

LOS ANGELES FOREIGN-TRADE ZONE

OPERATING AGREEMENT

by and between

THE CITY OF LOS ANGELES

and

CALIFORNIA CARTAGE COMPANY, LLC

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AGREEMENT NO. \_\_\_\_\_

FTZ OPERATING AGREEMENT  
BETWEEN THE CITY OF LOS ANGELES AND  
CALIFORNIA CARTAGE COMPANY, LLC

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, by and between the CITY OF LOS ANGELES, a municipal corporation ("City") acting by and through its Board of Harbor Commissioners ("Grantee") and CALIFORNIA CARTAGE COMPANY, LLC, 2401 E. Pacific Coast Highway, Wilmington, CA 90744 ("Operator").

R E C I T A L S:

WHEREAS, the Grantee has received permission from the United States Foreign-Trade Zones Board to establish a foreign-trade zone, designated as Foreign-Trade Zone No. 202, at various locations in or adjacent to the Los Angeles Customs port of entry; and

WHEREAS, the Operator desires to make use of foreign-trade zone status and wishes to activate the site located at as depicted and more fully described in Exhibit "A", attached hereto and made a part hereof Site 1A, ("Zone Site"), which is within the boundaries of Foreign-Trade Zone No. 202; and

WHEREAS, City and BNSF Railway Company ("BNSF") entered into the Site Preparation and Access Agreement ("SPAA") granting BNSF rights to certain real property and improvements and where Operator occupies a portion of said property; and

WHEREAS, on August 2, 2013, BNSF and Operator entered into a license agreement ("License") granting Operator a non-exclusive license for the use and occupancy of that certain property as set forth in the License which is attached hereto and incorporated by reference as Exhibit D; and

WHEREAS, the Grantee deems it practicable to limit its participation in the everyday operations of the Zone Site and to place the operation of the Zone Site under the supervision of Operator; and

WHEREAS, upon the terms and conditions herein set forth, Operator desires to undertake the development and operational management of a foreign-trade zone at the Zone Site accordance with standards of construction and operation approved by the Grantee and the Foreign-Trade Zones Board, including those related to occupancy and use.

NOW, THEREFORE, the parties hereto, in consideration of the mutual agreements herein contained and covenants herein expressed, and for other good consideration acknowledged by each of them to be satisfactory and adequate, do hereby agree as follows:

#### ARTICLE I. - DEFINITIONS

In this Agreement and in any amendment or supplement hereto (except as otherwise expressly provided or unless context otherwise requires), terms used as defined terms in the recitals hereto shall have the same meanings throughout this Agreement and, in addition, the following terms shall have the meanings specified below:

- A. "Act" shall mean the Foreign-Trade Zones Act of 1934, as amended, (19 U.S.C., 81a et. seq.).
- B. "Activation" shall mean initiation within Foreign-Trade Zone No. 202 of any activity authorized by the United States Foreign-Trade Zones Board and by the United States Customs Service to be conducted at the Zone Site.
- C. "Agreement" shall mean this Los Angeles Foreign-Trade Zone Operating Agreement by and between the City of Los Angeles and California Cartage Company, LLC.
- D. "Bond" shall mean a bond or bonds paid for by the Operator and issued by a surety company authorized to conduct business in the State of California and approved by Customs, to insure against any loss of duty, taxes or other sums from operations within the Zone Site and in an amount satisfactory to Customs and the Grantee.
- E. "City" shall mean the City of Los Angeles, a municipal corporation.
- F. "Contract Documents" shall mean this Agreement, and all other documents executed on behalf of the Operator in conjunction with this Agreement.
- G. "Customs" shall mean the U.S. Customs and Border Protection or any successor body or agency of the United States.
- H. "Executive Director" shall mean the General Manager of the Los Angeles Harbor Department.
- I. "Grantee" shall mean the City of Los Angeles Board of Harbor Commissioners, to which the privilege of establishing, operating and maintaining Foreign-Trade Zone No. 202 has been granted by the Foreign-Trade Zones Board.

