filming, conferences, and other events. Describe the overall qualifications gained from the relevant experience and its applicability to the project proposal including, but not limited to, implementing remote parking operations, off-site security, and check-in procedures. Additional description of pertinent experience should include, as applicable, a summary of the project/operation, total gross revenues, timeline of the project/operations and involvement in the project during and subsequent to project development, and the name, title, and phone number of clients to be contacted for references. Wherever possible, identify and provide contact references for public agencies involved in the process;
- Identify any members of your proposed team, including Proposer's firm and any subconsultant firms, who are former Commissioners, officers, or employees of the Harbor Department. Provide their name, proposed team position, and their past position and years of employment/appointment with the Harbor Department. If your proposed team does not have any such members, please include a statement in your proposal so stating;
- Proposers are advised that it is Proposer's obligation to determine whether any conflicts of interest exist for their team members and the extent to which those conflicts need to be resolved or disclosed prior to engaging in business with the Harbor Department and/or City; and
- Provide a list and results of any lawsuits or litigation where litigation is still pending or has occurred within the last five years, resulting from any public operations undertaken by the Proposer or any type of operations where claims or settlements were paid by the Proposer or its insurers within the last five years.

NOTE: If a new entity is being formed, the experience of the partners or members should

be discussed as well as which partners or members will be in operational control.

4. Development Approach

The Developmental Approach section shall provide a detailed description of the proposed project. This section shall include a narrative description, specific building details, concept plans/drawings, and project schedule. This shall include, but is not limited to, the following:

- Project schedule, including, but not limited to, lease term proposed, construction development phasing, planning, entitlements, environmental review, permits, construction, operations, and utility needs. The schedule should be shown in two forms, one showing estimated calendar dates and the other in a project management format with relative time requirements. Provide justification for the term proposed, primarily based on factors such as the life of the improvements, the amount of capital investment by the Proposer, financing terms and required return on investment.
 - Plan for Port and community engagement in design and construction updates.
- Project Design Concept Drawings that orient north up and should only include one plan or elevation/perspective per sheet. At a minimum, Proposers shall provide a Site Plan, Elevations and Context and Perspective drawings, as detailed below.
 - Site Plan – Provide a site plan that illustrates the proposed project for the site, including proposed terminal building footprints (and other structures), proposed public spaces, preliminary landscape design, parking lots with estimated parking counts, vehicular and pedestrian access;
 - Elevations – Provide colored architectural exterior elevations and a comprehensive view of the entire project that illustrates proposed building(s) massing and height, materials and colors and related architectural elements;
 - Context and Perspective Drawings – Provide a representative illustration of the proposed project clearly showing the relationship of the proposed project in relation to the surrounding LA Waterfront area. Context elements do not need to be photorealistic but must adequately convey the bulk, scale, and character of the surrounding area; and
 - Market data and feasibility analysis that justifies the proposed terminals, including projected number of calls, ship sizes, passenger volume projections, etc.

It is at the discretion of the Proposer to perform any and all necessary due diligence to determine project costs, including structural, mechanical, electrical, architectural, and in-water components to make the development project viable and successful. Proposers should provide assumptions dealing with all material revenue elements, the material expense elements, and cost assumptions. A source shall be provided for each assumption.

5. Operational Approach

The Operational Approach section provides a detailed description of day-to-day functions and organization of the cruise terminal and other uses. This shall include, but is not limited to, the following:

- Berthing policy and approach to cruise scheduling as well as the mix of vessels expected to call. Include information on passenger capacities, vessel dimensions, shore power capabilities, and other emissions-reduction measures;
- Passenger services and guest flow, including passenger check-in systems and facial recognition technology, and hospitality and concierge services;
- Security, which must be compliant with all applicable laws⁷, during active operations, off hours, and when the terminal is closed. Include Customs and Border Protection operations for passengers and crew as well as other law enforcement coordination including, but not limited to, Coast Guard and Los Angeles Port Police;
- Stevedoring services for cruise line requirements, regular turn-around calls and special needs of the vessel when at the berth;
- Baggage operations and the coordination between the terminal operator and the stevedore; and
- Off-site parking management, passenger flows, and traffic flows from off-site parking to the terminal.

6. Financial Proposal Form

A Financial Proposal Form shall be completed following the guidance and parameters provided in Exhibit D.

The Harbor Department is requiring Proposers to submit at least one (1) Base Bid. There are two options for the Base Bid:

⁷ 33 CFR Part 105
<https://www.ecfr.gov/current/title-33/chapter-I/subchapter-H/part-105>

- **Bid Structure A – Minimum Annual Passenger Guarantee.** Developer commits a financial guarantee to the Harbor Department based on a minimum number of passenger movements on cruise vessels for each fiscal year of the ground lease. Developers may elect to propose infrastructure fees in addition to passenger fees, in addition to sharing a percentage of the fees with the Harbor Department. The minimum amount to be paid annually to the Harbor Department under Bid Structure A is the greater of the following:
 - The product of the Minimum Annual Passenger Guarantee, the Per-Passenger Fee, and the Percentage of Passenger Fee Shared with the Harbor Department; or
 - Eight million dollars (\$8 million) dollars annually.
- **Bid Structure B – Minimum Base Ground Rent.** Developer shall pay a minimum base ground rent to the Harbor Department, which shall be no less than eight million dollars (\$8 million) annually. Developers may elect to propose passenger and/or infrastructure fees, in addition to sharing a percentage of the fees with the Harbor Department.

Proposed financial terms and conditions, including rent, will be subject to market conditions and market value of the land at the time of negotiation.

7. Financial Proposal Narrative

The Financial Proposal section shall consist of the following elements:

- Passenger Volume Projections, in narrative form and associated table included in Exhibit E, forecasting anticipated passenger volumes through 2043 and clearly identifying the impact of Phase I and Phase II improvements delivered by the Proposer on such volumes. If Bid Structure A is selected, provide justification as to how the Minimum Annual Passenger Guarantee is established, including, but not limited to, a range for number of vessels, size of vessels, passengers per vessel, destination and duration.
 - Please include a thorough explanation regarding how the Proposer will avoid or mitigate negative impacts to passenger counts and project revenues due to changes in market dynamics (e.g., economic downturns or travel-related security issues in existing cruise destinations).
- Financial Plan in narrative form and associated tables of description of Proposer(s)' approach to financing the project, including the total expected project cost and a description of the proposed capital stack(s) for each separately financed project component and for the project as a whole. Although the Proposer is expected to independently obtain financing for its capital

development proposal, if the Proposer requests the Harbor Department to contribute to the project's capital investment, please include the requested capital contribution and the timing associated with it. Specify any perceived challenges and risks to financing the project and proposed solutions to address these concerns. All financing information included within a proposal (including budgets and pro formas) must be submitted in Microsoft Excel with fully functional formulas.

- Business Plan, in narrative form and associated tables, describing in detail how the proposal will be implemented. The Business Plan timeframe covers construction period(s) and the first 10 years of operation of all phases of development (if applicable). Identify each separately constructed and financed project component including estimated capital development costs (construction and soft costs), projected financing terms and Financial Proposal Form with a consolidated plan extending through 10 years after the last development component is complete. Include unit costs for construction and identify contingency costs. Provide a detailed description of the required return on capital investment based on the proposed revenue streams, expected capital investment, financing terms and Rent Proposal. Explain how operational costs will be offset by corresponding fees charged to users.
- Financial Capacity Statement describing the ability of the Proposer to address the capital funding requirements and lease obligations of the project. Examples of information might include, but are not limited to, a description of funding sources secured for previous projects, access to capital, and liquidity available to address unexpected cost increases to the project. Other narrative means to evidence the financial strength and capability of the Proposer are welcome.
- Proposed Security Package describing what forms of security (e.g. letter of credit, parent company guarantee) and/or bonding agreements will be offered to the Harbor Department to ensure the obligated capital improvements are completed and the obligated lease terms are met.