- J. "Operator" shall mean California Cartage Company, LLC., the entity designated by the Grantee to conduct foreign-trade zone activities at the Zone Site.
- K. "Operator of a Multi-User Zone Site" shall mean that the Zone Site is available for use by companies other than the Operator.
- L. "Operator of a Single-User Zone Site" shall mean that the Operator is the sole user of the Zone Site, including Operators of subzone sites.
- M. "Port Director" shall mean the Port Director of the U.S. Customs and Border Protection Agency of Los Angeles.
- N. "Regulations" shall mean all applicable federal, state and local statutes, ordinances and regulations including the rules, statutes, regulations, orders, decisions, ordinances or decrees of any governmental body, including judicial bodies, having jurisdiction over the Los Angeles Foreign-Trade Zone No. 202, the Operator, or the operations conducted therein.
- O. "Zone" shall mean those areas in or adjacent to the Los Angeles Customs Port of Entry designated by the Foreign-Trade Zones Board as Foreign Trade Zone No. 202.
- P. "Zone Site" shall mean those areas within the Zone that Operator may operate and maintain as a foreign-trade zone.

## ARTICLE II. - AUTHORITY GRANTED/ACCEPTED, TERM AND AGREEMENT

### 2.01 Authority Granted

The Grantee gives and grants to Operator for the term hereof and for any extensions as hereinafter provided, the non-exclusive authority to conduct foreign-trade zone activities at the Zone Site as an Operator of a Multi-User Zone Site, subject to the terms, conditions, agreements and restrictions herein set forth.

### 2.02 Authority Accepted

Operator agrees during the term of this Agreement to exercise its rights and powers in accordance with the terms and conditions of this Agreement and hereby assumes responsibility for the operation and management of said Zone Site.

### 2.03 Term of Agreement

A. Term and Renewal. Unless terminated as herein provided, this Agreement shall remain in effect for one (1) year, provided that Operator has performed to the satisfaction of Grantee as required herein, commencing on the

first day of the month subsequent to City approval of this Agreement. Any renewal of this Agreement must be approved in advance or subsequently ratified by the Board of Harbor Commissioners. If the parties cannot agree on the terms and conditions for said renewal prior to the end of the then current one-year period, the Agreement shall terminate at the end of such term.

B. Initiation of Operations. Operator hereby agrees to initiate operations at the Zone Site, as soon as practicable following approval by the Foreign-Trade Zones Board and Customs or such other time as may be mutually agreed upon in writing by the Grantee and Operator. Operator shall not initiate operations at the Zone Site without first receiving, pursuant to 19 C.F.R. 146.6(b)(5), a written letter from the Grantee concurring in the initiation of operations.

### ARTICLE III. - CONSTRUCTION, REPAIR AND MAINTENANCE

#### 3.01 Construction

A. Operator agrees that it will construct at its expense the improvements and facilities at the Zone Site required by the Foreign-Trade Zones Board and Customs.

B. Operator further agrees that it will not construct any additional Zone Site facility or make any substantial alterations to the improvements referred to in Section 3.01.A, which materially affect operation of the Zone Site, unless plans for such alterations or additional improvements are first submitted to Grantee, for the concurrence of the Grantee, Foreign-Trade Zones Board and Customs, and appropriate federal, state and local agencies, as required by law.

#### 3.02 Repair and Maintenance of Facilities

A. Operator, at its own expense, shall at all times repair and maintain the structures and other facilities that Operator leases or owns within the Zone Site in a condition satisfactory to the Grantee and consistent with the nature of the operations in the particular foreign-trade zone so as not to endanger the life and health of employees of the United States and others who may enter the Zone Site for any reason whatsoever. Accepted sanitary practices shall be followed in the construction, equipment, and operation of such buildings and other structures. Operator, in a timely manner, shall make such repairs or alterations as may be ordered by the Foreign-Trade Zones Board or the Grantee.

B. Operator agrees to provide at the Zone Site its own expense proper containers for trash to keep the Zone Site free and clear of rubbish, debris and litter at all times, and to keep and maintain the Zone Site in a safe, clean, wholesome and sanitary condition under Regulations. No offensive refuse matter or any substance constituting any unnecessary, unreasonable or unlawful

fire hazard, nor material detrimental to the public health shall be permitted to be remain on the Zone Site, and Operator shall exercise reasonable care to prevent such material or matter from being or accumulating upon the Zone Site.

C. All fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems, portable fire extinguishers and other fire protective or extinguishing systems or appliances which have been or may be installed at the Zone Site shall be maintained by Operator at its own expense in an operative condition at all times.

D. Operator shall be liable and shall make immediate payment of any fine, penalty, liquidated damage or other charge or assessment imposed by the Foreign-Trade Zones Board, Customs, Grantee or City for failure to make repairs or alterations as ordered, pursuant to procedures herein provided.

#### ARTICLE IV. - USE OF NAME AND ADVERTISING

##### 4.01 Advertising

So long and only so long as this Agreement shall remain in force and effect, Operator, in operational management of the Zone Site, may advertise its operations as being within "Los Angeles Foreign-Trade Zone No. 202"; however, no designs, advertising, signs or forms of publicity (including form, color, number, location and size) shall be used upon or with respect to the Zone Site or other place of related business unless the same shall have been first approved in writing by the Grantee as meeting its standards. The Grantee, or its authorized agents, may at any time after five days' notice to Operator, enter the Zone Site and remove any unapproved signs or advertising media, and may keep or destroy such signs or other media without paying therefor, and without being deemed guilty of trespass or other tort.

#### ARTICLE V. - ESTABLISHMENT OF TARIFFS

##### 5.01 Foreign-Trade Zone Regulations and Rate Schedules

This Agreement shall be subject to the rates, terms and conditions of the Foreign-Trade Zone No. 202 Tariff as it now exists or may be amended or superseded. Operator acknowledges it has received, read and understands the rates, terms and conditions of Tariff and agrees to be contractually bound by these rates, terms and conditions as if these terms were set forth in full herein except as may be modified by this Agreement. Operator understands it is responsible for maintaining a complete copy of the current Tariff and assumes responsibility for doing so.

## ARTICLE VI. - ADMINISTRATION AND OPERATION OF ZONE

### 6.01 Federal, State and Local Laws and Regulations

In the performance of activities required and permitted by this Agreement, Operator agrees to comply with Regulations, the Tariff and the terms of this Agreement.

### 6.02 Availability of Zone Site

If applicable as an operator of a Single-User Zone Site, Operator confirms that the Zone Site will be used only for the conduct of the business of the Operator and its affiliates. For purposes of this paragraph, the term "affiliates" means wholly-owned subsidiaries of the Operator and subsidiaries and partnerships in which the Operator has a greater than 50% interest.

### 6.03 PierPASS

Operator acknowledges that truck traffic congestion is a serious problem on roads and freeways leading into and out of the Port of Los Angeles. Therefore, the Operator shall, whenever it is reasonably feasible in light of its overall operations, utilize the PierPASS Program or other programs to reduce daytime truck operations. Operator shall use its best efforts to encourage its zone users to consider using the PierPASS and/or other programs to reduce daytime operations. Further, the Operator shall make available to its zone users PierPASS informational material provided to it by the City. Operator shall provide to City, at least annually, a report concerning its nighttime operations and PierPASS utilization.

### 6.04 Wilmington Truck Route

It is recognized by both parties that the Operator does not directly control the trucks serving the Port. However, the Operator shall notify truck drivers, truck brokers and trucking companies that trucks serving FTZ warehouses and originating in the Port of Los Angeles must confine their route to the designated Wilmington Truck Route of Alameda Street and "B" Street; Figueroa Street from "B" Street to "C" Street; and Anaheim Street east of Alameda Street. A copy of the Wilmington Truck Route is attached as Exhibit "B", which may be modified from time to time at the sole discretion of the Executive Director with written notice to Operator.