8. Exceptions to Bid Term Sheet and Financial Proposal Form

Proposers will have one opportunity to indicate and/or request exceptions to the proposed terms provided in Exhibits C and D:

- **Prior to the Questions Due Date.** Any Bid Term Sheet and Financial Proposal Form exceptions or comments should be submitted via email to the Harbor Department by the deadline specified in the "Schedule of Events". Clarification questions and Bid Term Sheet and Financial Proposal Form comments will be anonymized. In the event that the Harbor Department agrees to modification(s) of a proposed term, all Proposers shall have the option to incorporate such modification(s) into their Financial Proposals.

For any Bid Term Sheet and Financial Proposal Form exceptions or comments, please explain with reasonable specificity the proposed changes, the underlying rationale, and the Proposer's view on the perceived benefit of such change to the project.

9. Audited Financial Statements

To support an evaluation of each Proposer's Financial Strength, Proposer(s) shall provide the Harbor Department with documents indicating Proposer's financial capability to provide the services required by this RFP. Proposer(s) shall elect to (1) submit the documents with the Proposal, (2) allow the Harbor Department to review these documents at the Harbor Department Administration Building (HAB), or (3) allow the Harbor Department to review these documents at a location within 20 miles of the HAB. If options (2) or (3) are chosen, then the Harbor Department shall schedule a review of the documentation following the proposal deadline. Please note that it is the Proposer's sole responsibility to elect which option is chosen. Documents submitted to the Harbor Department will be subject to the California Public Records Act (CPRA). The Harbor Department, at its discretion, may require additional financial information beyond those requested herein. Proposer shall make available for review the past three (3) years of annual audited financial statements (or statements prepared by a Certified Public Accountant) as well as the most recent interim financial statement as part of their Proposal. If the Proposer entity was or will be recently formed for the purposes of this solicitation, statements from the principal entities that combined to form the new entity are requested.

10. Litigation and Bankruptcy Information

Proposer(s) shall disclose any litigation and/or bankruptcy information. During the past ten (10) years. This includes the firm, or joint venture partner, including their parent corporation or subsidiary or affiliated corporation as well as any of the firm's officers, principal members, shareholders or investors that have been adjudged bankrupt, either voluntary or involuntary, or have been involved in litigation relating to marina operations or commercial development either voluntarily or involuntarily.

11. Contract Administrative Requirements

In order for your proposal to be deemed responsive, the following documents MUST be included with your proposal:

- **Operator Description Form.** Provide with your proposal the Operator Description form (Exhibit G), fully filled out for your firm and any proposed subconsultants, subcontractors, or operating partners.
- **Insurance Verification Letter.** Provide a signed letter from your insurance carrier indicating that the insurance requirements for this project as described in Exhibit H of this RFP are presently part of the Proposer's coverage, or that the insurance company is able to provide such coverage should the Proposer

be selected. The insurance carrier must be aware of the indemnification requirements also set forth in this RFP. Proposer(s) are not required to purchase the required insurance in order to respond; however, all required insurance will need to be submitted at the time of contract award. **ACORD® Certificate of Liability Insurance sheets will not be accepted in lieu of an insurance verification letter.** Proposals submitted without an insurance verification letter, as described above, will be deemed non-responsive.

Checklist for RFP Submittal Requirements

A checklist is provided to assist in verifying that all elements of the RFP have been addressed. However, firms are encouraged to review the entirety of the RFP, including the Standard Contract Provisions section, to ensure full compliance and not rely solely on this checklist.

- Submittal Cover
- Transmittal letter, signed by an authorized principal of the proposing consulting firm.
- Table of Contents, if included (not required).
- Technical Proposal with the following sections, in order:
 - Qualifications and Experience
 - Developmental Approach
 - Operational Approach
- Financial Proposal with the following sections, in order:
 - Exhibit E – Passenger Volume Forecast
 - Financial Plan Narrative
 - Business Plan Narrative
 - Statement of Financial Strength
 - Proposed Security Package
 - Exhibit D Completed Financial Proposal Form
 - Exhibit C – Bid Term Sheet
 - Exceptions to Bid Term Sheet (if any)
 - Audited Financial Statements
 - Litigation and Bankruptcy Information
- A comprehensive pro forma, in Microsoft Excel format with fully functional formulas
- Contract Administrative Forms with the following sections, in order:
 - Exhibit G - Operator Description Form
 - Letter from insurance carrier or broker indicating ability to meet insurance requirements for this project, including general liability, auto liability, professional liability, ocean marine liability and workers' compensation. **Do not submit an ACORD® Certificate of Liability Insurance sheet. It will not be accepted in lieu of an insurance verification letter.**

Appendix A – Potential Berth Designs

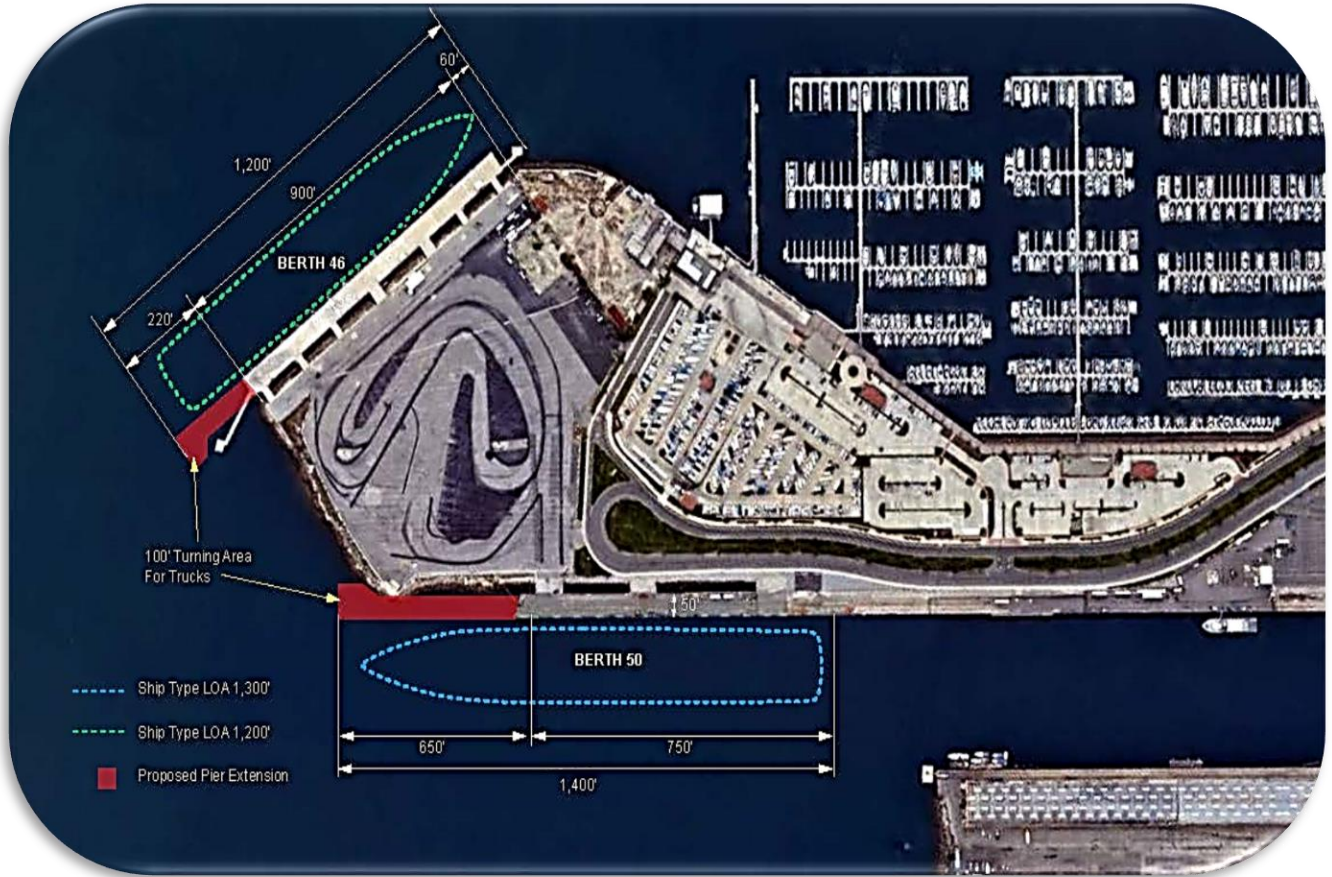


EXHIBIT A - HARBOR DEPARTMENT GROUND LEASE STANDARD TERMS AND PROVISIONS

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; Executive Director Directives. 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 transaction does not comply with any Applicable Laws or any third-party compliance or approval process. 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.