## ARTICLE VII. - CHARGES AND FEES

### 7.01 Processing/Application Fees

Upon execution of this Agreement, the Operator shall pay to Grantee a one-time non-refundable Operator's processing fee (in anticipation of activation) in the amount specified in the Foreign-Trade Zone No. 202 Tariff in effect at the time of the execution of this Agreement. The parties agree that this amount is fair and reasonable

compensation for the services to be rendered by Grantee in assisting Operator with the processing of this Agreement and anticipated activation of the Zone Site. In addition, Operator shall pay to Grantee an application fee when the Grantee must return to the Foreign-Trade Zones Board on Operator's behalf for approval of (a) an expansion to include a new Zone space or Zone site, (b) a boundary modification to accommodate expanded operations, or (c) manufacturing authority or scope requests, which fees shall be those specified in the Foreign-Trade Zone No. 202 Tariff in effect at the time of the application. Such fees shall be paid to Grantee at such time that Grantee is required to return to the Foreign-Trade Zones Board for (a), (b) or (c). In each of the three above referenced situations, Operator will be responsible for the total expense of preparing the application or request to be filed with the Foreign-Trade Zones Board.

#### 7.02 Annual Administrative Charges

A. Annual Administrative Charges. In consideration of the granting of this authorization to operate the Zone Site, Operator agrees to pay to the Grantee an annual fee as specified in the Foreign-Trade Zone No. 202 Tariff in effect at the time the execution of this Agreement. The parties agree that this amount is fair and reasonable compensation for the services to be rendered by Grantee in assisting Operator with its operation of the Zone Site and in providing its oversight responsibilities of the Zone. This annual fee is payable upon the execution of this agreement and on every October 1 thereafter, so long as the agreement remains in effect. The initial annual fee is to be prorated from the date of the execution of this agreement to the following October 1.

B. Operator's Expenses. Operator further agrees to pay, or cause to be paid, all costs, expenses, and taxes (if any) of the Zone Site operation, including, but not limited to, construction, installation, improvements, security, maintenance and personnel, and as otherwise provided herein.

### ARTICLE VIII. - CUSTOMS EXPENSES

#### 8.01 U.S. Customs and Border Protection Personnel

It is understood that from time to time it may become necessary for Customs personnel to be located at the Zone Site. In such event, the Operator shall be responsible for all charges for personnel billed by Customs. Grantee shall request that Customs bill Operator directly for any Customs personnel expense attributable to such foreign-trade zone operations at the Zone Site. In the event that such direct billing to Operator is not acceptable to Customs upon receipt of any billing for personnel expense by Grantee, Grantee shall promptly present the bill to Operator for payment. Operator agrees to make such payments promptly.

## 8.02 U.S. Customs and Border Protection Bond

Operator shall pay the full cost of any Bond required by Customs for all operations of the foreign-trade zone at the Zone Site.

## 8.03 Customs Charges

Operator shall be responsible for the payment of all Customs charges or exactions including but not limited to duties, taxes, charges, fines, penalties, interest, attorney, user and other fees, costs, liquidated damages, or expenses assessed due to the operation of the Zone Site.

## ARTICLE IX. - ACCESS TO SITE

### 9.01 Right of Entry and Inspection

Representatives of Customs, the Foreign-Trade Zones Board, Grantee and any other authorized federal, state or local officials shall have the right to enter upon the Zone Site at any time for the authorized and lawful purpose of examining such Zone Site and merchandise contained therein and conferring with Operator, its agents, invitees, and employees on such Zone Site, inspecting and checking operations, supplies, equipment and merchandise, conducting financial and compliance audits and determining whether the business is being conducted in accordance with Regulations. All such entries shall be in accordance with usual security procedures.

## ARTICLE X. - RESPONSIBILITY FOR AND ACCESS TO BOOKS AND RECORDS

### 10.01 Reports to Foreign-Trade Zones Board, Customs and Grantee

Operator shall submit to the Foreign Trade Zones Board at its website via <http://ita-web.ita.doc.gov/FTZ/OFISLogin.nsf>, and at its own expense data sufficient to complete annual reporting requirement of the Operator to the Foreign-Trade Zones Board. Such information shall be provided not later than February 1 of each year (for the preceding period of 1/1-12/31). The submittal of all such data shall be entered by an appropriate official of Operator, certifying to the accuracy of the records for the specified accounting period. Apart from, and in addition to, reimbursing Grantee for any fine imposed upon Grantee as a result of an act or omission of Operator under this Agreement, Grantee may demand and Operator, upon such demand, shall pay Grantee \$100 per day for each and every day after February 15 that the annual report data is entered into the FTZ OFIS system, unless Grantee has provided Operator with a written extension of time in which to submit such data. All records maintained for preparation of all data and those required under the accounting system shall be retained in the Operator's place of business for at least five years after the merchandise covered by such records has been forwarded from the Zone Site except as required by Regulations.

All written communications with the Foreign-Trade Zones Board concerning operations within Foreign Trade Zone No. 202 are to be made through the Grantee.

#### 10.02 Confidential Information

Details of business operations of individual firms operating and using the foreign-trade zone at the Zone Site shall be kept confidential except for such information as shall be determined to be public information under federal, state, or local laws. Any procedures manual, computer programs, computer report format, and any other related systems developed by Operator for said foreign-trade zone operation shall be the sole property of Operator and will not be disclosed to any other entity without the express written permission of Operator except as required under federal, state or local laws.

### ARTICLE XI. - NONDISCRIMINATION

#### 11.01 Nondiscrimination and Equal Opportunity

Operator agrees not to discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's marital status, sexual orientation, medical condition, race, religion, national origin, ancestry, sex, age or physical handicap. All assignments, subleases and transfers of interest in this Agreement under or pursuant to this Agreement shall contain this provision.

The provisions of Section 10.8.4 of the Los Angeles Administrative Code as set forth in the attached Exhibit "C" are incorporated herein and made a part hereof.

#### 11.02 Small Business Development Program

It is the policy of the Department to provide Small Business Enterprises (SBE) and Minority-Owned, Women-Owned and all Other Business Enterprises (MBE/WBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Operator shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for SBE's, MBEs, WBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBE's, MBEs, WBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement.

### ARTICLE XII. - TERMINATION AND DEFAULT

#### 12.01 Termination for Cause

A. The breach of any provision of this Agreement or the failure to perform any obligations, duty or to accept liability established herein by act of commission or omission for whatsoever cause by a party hereto shall be a default. The non-defaulting party shall give written notice of intent to terminate

this Agreement by registered or certified mail to the defaulting party stating the specific default or breach committed.

B. The non-defaulting party shall have the option to terminate the Agreement after expiration of the time periods as follows:

1. If the default can be cured by payment or posting of money, bond or other security for money due to the other party, the defaulting party shall have seven (7) days after receipt of the notice to terminate in order to pay over such money or, if the payment be contested, to post such amount with the other party pending final determination of liability, in cash or security in such form as approved by the non-defaulting party.

2. If the default cannot be cured by payment or posting of money or security to the other party as provided in subsection (1) above, the defaulting party shall have twenty-one (21) days after receipt of written notice to terminate in which to cure the default.

3. If the default is one, which by its nature cannot be reasonably cured within twenty-one (21) days, then the defaulting party shall have a reasonable time period in which to cure the default. Such time period shall include, but shall not exceed the time period provided by statutes, laws, ordinances, rules and regulations, or order of the Foreign-Trade Zones Board and shall include the time required for the completion of all administrative and all judicial procedures, including appellate procedures, as provided for by law. Upon the request of the non-defaulting party, the defaulting party shall submit to the non-defaulting party a written schedule of performance and supporting documentation indicating the shortest period in which such default can be cured by defaulting party.

#### 12.02 Performance

In addition to any default arising under the provisions of Section 12.01, Operator hereby acknowledges that Operator's failure to perform any of the following duties and obligations to the reasonable satisfaction of the Grantee shall constitute a default which shall permit the Grantee to initiate termination proceedings pursuant to Section 12.01.