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 their 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 Lessee, 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 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. 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, subject to Tenant's consent (which consent shall not be unreasonably withheld), 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. City and Tenant agree to negotiate in good faith regarding any other terms and conditions of such temporary assignments.

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 pursuant to Subsection 103.2.6.2, below. Two percent (2%) of the value of any standby letter of credit, or its equivalent, shall be deducted and paid to a Harbor District maintenance fund and shall be non-refundable. 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 remaining ninety-eight percent (98%) 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.

103.2.6.2 Port Environmental Fund Deposit. Should Executive Director so direct Tenant in writing, in addition to, and not as a substitute for, the Security Deposit, Tenant shall deposit with the Board a sum equal to one percent (1%) of the Base Rent up to one hundred thousand dollars (\$100,000) per year, for deposit into the Port's general environmental clean-up and restoration fund to be used by City if Tenant fails to remediate a Term Release fully or if Tenant fails to restore the Premises fully at the expiration or earlier termination of the Agreement. Any portion of such deposit not needed for a Term Release or for Restoration shall be refunded to Tenant upon termination of this Agreement. When the Base Rent is increased pursuant to this Agreement, Tenant shall deposit an increased amount such that there is one percent (1%) of the Base Rent, up to one hundred thousand dollars (\$100,000), deposited at all times.

103.2.7 Charges on Past Due Obligations. Payments required to be made by this Section 103 which have not been paid within ten (10) calendar days of the date such payments are due shall be subject to a delinquency charge which shall accrue at the rate provided in Item No. 270 of the Tariff, currently consisting of simple interest of one thirtieth (1/30) of two percent (2%) of the amount remaining unpaid each day. Tenant acknowledges that it knows the day of the month its payments hereunder are due and that such payments are due to be made from that date and not the date of City's invoice, if any. The delinquency service charge shall be imposed whether or not a deposit required by Subsection 103.2.6, above, is applied to the amount due. City has the unqualified right, upon thirty (30) days' prior written notice to Tenant, to change the level of the delinquency service charge. The payment of interest on such amounts shall not excuse or cure any Default by Tenant under this Agreement.

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 Baseline Report, Exhibit "G," attached hereto and incorporated herein as if set forth in full, which Tenant has reviewed and approved, 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 the 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.

104.2 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" 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 Mitigation and Other Environmental Obligations.

104.3.1 Compliance Obligation; Notice. Tenant shall comply (and shall immediately halt and 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 Environmental Policies, Rules and Directives. All applicable environmental policies, rules and directives of the Harbor Department as set forth on in Exhibit "I" attached hereto and incorporated herein as if set forth in full; and

104.3.1.3 Mitigation Measures and MMRP. Following certification of the environmental document required by the California Environmental Quality Act ("CEQA") for the development at the Premises intended to implement any improvements or legally entitle hereunder an additional term of use and occupancy of the Premises, the environmental mitigation measures ("Mitigation Measures") and Mitigation Monitoring and Reporting Program (or "MMRP") and other Environmental Compliance Requirements, if any, set forth collectively in Exhibit "I" hereto. Tenant shall report any non-compliance with Exhibit "I" to Executive Director, including the facts of such non-compliance and Tenant's proposed cure of such non-compliance in accordance with Section 108 hereto. Following the Effective Date, upon mutual written agreement of Board and Tenant, Board may revise Exhibit "I." Tenant shall be considered to be in compliance with the requirements imposed by Exhibit "I" if it complies with laws and regulations adopted by applicable Governmental Agencies that are equivalent to or more stringent than those of Exhibit "I." In such event of superseding

regulations, tenants shall not be required to continue reporting on the superseded MMRP measures unless a violation occurs, in which event Tenant shall provide notification to the City as required pursuant to Section 104.4, in addition to any required agency notifications. Tenant shall perform annual written audits of its compliance with Exhibit "I". The results of such audits shall be maintained on Premises for review by City and transmitted to the City annually.

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 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. THE FOLLOWING INSURANCE PROVISION IS A PLACEHOLDER THAT INCLUDES BOILERPLATE CURRENT AS OF SEPTEMBER 2021. THE NATURE OF THE TRANSACTION WILL DRIVE THE COVERAGE REQUIRED AND THEIR LIMITS AND AMOUNTS, ALL OF WHICH ARE WITHIN THE PURVIEW OF THE RISK MANAGEMENT DIVISION. 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 Assessment, 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.

110.3 Additional Insurance Maintained by Tenant. If Tenant maintains higher limits than the minimums required above by the City, City shall be entitled to coverage for the higher limits maintained by Tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

110.4 Limits for Coverage. Limits for coverage required under this Section 110 shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her sole judgment, such retention or self-insurance is justified by the net worth of Tenant. The self-insured retention or self-insurance shall provide that any other insurance maintained by Harbor 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 all the obligations of an "insurer" under the California Insurance Code and said insurance shall be deemed to include a defense of suits provision and a severability of interest clause.

110.5 Additional Requirements. Policies submitted pursuant to this Section 110 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 the City of Los Angeles, acting by and through its Harbor Department, the Board of Harbor Commissioners, and their officers, agents, and employees, are additional insureds hereunder, and that coverage is provided for all contractual obligations, operations, uses, occupations, acts, and activities of all the insureds, including any sole negligence of the additional insureds, under Permit No. _____, and under any amendments, modifications, extensions, or renewals of said

Permit regardless of whether such contractual obligations, operations, uses, occupations, acts, and activities occur on the Premises or elsewhere.”

“The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by the City is excess coverage.”

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

“Notice of occurrences or claims under the policy shall be made to the City’s Risk Manager with copies to the Los Angeles City Attorney’s Office.”

110.6 Workers’ Compensation. Tenant shall secure the payment of compensation to any employees injured while performing work or labor necessary for and incidental to performance under this Agreement in accordance with Section 3700 of the California Labor Code of the State of California. Tenant shall file with the City one of the following:

110.6.1 A certificate of consent to self-insure issued by the Director of Industrial Relations, State of California;

110.6.2 A certificate of Workers’ Compensation insurance issued by an admitted carrier; or

110.6.3 An exact copy or duplicate thereof of the policy certified by the Director of Industrial Relations or the insurer. Such documents shall be filed prior to Tenant’s occupancy of the Premises. Where Tenant has employees who are covered by the United States Longshore and Harbor Workers’ Compensation Act, (“USLHWC Act”), Tenant shall furnish proof of such coverage to the City. It is suggested that Tenant consult with its insurance professional of its choosing to determine whether its proposed operation methods will render its employees subject to coverage under the USLHWC Act. All Workers’ Compensation insurance submitted to City shall include an endorsement providing that any carrier paying benefits agrees to waive any right of subrogation it may have against City.

110.7 Insurance Features. All insurance procured by Tenant shall comply with the following features:

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

110.7.2 Acceptable Evidence and Approval of Insurance. Electronic submission is the required method of submitting Tenant's insurance documents. KwikComply® is the City's online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system which is designed to be used primarily by insurance brokers and agents to submit client insurance certificates directly to the City. It uses the standard insurance industry form known as the ACORD 25 Certificate of Liability Insurance in electronic format. The advantages of KwikComply include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. Tenant's insurance broker or agent shall obtain access to KwikComply® at <https://kwikcomply.org/http://kwikcomply.org> and follow the instructions to register and submit the appropriate proof of insurance on Tenant's behalf.

110.7.3 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, may obtain such insurance for Tenant.

110.7.4 Modification of Coverage. Executive Director, at his or her discretion, based upon recommendation of the Risk Manager of Harbor Department, may request that Tenant increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving written notice to Tenant.

110.7.5 Certified Copies of Policies. Immediately upon procuring any and all policies of insurance required herein, Tenant must request from Tenant's insurance carrier(s) full certified copies of such policies of insurance. Tenant shall thereafter provide such full certified copies of such policies to City within thirty (30) days of Tenant's receipt of such policies from Tenant's insurance carrier(s). Tenant's obligation to provide such copies shall survive the Expiration Date of this Agreement regardless of whether Tenant receives such policies prior to or after the Expiration Date of this Agreement. Tenant shall further provide written notice to City of any change of terms of any policies of insurance required herein within thirty (30) days of any such change.

110.7.6 Accident Reports. Tenant shall report in writing to Executive Director within fifteen (15) days after it, its officers, or its managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of 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 relevant information as may be known to Tenant, its officers, or its managing agents.

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

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

110.8 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. No offensive or refuse matter, or any substance constituting any unnecessary, unreasonable, or unlawful fire hazard, or material detrimental to the public health, shall ever be permitted by Tenant to be or remain on the Premises, and Tenant shall prevent any such material or matter from being or accumulating upon the Premises. Tenant further agrees not to keep on the Premises or permit to be kept, used, or sold thereon, anything prohibited by any policy of fire insurance covering the Premises or any structure erected thereon.

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 behalfs) 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 of such Transfer or 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 Assignment Fee.

If City approves any Transfer as herein provided, Tenant shall pay to City, as Additional Rent, twenty percent (20%) of any monetary or other economic consideration received by Tenant as a result of the Transfer over and above the amount of Tenant's rental and other payments due City pursuant to this Agreement (or applicable share, if a sublease). The agreement evidencing such Transfer, as the case may be, after approval by City, shall not be amended without City's prior written consent, and, at City's option, shall contain a provision directing such transferee to pay the rent and other sums due thereunder directly to City upon receiving written notice from City that Tenant is in Default under this Agreement following applicable notice and cure periods with respect to the payment of Rent. In the event that, notwithstanding the giving of such notice, Tenant collects any rent or other sums from such transferee, then Tenant shall hold such sums in trust for the benefit of City and shall immediately forward the same to City. City's collection of such rent and other sums shall not constitute an acceptance by City of attornment by such transferee.

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 Operations. Tenant shall keep full and accurate books, records and accounts relating to its operations on the Premises. City shall have the right, through its representatives, at all reasonable times and on reasonable notice, to inspect such books, records and accounts in order to verify the accuracy of the sums due, owing and paid to City hereunder. Tenant agrees that such books, records and accounts shall be made available to City at Tenant's offices in the City of Los Angeles. City shall protect, to the extent permitted by law, the confidentiality of any such books, records and/or accounts so inspected.

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. (Only applicable if Permitted Uses includes a rail related use) 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 Talking. 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.

116.7 Restoration Security. In addition to any other requirement to provide security under Agreement, Tenant also agrees to provide City a cash deposit or irrevocable letter of credit in the name of City to assure restoration of the premises in accordance with the terms of this Agreement. The restoration security required herein shall be in a form acceptable to the City Attorney and the amounts shall be determined in the sole discretion of Executive Director. No interest is payable by City on deposits if the deposits are subsequently refunded.

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 117.23 (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; Dispute Resolution by Judicial Reference. 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 dispute arising under this Agreement shall be resolved by

judicial reference pursuant to the provisions of Code of Civil Procedure § 638-645.1. The cost of the referee shall be borne equally by each Party. The referee shall be a retired judge or attorney with at least 10 years of experience in lease related matters and/or lease litigation, or any other individual that both Parties agree has the qualifications and experience necessary. The Parties shall agree upon the referee within thirty (30) days of the demand for judicial reference. In the absence of proof of grounds for objection to the appointed general referee pursuant to Code of Civil Procedure § 641, any Party brought into the judicial reference after the selection of the referee shall be deemed to have consented to such selection. In the event the Parties cannot agree on the selection of a referee, any Party may petition the Superior Court of Los Angeles County for the appointment of a qualified retired judge or attorney as a general referee. The general referee's decision shall be binding on the Parties as would a decision by a court. The decision shall be in writing, and shall contain written findings of fact, and, to the extent applicable, conclusions of law, and shall be reported to the court within twenty (20) days after the testimony is closed.

Each Party retains the same appeal rights of the referee's decision as if the decision were rendered by a trial court judge. The judicial reference shall be held in Los Angeles County, California. In the event of judicial reference under this Section 117.10, the Parties shall attempt to develop a mutually agreeable discovery plan taking into consideration the number and complexity of issues in the dispute. If the Parties cannot agree upon a discovery plan, any Party may request that the appointed referee order the discovery the party contends is necessary.

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 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.

117.14 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.

117.15 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.

117.16 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.

117.17 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.

117.18 Visual Artists' Rights Act.

117.18.1 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.

117.18.2 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.

117.18.3 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 117.18.3.

117.18.4 Cumulative Remedy. The rights afforded the City under this Subsection 117.18 shall not replace any other rights afforded City in this Agreement or otherwise, but shall be considered in addition to all its other rights.

117.19 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.

117.20 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.

117.21 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 the City if the 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.

117.22 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.

117.23 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.

117.24 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.

117.25 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.

117.26 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.

117.27 Executive Director Authority. Whenever this Agreement refers to an action to be taken by the Executive Director, to the extent permitted by Applicable Law, that action may be taken by the Executive Director or the Executive Director's designee.

117.28 City Approvals. Any approvals or consents required from or given by City under this Agreement shall be approvals of POLA acting as the landlord, 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 Demised Premises or maintenance of the Demised Premises and the right to enact, amend or repeal Legal Requirements, 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 CEO within the legal authority of the CEO, subject to the approval of the Office of the City Attorney as to form; provided, however, if the approval or consent by City is in excess of the CEO's legal authority, then such matter shall be approved by the Board or the 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 CEO, the Board or the City Council, as applicable, such approval or

consent may be given or withheld in the CEO's, the Board's or the City Council's sole and absolute discretion.

117.29 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.

117.30 Civil Code Section 1938 Disclosure. 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 117.30, unless directed to do so by the Executive Director.

117.31 OFAC Compliance. Tenant hereby 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.

117.32 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.

Landlord has no special knowledge relating to ACM. Tenant must immediately notify Landlord 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 Landlord, 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 Landlord’s request, Tenant shall deliver to Landlord a copy of a signed acknowledgement from Tenant acknowledging receipt of notice of the potential presence of ACM.

117.33 Audits. City may, at its sole discretion and with reasonable notice to Tenant, require Tenant to provide access to all records and other information necessary to perform an audit of rental, 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 five (5) years past the end of the fiscal year in which they were generated and up to five (5) years past the expiration or early termination of this Lease. Tenant shall retain all records and other information necessary to perform an audit as described above for a minimum of five (5) years.

[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

Dated: _____, 20__

[TENANT]
By: _____

(Print/type Name and Title)

Attest: _____

(Print/type Name and Title)

APPROVED AS TO FORM AND LEGALITY

_____, 20__
HYDEE FELDSTEIN SOTO, City Attorney
STEVEN Y. OTERA, 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.

“Adjusted Base Rent” means the adjustment to the Base Rent that occurs every five (5) years of the Term pursuant to 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.

“Annual Adjustment Date” shall have the meaning set forth in Article 1, Subsection 4.3.1.

“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.

“**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 Tariff Charges and other Additional Rent, as set forth in Article 1, Section 4 of this Agreement.

“**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.

"Compensation Year" means the twelve (12) month period from the Effective Date and every twelve month period thereafter.

"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.

"CPI-U" means the Consumer Price Index for All Items, All Urban Consumers for the Los Angeles-Long Beach-Anaheim, California area, 1982-84=100 as published by the U.S. Department of Labor, Bureau of Labor Statistics, or a successor index selected by the Executive Director of the Harbor Department in the Executive Director's sole reasonable discretion.

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

"Environmental Compliance Requirements" means the requirements identified in Exhibit "I" as set forth in Article 2, Subsection 104.3.1. Generally, this term encompasses the MMRP, Lease Measures, and any other environmental compliance and/or reporting requirements related to Tenant's environmental obligations set forth in Article 2, Section 104 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.