A. Maintenance of a uniform system of accurate books, records and accounts prepared in accordance with Generally Accepted Accounting Principals and capable of producing the following results, to the extent such results are required under the customs laws of the United States:

1. Accounting for all merchandise, including merchandise that is of domestic status, temporarily deposited, admitted, granted a zone

status and/or status change, stored, exhibited, manipulated, manufactured, destroyed, transferred, and/or removed from a Zone Site;

2. Producing accurate and timely reports and documents;

3. Identifying shortages and overages of merchandise in the Zone Site in sufficient detail to determine the quantity, description, tariff classification, Zone Site status, and value of the missing or excess merchandise;

4. Providing all information necessary to make entry for merchandise being transferred to the Customs territory; and

5. Providing an audit trail to Customs forms from admission through manipulation, manufacture, destruction or transfer of merchandise from the Zone Site by a Customs authorized inventory method.

B. Proper operation of the Zone Site in accordance with applicable federal, state and local laws, regulations, rules, and operational management procedures approved by the Grantee, Customs and the Foreign-Trade Zones Board.

C. Preparation and timely submission of all reports to the Grantee.

#### 12.03 Total or Partial Destruction of Zone Site

In the event that the Zone Site or the accommodation of foreign-trade zone business at the Zone Site is totally destroyed or partially destroyed and thereby terminates 33 and 1/3 percent or more of the activities within the Zone Site, based on a comparison of income derived, exclusive of insurance recovery, upon written demand from Grantee by registered or certified mail, Operator shall provide Grantee with general building and financial plans for the restoration of the Zone Site or the accommodation of foreign-trade zone business within thirty (30) days from receipt of such demand. If Operator does not provide any plans for restoration or accommodation of foreign-trade zone business at the Zone Site, Grantee shall have the option to immediately notify Operator of its intent to terminate, which shall be effective twenty (21) days after receipt of such notice by registered or certified mail.

#### 12.04 Termination For No Cause

In the event either party for any reason wishes to terminate its participation in foreign-trade zone activities and terminate its rights and obligations under this Agreement, at least one hundred eighty (180) days prior written notice must be delivered to the other party. If the Grantee wishes to terminate, the Operator shall have the right, directly or through another entity, to assume the rights and obligations of the Grantee subject only to the approval of the Foreign-Trade Zones Board. If the Operator wishes to terminate, Operator is obligated to deactivate the Zone Site prior to the date

of termination and must ensure that all foreign status merchandise has either been subject to the payment of customs duties and fees or been transferred, in bond, to another foreign trade zone facility.

**Operator acknowledges that this Agreement has no bearing on any lease or other agreement it has regarding the Zone site, with the City of Los Angeles or license with the BNSF. This Agreement cannot be construed as granting any right under or expectation in connection with any other agreement, including any leases, licenses or permits, held by the Operator for the Zone site or the property on Exhibit D. In the event that Operator's agreement, lease or permit concerning the facilities and property where the foreign trade zone operates expires or is terminated without any replacement permit that is approved by Grantee, the Grantee may assist Operator in obtaining necessary approvals from the Foreign-Trade Zone Board and/or Customs to establish its foreign trade zone at a different location.**

#### 12.05 Waiver

No waiver by either party at any time of any of the terms, conditions or covenants of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other term, conditions, covenant or agreement herein contained nor of the strict and prompt performance thereof by the party obligated to perform. No delay, failure or omission of either party to exercise any right, power, privilege or option arising from any default nor subsequent acceptance of compensation 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. No option, right, power, remedy or privilege of either party hereto shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all the rights, powers, options or remedies given to the parties herein by this Agreement are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law and that the exercise of one right, power, option or remedy by a party shall not impair its rights to any other right, power, option or remedy.

#### 12.06 Discontinuance of Trade Name

Upon the termination of this Agreement for any cause, the Operator shall, deactivate the Zone Site as of the date of expiration of the term of the Agreement and immediately discontinue all use of trade names, trademarks, signs and forms of advertising and other indicia of operation within the foreign-trade zone at the Zone Site, specifically referring to the Los Angeles Foreign Trade- Zone, and if the Operator shall fail or omit to make, or cause to be made, such changes, within ten (10) days after written notice, then the Grantee shall have the right to enter upon the Zone Site without being deemed guilty of or liable for trespass or any other tort or offense, and to make or cause to be made such changes at the expense of the Operator, which expense the Operator agrees to pay on demand.