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

"Fair Market Rental" means the most probable rent that a property should bring in a competitive market reflecting all conditions and restrictions of the lease agreement, including permitted uses, use restrictions and tenant improvements.

“Five-Year Adjusted Period” means each five (5) year period of the Term of this Agreement that is subject to rental adjustment pursuant to Article 1, Section 4, of this Agreement.

“Force Majeure” shall have the meaning set forth in Article 2, Section 109 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 117.26.

“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.

“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.

“Market Rent” means the most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement, including permitted uses, use restrictions, expense obligations, term, concessions, renewal and purchase options, and tenant improvements.

“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.

“Mitigation Monitoring and Reporting Program” or **“MMRP”** means the Mitigation Monitoring and Reporting and Program described in Exhibit “I,” herein.

“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 117.26, 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.

“Site Vacation Plan” is as defined in Article 2, Subsection 116.2.1 of this Agreement.

“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 – Estimated Calendar Year 2023 Cruise-Related Operating Income⁸

Revenues	
Dockage, Wharfage, Lay Day Fees	\$21,919,000
Cruise Passenger Parking Revenue ⁹	-
Miscellaneous Cruise Facility Revenue	876,000
Total Operating Revenues	\$22,795,000
Expenses	
Ports America Terminal Operator	\$2,417,000
Estimated Incentive	2,706,000
Estimated Construction & Maintenance Costs	1,406,000
Estimated Security Costs ¹⁰	-
Estimated Utility Costs	750,000
Total Operating Expenses¹¹	\$7,279,000
Operating Income, prior to Depreciation	\$15,516,000

⁸ The numbers are rounded to the nearest thousand.

⁹ Existing parking revenues of \$6,938,000 have been excluded from this analysis. As per Section 2.6, "Proposals expecting to leave the existing surface parking as is, permanently or for some period of time, should assume the parking operation and revenue shall remain with the Harbor Department and outside the proposed leasehold area until a significant investment and densification of parking is developed."

¹⁰ Port Police costs of \$2,047,000, which differ from the costs associated with security referenced in Section 4.4, Operational Approach, have been excluded from this analysis.

¹¹ Operating Expenses include estimates which may be subject to change.

Exhibit C – Bid Term Sheet

This non-binding term sheet (“**Term Sheet**”) is being delivered to you to outline the basis on which the City of Los Angeles Harbor Department (the “**Harbor Department**”) will consider leasing the Outer and Inner Harbor Cruise Terminals (the “**Project Site**”) to the selected Developer (the “**Developer**”) for the development by Developer of a new cruise terminal at Berths 45-51 known as the Outer Harbor Cruise Terminal and potential redevelopment of the existing cruise terminal at Berths 90-93 known as the Inner Harbor Cruise Terminal (the “**Project**”) on said Project Site and to own and operate the Project for the Term (as defined below). Harbor Department and Developer shall hereinafter be collectively referred to as the “**Parties.**”

Developers are required to either (1) affirmatively state that the Developer is in agreement with the terms as specified or (2) propose modified terms that are agreeable to the Developer and explain the reasons for the proposed changes in the submittal to the RFP.

The general terms under which Harbor Department would consider entering into a ground lease agreement for the Project Site (the “**Ground Lease**”) are set forth below.¹²

A. Ground Lease – The Ground Lease will govern the rights and responsibilities of the Developer and Harbor Department regarding the construction and long-term operation of the Project, including fair market value consideration to be paid to Harbor Department as ground rent.

1. Form of Ground Lease. Harbor Department will prepare the draft form of ground lease on Harbor Department’s template.¹³
2. Term. The term of the Ground Lease is anticipated to be a maximum of sixty-six (66) years, inclusive of the period of construction, without any right to renew. The term shall not be extended to account for owner-caused delays, third-party delays or Force Majeure.
3. Rent Commencement Date. The ground rent due under Bid Structure A or Bid Structure B shall commence on the date of ground lease execution.
4. Minimum Base Ground Rent.
 - a. Bid Structure A (Minimum Annual Passenger Guarantee)
 - i. Upon the Rent Commencement Date, the minimum amount to be paid annually to the Harbor Department shall be the greater of the following:
 1. The product of the Minimum Annual Passenger Guarantee, the Per-Passenger Fee, and percentage of the Per-Passenger Fee shared with the Harbor Department; or

¹² For the avoidance of doubt, the Parties agree and acknowledge that nothing in this Term Sheet in any respect does or shall be construed to affect or prejudice the exercise of the Harbor Department’s discretion, and by its delivery of this Term Sheet, Harbor Department is not committing to undertake the disposition of the Project Site or any portion thereof to any Developer, or to any activities requiring the subsequent independent exercise of discretion by the Harbor Department.

¹³ This Term Sheet specifies certain material provisions of the Ground Lease but is not intended as a comprehensive summary of all the terms and conditions of the Ground Lease which the Parties may consider to be material.

2. Eight million dollars (\$8 million) annually.

- ii. The Minimum Annual Passenger Guarantee, which will be calculated as a base dollar amount, shall be increased annually (Adjusted Minimum Annual Passenger Guarantee) by CPI for All Urban Consumers (CPI-U) for the Los Angeles-Riverside-Orange County, California area as of each anniversary of the Rent Commencement Date. The annual CPI adjustment shall be no less than two percent (2.0%). The annual CPI adjustment shall be no greater than the percentage specified by the Developer in the Financial Proposal Form.
- iii. In addition to Terms 4.a.i. and 4.a.ii., above, the Developer may share with the Harbor Department a percentage of all terminal passenger, infrastructure and other fees to be specified by the Developer in the Financial Proposal Form.

b. Bid Structure B (Minimum Base Ground Rent)

- i. The annual Minimum Base Ground Rent, which shall be no less than eight million dollars (\$8 million) annually, will be submitted by the Developer in the Financial Proposal Form and will serve as the minimum annual payment to be paid by the Developer to Harbor Department upon the Rent Commencement Date.
- ii. The Minimum Base Ground Rent shall be increased annually (Adjusted Minimum Base Ground Rent) by CPI for All Urban Consumers (CPI-U) for the Los Angeles-Riverside-Orange County, California area as of each anniversary of the Rent Commencement Date. The annual CPI adjustment shall be no less than two percent (2.0%). The annual CPI adjustment shall be no greater than the percentage specified by the Developer in the Financial Proposal Form.
- iii. In addition to Terms 4.b.i. and 4.b.ii., above, the Developer may share with the Harbor Department a percentage of all terminal passenger, infrastructure and other fees to be specified by the Developer in the Financial Proposal Form.

5. Infrastructure Fee

- a. Developers are required to disclose sufficient justification for the Infrastructure Fee. The justification should include the following information.
 - i. The itemized development costs.
 - ii. Financial schedules, which include, but are not limited to the following details:
 - 1. The recovery of the development costs over the ground lease term, based upon projected passenger counts.
 - a. The recovery of the development costs may conclude prior to the expiration of the ground lease term, but in no event shall it exceed the expiration of the ground lease term.
 - 2. The allocation of costs between the Parties.

3. The expected rates of return for the Parties.
 - a. The infrastructure fee will be paid for by the public. Therefore, the following factors must be considered when applying the Infrastructure Fee:
 - i. Each year, the Parties may obtain their respective recovery of development costs and expected rate of return.
 - ii. Each year, the Parties must obtain their respective recovery of development costs prior to the Harbor Department or Developer obtaining an expected rate of return.
 - iii. If the cash flow generated from the Infrastructure Fee in a year exceeds the Parties' recovery of development costs and rates of return, then the excess cash flows must be placed in a reserve account to pay down the development costs and/or reduce deficits as explained in the provision below.
 - iv. If the cash flow generated in a year does not meet or exceed the Parties recovery of development costs and rates of return, causing a deficit, then the monies in the reserve account will be used to reduce or eliminate the deficit.
 4. The rate by which Infrastructure Fee will escalate.
 5. The waterfall distribution of cash flow between Harbor Department and Developer for each tier.
 - b. For purposes of establishing Infrastructure Fee, Harbor Department's target rate of return is 12%.
 - c. For purposes of completing the Financial Proposal Form, at the discretion of Developer, Infrastructure Fee may start in "Year 6" or "Year 11" upon the completion of the construction for Phase I or II improvements, respectively.
6. Compensation Resets.
 - a. Bid Structure A (Minimum Annual Passenger Guarantee)
 - i. The Minimum Annual Passenger Guarantee will be subject to a compensation reset on every fifth (5th) anniversary of the Rent Commencement Date.
 - ii. For the purposes of the financial proposal, Developers are to assume that the Minimum Annual Passenger Guarantee will be reset to reflect seventy five percent (75.0%) of the annual average passenger movements recorded over the preceding three (3) years.
 - b. Bid Structure B (Minimum Base Ground Rent)
 - i. Minimum Base Ground Rent will be subject to a compensation reset on every fifth (5th) anniversary of the Rent Commencement Date.

- ii. For the purposes of the financial proposal, Developers are to assume the Minimum Base Ground Rent will be reset to reflect seventy five percent (75.0%) of the (initial Minimum Base Ground Rent x (aggregate percentage passenger growth+ 100%) over the preceding five (5) years.

Milestone	Ground Lease Year	Compensation Reset
Ground lease execution	0	
Developer design	1	
Issuance of building permits	2	
Phase I construction commencement	3	
	4	
Phase I construction completion	5	
Phase I operational	6	First
	7	
	8	
	9	
Phase II construction completion	10	
Phase II operational	11	Second
	12	
	13	
	14	
	15	
	16	Third

7. Escalation of Passenger Fees. Developer acknowledges and agrees Harbor Department sets passenger tariffs, subject to approval from the Board of Harbor Commissioners and Los Angeles City Council. The Harbor Department anticipates collaborating with the Developer to establish reasonable and applicable passenger rates for the Project Site as defined in the Bid Term Sheet. The Passenger Fees are proposed to be increased every five (5) years in one (1) year annual adjustments for the following five (5) years based on the simple average over the preceding five (5) years in CPI for All Urban Consumers (CPI-U) for the Los Angeles-Riverside-Orange County, California area as of each anniversary of the Rent Commencement Date. These adjustments will never result in a decrease in the Passenger Fees.
8. Escalation of Infrastructure Fee. The Harbor Department anticipates collaborating with the Developer to establish a reasonable and applicable infrastructure fee for the Project Site,

if applicable. As part of the justification for the Infrastructure Fee, as described in Section 5, above, the Developer may propose a percentage by which the infrastructure fee will increase on each anniversary of the Rent Commencement Date. These adjustments should never result in a decrease in the Infrastructure Fee. Additionally, these adjustments will be subject to change during lease negotiations with the selected Proposer.

9. Escalation of Parking Fees. The Harbor Department anticipates collaborating with the Developer to establish reasonable and applicable parking fees for the parking associated with the Project Site. The Parking Fees are proposed to be increased every five (5) years for the following five (5) years based on the preceding five (5) year aggregate in CPI for All Urban Consumers (CPI-U) for the Los Angeles-Riverside-Orange County, California area as of each anniversary of the Rent Commencement Date. The resulting five (5) year fee increase will be adjusted up to the nearest dollar for the daily rate. These adjustments will never result in a decrease in the Parking Fees.

B. Development Scope Responsibility and Timeline

1. Developer Scope. The Developer shall be responsible for delivering the scope outlined in Section 2.4.1 of the RFP:
2. Development Schedule. The Developer pro forma should assume the following timeline for execution of a ground lease agreement and delivery of the Phase I improvements (subject to limited extension for force majeure or owner-caused delays):

Development Schedule	
Proposals due	November 12, 2024
Developer selection	Within three (3) months of submission
Environmental assessment	Within eighteen (18) to twenty-four (24) months of Developer selection
Ground lease execution	Within six (6) months of environmental assessment completion
Developer design	Within twelve (12) months of ground lease execution
Issuance of building permits	Within twelve (12) months of design completion
Phase I construction commencement	Upon issuance of building permits
Phase I construction completion	Within sixty (60) months of the ground lease execution date
Phase II construction commencement and completion	To be determined

C. Minimum Annual Passenger Guarantee

1. Minimum Annual Passenger Guarantee. If Bid Structure A is selected, Developer commits and guarantees to the Harbor Department for each Fiscal Year of the Ground Lease the number of passenger movements on cruise vessels specified on the Financial Proposal Form, which total passenger movement shall be comprised of the aggregate amount of passengers embarking and disembarking from cruise vessels during a Fiscal Year in the Ground Lease, specifically excluding from this guarantee any passenger movements that may result from embarkation and disembarkation from any other third-party vessels.

D. Other Financial Requirements

1. Replacement Reserves. Developer shall be required to maintain reasonable and customary replacement reserves.
 - a. Amount of Reserves. On the day on which the Project first opens for business to the public, Developer shall establish a Replacement Reserve Fund (the "Reserve Account") to which Developer will contribute monthly a sum equal to three percent (3.0%) of its Gross Revenues.

Exhibit D – Financial Proposal Form

INSTRUCTIONS

Please read through Exhibit C – Bid Term Sheet in its entirety before filling out the Financial Proposal Form.

Bid Assumptions

- (1) As defined in the Base Bid tables below, “Year 1” refers to the first year of operations. See Term A. of Exhibit C - Bid Term Sheet.
- (2) It is assumed that in Year 1, two berths are operational in the Inner Harbor, and temporary terminal facilities can be erected in the Outer Harbor.
- (3) It is assumed that the fees proposed in the Base Bid tables, with exception of the Infrastructure Fee as described below, will begin on the Rent Commencement Date as defined in Term A.3. of Exhibit C - Bid Term Sheet and will apply to existing and new facilities.
- (4) The Base Bid assumes that Developer proposals will not include redevelopment and densification of the parking areas.
- (5) The assumptions noted herein may be subject to change during lease negotiations with the selected Proposer.

Base Bid Parameters (the “Base Bid”)

- (1) Developers are required to assume a ground lease term of up to sixty-six (66)-years.
- (2) Developers must choose at least one of the following bid structures and provide the requisite information on the Financial Proposal Form:
 - (a) Bid Structure A – Minimum Annual Passenger Guarantee – Developer commits and guarantees to the Harbor Department a minimum number of passenger movements on cruise vessels for each fiscal year of the ground lease. In the Bid Term Sheet, the Developer shall indicate the Minimum Annual Passenger Guarantee it commits to provide over the term of the ground lease. The minimum amount to be paid annually to the Harbor Department under Bid Structure A will be calculated as follows:

Minimum Annual Passenger Guarantee x Per-Passenger Fee x Percentage of Passenger Fee Shared with the Harbor Department
 - (b) Bid Structure B – Minimum Base Ground Rent – Developer shall pay a minimum base ground rent to the Harbor Department. Developers may also elect to propose sharing a percentage of passenger and/or infrastructure fees with the Harbor Department.
- (3) Each bid structure (Bid Structure A and B) requires the Developer to provide the Developer’s passenger projections through 2043 in Exhibit E of the RFP.

Exhibit D – Financial Proposal Form

Base Bid – Minimum Annual Passenger Guarantee (Bid Structure A)

<u>Bid Parameter</u>	<u>Year 1</u>	<u>Year 6¹⁴</u>	<u>Year 11</u>	<u>Unit Type</u>	<u>Percentage to Port</u>	<u>Comment</u>
Minimum Passenger Guarantee ¹⁵	_____	_____	_____	Passengers Per Year	Not applicable	
Annual CPI Adjustment (Maximum) ¹⁶	_____	_____	_____	%	Not applicable	
Passenger Fees ¹⁷	\$_____	\$_____	\$_____	Per Passenger	____%	
<i>Development</i>						
Infrastructure Fee ¹⁸	\$_____	\$_____	\$_____	Per Year	____% ¹⁹	

¹⁴ Years 6 and 11 will coincide with compensation resets (refer to Term A. of the Bid Term Sheet).

¹⁵ Developers are required to disclose sufficient justification for Minimum Annual Passenger Guarantee, including, but not limited to number of vessels, size of vessels, passengers per vessel, destination and duration. See Section 4.3 of the RFP for additional information.

¹⁶ Developers must pay a Minimum Passenger Guarantee, which will be calculated as a base dollar amount, that will be adjusted annually by the Consumer Price Index (CPI). See Term 4.a.iii. of Exhibit C – Bid Term Sheet. The minimum annual rate adjustment is 2%. This category represents the Developers’ opportunity to propose the maximum annual rate adjustment.

¹⁷ Passenger fees are inclusive of wharfage, dockage and stores charges.

¹⁸ Fee paid by passengers to compensate Harbor Department and Developer for infrastructure development costs incurred. Developer has the discretion to start the Infrastructure Fee in “Year 6” or “Year 11” upon completion of Phase I or II improvements, respectively. The infrastructure fee shall expire on or before the expiration of the ground lease term.

¹⁹ Please see Section 5 of Exhibit C – Bid Term Sheet, for more information regarding Infrastructure Fee.

<u>Bid Parameter</u>	<u>Year 1</u>	<u>Year 6¹⁴</u>	<u>Year 11</u>	<u>Unit Type</u>	<u>Percentage to Port</u>	<u>Comment</u>
<i>Parking</i>						
Parking Fees ²⁰	\$ _____	\$ _____	\$ _____	Daily Charge Per Car	____%	
<i>Other Fees / Revenue²¹</i>						
Event Fees	\$ _____	\$ _____	\$ _____	Per Year	____%	
Filming Fees	\$ _____	\$ _____	\$ _____	Per Year	____%	
Other (<i>Please enter below</i>)	\$ _____	\$ _____	\$ _____	Per Year	____%	
	\$ _____	\$ _____	\$ _____	Per Year	____%	
	\$ _____	\$ _____	\$ _____	Per Year	____%	
	\$ _____	\$ _____	\$ _____	Per Year	____%	
	\$ _____	\$ _____	\$ _____	Per Year	____%	
	\$ _____	\$ _____	\$ _____	Per Year	____%	

²⁰ Subject to ten percent (10.0%) City of Los Angeles tax. As discussed in the Parking section of the RFP, Developer proposals are not anticipated to include the parking areas. Therefore, it is assumed the Parking Fees will be wholly collected by the Harbor Department unless Developer proposes significant investment in parking with supporting explanation and financial justification.

²¹ Sources include additional revenue-producing uses during non-ship days and the off season, including, but not limited to filming and event fees.

Base Bid – Minimum Base Ground Rent (Bid Structure B)

<u>Bid Parameter²²</u>	<u>Year 1</u>	<u>Year 6</u>	<u>Year 11</u>	<u>Unit Type</u>	<u>Percentage to Port</u>	<u>Comment</u>
<i>Minimum Base Ground Rent</i>						
Minimum Base Ground Rent	\$_____	\$_____	\$_____	Per Year	100%	
Annual CPI Adjustment (Maximum)	_____	_____	_____	%	Not applicable	
<i>Passengers (Optional)</i>						
Passenger Fees ²³	\$_____	\$_____	\$_____	Per Passenger	____%	
<i>Development</i>						
Infrastructure Fee ²⁴	\$_____	\$_____	\$_____	Per Year	____% ²⁵	
<i>Parking</i>						
Parking Fees ²⁶	\$_____	\$_____	\$_____	Daily Charge Per Car	____%	
<i>Other Fees / Revenue²⁷</i>						
Event Fees	\$_____	\$_____	\$_____	Per Year	____%	

²² Years 6 and 11 are anticipated to coincide with compensation resets (refer to Term A of the Bid Term Sheet).

²³ Passenger fees are inclusive of wharfage, dockage, and stores charges.

²⁴ Fee paid by passengers to compensate Harbor Department and Developer for infrastructure development costs incurred. Developer has the discretion to start the Infrastructure Fee in “Year 6” or “Year 11” upon completion of Phase I or II improvements, respectively. The infrastructure fee shall expire on or before the expiration of the ground lease term.

²⁵ Please see Section 5 of Exhibit C – Bid Term Sheet for more information regarding Infrastructure Fee.

²⁶ Subject to ten percent (10.0%) City of Los Angeles tax. As discussed in the Parking section of the RFP, Developer proposals are not anticipated to include the parking areas. Therefore, it is assumed the Parking Fees will be wholly collected by the Harbor Department unless Developer proposes significant investment in parking with supporting explanation and financial justification.

²⁷ Sources include additional revenue-producing uses during non-ship days and the off season, including, but not limited to filming and event fees.

<u>Bid Parameter²²</u>	<u>Year 1</u>	<u>Year 6</u>	<u>Year 11</u>	<u>Unit Type</u>	<u>Percentage to Port</u>	<u>Comment</u>
Filming Fees	\$_____	\$_____	\$_____	Per Year	____%	
Other (<i>Please enter below</i>)	\$_____	\$_____	\$_____	Per Year	____%	
	\$_____	\$_____	\$_____	Per Year	____%	
	\$_____	\$_____	\$_____	Per Year	____%	
	\$_____	\$_____	\$_____	Per Year	____%	
	\$_____	\$_____	\$_____	Per Year	____%	
	\$_____	\$_____	\$_____	Per Year	____%	

By submitting this completed Financial Proposal Form, Proposer acknowledges and agrees that, if there is a discrepancy between the bid parameters stated in this summary and the amount thereof determined in accordance with Proposer's Pro Forma, the higher amount will prevail.

Exhibit E – Passenger Volume Forecast

Year	Calendar Year	Calls	Passengers
1	2024		
2	2025		
3	2026		
4	2027		
5	2028		
6	2029		
7	2030		
8	2031		
9	2032		
10	2033		
11	2034		
12	2035		
13	2036		
14	2037		
15	2038		
16	2039		
17	2040		
18	2041		
19	2042		
20	2043		

Exhibit F – RFP Selection Evaluation Form

PROJECT: CRUISE TERMINAL DEVELOPMENT OPPORTUNITY

SCORING GUIDELINES:

Rater's Score: (Range 0-5) - 0=Not Included/Non-responsive; 1=Serious Deficiencies; 2=Marginal Abilities; 3=Adequate, 4=Well Qualified; 5=Exceptionally Qualified.

Multiple: 20

Weighted Percentage – Technical: = 40% (A+B+C)

Weighted Percentage – Financial: = 60% (D+E+F)

Weighted Score:= Rater's Score multiplied by (x) Multiple multiplied by (x) Weighted Percentage (Technical or Financial)

Total score: = Sum of weighted scores.

Firm Name	Evaluated by	Date

CRITERIA TO BE RATED	RATER'S SCORE	MULTIPLE	WEIGHTED PERCENTAGE	WEIGHTED SCORE
Technical Factors <i>(Technical subcategories A, B, and C, below, can collectively equal a maximum Rater's Score of 5)</i>				
A. Qualifications and Experience	Successful development and operations similar to proposed Port project scope and jurisdiction			
B. Development Approach	Quality of the proposal for the development of the Port project scope, including design concept, construction delivery, and overall project schedule, with an emphasis on the new Outer Harbor Cruise Terminal			
C. Operational Approach	Quality of the proposal for the cruise operations of both existing inner harbor and new outer harbor terminals, including safety, cruise passenger experience, and operational assumptions			
Score Subtotal - Technical	x	20	x	40%
Financial Factors <i>(Financial subcategories D, E, and F, below, can collectively equal a maximum Rater's Score of 5)</i>				
D. Passenger Volumes	Number of passengers projected or guaranteed, reasonableness of demand and growth assumptions, and strength of commitment from cruise lines or other comparable financial guarantees			
E. Financial Proposal	Rent terms, projected revenue, projected revenue to the Port, feasibility of finance and business plan assumptions, and the minimization of the Harbor Department's contribution to the project's capital investment.			
F. Financial Strength	Proposer's capacity to deliver the project scope based on short-term liquidity and long-term solvency metrics derived from an analysis of the financial statements			
Score Subtotal - Financial	x	20	x	60%
				TOTAL WEIGHTED SCORE

Exhibit G – Operator Description Form

PRIME OPERATOR:

Contract Title: _____

Business Name: _____ RAMP#: _____

Local Business Enterprise: YES _____ NO _____ (Check only one)

Primary NAICS Code: _____

Address: _____

City/State/Zip: _____

County: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email Address: _____

PARTNER:

Business Name: _____ RAMP ID#: _____

Services to be provided: _____

Local Business Enterprise: YES _____ NO _____ (Check only one)

Primary NAICS Code: _____

Address: _____

City/State/Zip: _____

County: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email Address: _____

PARTNER:

Business Name: _____ RAMP ID#: _____

Services to be provided: _____

Local Business Enterprise: YES _____ NO _____ (Check only one)

Primary NAICS Code: _____

Address: _____

City/State/Zip: _____

County: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email address: _____

PARTNER:

Business Name: _____ RAMP ID#: _____

Services to be provided: _____

Local Business Enterprise: YES _____ NO _____ (Check only one)

Primary NAICS Code: _____

Address: _____

City/State/Zip: _____

County: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email Address: _____

Exhibit H – Indemnity and Insurance Requirements

REQUIRED AT PROPOSAL STAGE: A letter from each Proposer’s carrier or broker must be provided with their proposal. The letter should indicate that the requirements below are presently part of the Proposer’s coverage, or that the carrier/broker is able to provide such coverage should the Proposer be selected. The carrier/broker must be aware of the indemnification requirements below. Proposers are not required to purchase the required insurance in order to respond, however all required insurance will need to be submitted at the time of contract award. **ACORD® certificates will not be accepted.**

1. Indemnification

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Contractor undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and Contractors), damages or liability of any nature whatsoever, for death or injury to any person, including Contractor’s employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by Contractor or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the City.

2. Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting insurance documents. Contractor’s insurance broker or agent shall register with the City’s online insurance compliance system **KwikComply** at <http://kwikcomply.org> and follow the instructions to register and submit the appropriate proof of insurance on Contractor’s behalf.

Carrier Requirements

All insurance which Contractor is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best’s Insurance Guide. Carriers without a Best’s rating shall meet comparable standards in another rating service acceptable to City.

Primary Coverage

The coverages submitted must be primary with respect to any insurance or self insurance of the City of Los Angeles Harbor Department. The City of Los Angeles Harbor Department’s program shall be excess of this insurance and non-contributing.

Notice Of Cancellation

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

Modification of Coverage

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

Renewal of Policies

At least thirty (30) days prior to the expiration of any policy, Contractor shall direct their insurance broker or agent to submit to the City's online insurance compliance system **KwikComply** at <http://kwikcomply.org> a renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified below. If Contractor neglects or fails to secure or maintain the insurance required below, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect the City's interests. The cost of such insurance will be deducted from the next payment due Contractor.

Policy Copies

Upon request by City, Contractor shall furnish a copy of the binder of insurance and/or full certified policy for any insurance policy required herein. This requirement shall survive the termination or expiration of this Agreement.

Limits of Coverage

If the Contractor maintains higher limits than the minimums shown below, City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Right to Self-Insure

Upon written approval by Executive Director, Contractor may self-insure if the following conditions are met:

- a. Contractor has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Contractor must have a formal resolution of its board of directors authorizing self-insurance.
- b. Contractor 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. Contractor agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
- d. Contractor agrees that any insurance carried by Department is excess of Contractor's self-insurance and will not contribute to it.
- e. Contractor provides the name and address of its claims administrator.
- f. Contractor 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. Contractor agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.
- h. Contractor has complied with all laws pertaining to self-insurance.

Insurance

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Indemnification Section Above, Contractor shall procure and maintain at its sole cost and expense and keep in force during the term of this Agreement the following insurance:

3. General Liability Insurance

Contractor shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the City, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Contractor's normal limits of liability but not less than Five Million Dollars (\$5,000,000) combined single limit for injury or claim. Where Contractor provides or dispenses alcoholic beverages, Host Liquor Liability coverage shall be provided as above. Where Contractor

provides pyrotechnics, Pyrotechnics Liability shall be provided as above. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Contractor. The retention or self-insurance provided shall provide that any other insurance maintained by Department shall be excess of Contractor's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds.

4. Fire Legal Liability

In addition to and concurrently with the aforesaid insurance coverage, Contractor shall also procure and maintain, fire legal liability insurance with a minimum limit of Two Hundred and Fifty Thousand Dollars (\$250,000), covering legal liability of Contractor for damage or destruction by fire or explosion to the works, structures and improvements owned by City provided that said minimum limits of liability shall be subject to adjustments by Executive Director to conform with the deductible amount of the fire insurance policy maintained by Board.

5. Automobile Liability Insurance

Contractor shall procure and maintain at its expense and keep in force at all times during the term of this Agreement, automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Contractor's normal limits of liability but not less than Five Million Dollars (\$5,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds.

6. Professional Liability

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

Contractor certifies that it now has professional liability insurance in the amount of Five Million Dollars (\$5,000,000), which covers work to be performed pursuant to this Agreement and that it will keep such insurance or its equivalent in effect at all times during performance of said Agreement and until two (2) years following the completed term of the Agreement. Notice of occurrences of claims under the policy shall be made to the

City Attorney's office with copies to Risk Management.

7. Ocean Marine Liability

Contractor shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connections with Contractor's operations. The cost of the insurance shall be borne by Contractor. The coverage shall be written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's Rating is not available). Coverage shall include, but not be limited to:

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

Coverage shall contain a defense of suits provision and a severability of interest clause. Each policy shall also contain an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents, and employees as Primary additional insureds.

8. All Risk Property

Contractor shall secure and shall maintain at all times during the life of this Agreement, All Risk Property insurance that requires the Contractor to insure the works, structures and improvements erected by Contractor on the premises on an "All Risk" basis equal to the full replacement cost of the property with no coinsurance clause. Coverage shall include a "Loss Payee" endorsement where losses payable under this policy shall be adjusted with the named insured and paid to the "City of Los Angeles Harbor Department" as its interests may appear. Additionally, evidence of Business Interruption and Extra Expense insurance in such amounts as will cover all rent and other monies payable to the Harbor Department and will reimburse Contractor for direct and indirect loss of earnings due to a covered peril for a period of at least twelve (12) months.

Said policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as additional insureds.

9. All Risk Builder's Risk/Installation Floater

a. Contractor shall, at the Contractor's own expense, provide all risk builder's risk insurance covering loss, damage or destruction of property, including material in transit and stored on and off site, satisfactory to the City, in an amount at least equal to the value of the construction and materials on hand. The Contractor's insurance broker or agent shall submit for approval said insurance to the City's online insurance compliance system KwikComply™ <https://kwikcomply.org/>. Acceptable evidence of coverage shall name the City as an additional named insured and as loss payee as its

interest may appear.

b. The Contractor need not provide all risk builder's risk insurance for fills; excavations; rock work; concrete or masonry walls and bulkheads retaining earth; foundations entirely below ground or in earth fill; pipe, sewer systems, conduit, and electric light and power systems entirely below ground or submerged; ballast and grading for railroad tracks on or in earth; pavements, sidewalks and pits on solid earth or in fill outside of buildings; incombustible poles, area lighting and metal fencing not attached to exterior or interior of buildings. Contractor is not relieved of the obligation to rebuild these improvements when damaged.

c. An installation risk or "floater" policy, written to cover only specific types of equipment during construction, may be provided to cover damage to work or high valued equipment or materials.

10. Workers' Compensation and Employer's Liability

Contractor shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that the Contractor shall comply with such provisions before commencing the performance of the tasks under this Agreement. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. Contractor shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City in any circumstance in which it is alleged that actions or omissions of the City contributed to the accident. Such worker's compensation and occupational disease requirements shall include coverage for all employees of Contractor, and for all employees of any subcontractor or other vendor retained by Contractor.