#### 12.07 Breach of Contract

Failure of any party to perform the obligations required by this Agreement or incorporated herein by reference shall constitute a material breach of this Agreement and the other party shall be entitled to pursue any and all remedies available at law or equity in addition to other rights and remedies specifically provided herein.

### ARTICLE XIII. - DEACTIVATION OF ZONE SITE

#### 13.01 Deactivation of Zone Site

Upon the expiration of the term of this Agreement, if no new agreement is entered into, Operator is obligated to deactivate the Zone Site as of the date of expiration of the term of the Agreement. Prior to deactivating the Zone Site, Operator must ensure that all foreign status merchandise has either been subject to the payment of customs duties and fees or been transferred, in bond, to another foreign trade zone facility.

### ARTICLE XIV. - INDEMNIFICATION AND INSURANCE

#### 14.01 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, Operator 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 consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Operator'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 Agreement by Operator 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 Agreement and those allowed under the laws of the United States, the State of California, and the City.

#### 14.02 Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Operator's insurance documents. Operator's insurance broker or agent shall register with the City's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> and submit the appropriate proof of insurance on Operator's behalf.

#### 14.03 General Liability Insurance

Operator 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 Operator's normal limits of liability but not less than One Million Dollars (\$1,000,000.00) combined single limit for injury or claim. 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 Operator. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Operator'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, a 10 days notice of cancellation for nonpayment of premium, and a 30 days notice of cancellation for any other reasons.

#### 14.04 Automobile Liability Insurance

Operator 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 Operator's normal limits of liability but not less than One Million Dollars (\$1,000,000.00) 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 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, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

#### 14.05 Workers' Compensation and Employer's Liability

Operator 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 Operator 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. Operator 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 Operator, and for all employees of any subcontractor or other vendor retained by Operator.

#### 14.06 Back-to-Back Bond

Operator shall, if requested to do so by the Grantee, furnish and pay the premium for a bond in a sum equal to the amount of the Customs Form 301 Foreign-Trade Zone Operator's bond required by Customs pursuant to the Regulations, conditioned upon the full, faithful and prompt performance of and compliance with, on the part of the Operator, all the covenants, terms and conditions of this Agreement on its part to be fulfilled, kept, performed and observed. The bond so furnished shall be in a form acceptable to the Grantee, and shall be effective throughout the term of this Agreement and shall be made either by a surety company or companies qualified to carry on a surety business in the State of California and satisfactory to the Grantee.

#### 14.07 Carrier Requirements

All insurance which Operator 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.

#### 14.08 Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

#### 14.09 Modification of Coverage

Executive Director, at his or her discretion, based upon recommendation of independent insurance consultants 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' prior written notice to Operator.

#### 14.10 Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Operator shall direct their insurance broker or agent to submit to the City's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If Operator neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance will be deducted from the next payment due Operator.

#### 14.11 Right to Self-Insure

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

1. Operator has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Operator must have a formal resolution of its board of directors authorizing self-insurance.
2. Operator 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.
3. Operator agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. Operator agrees that any insurance carried by Department is excess of Operator's self-insurance and will not contribute to it.
5. Operator provides the name and address of its claims administrator.
6. Operator 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 Executive Director's consideration of approval of self-insurance and annually thereafter.
7. Operator 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.

8. Operator has complied with all laws pertaining to self-insurance.

#### 14.12 Accident Reports

Operator shall report in writing to Executive Director within fifteen (15) calendar 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 Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Operator's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Operator, its officers or managing agents.

### ARTICLE XV. - INTEREST OF PARTIES

#### 15.01 Independent Contractor Status

Operator is an independent contractor in the performance of all activities and functions pursuant to this Agreement. Operator and Grantee are not and shall not be considered as joint venturers, partners or agents of each other and neither shall have the power to bind or obligate the other. Operator's officers, employees, agents and subcontractors shall not be considered as officers, employees or agents of the Grantee. Grantee and Operator hereby agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another.

#### 15.02 Sublease and Assignment

A. Assignments/Subleases Prohibited. Except as provided in subsections (D) and (E), no assignment, sublease, transfer, gift, hypothecation or grant of control, or other encumbrance 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 Operator, or accomplished in any other manner, whether voluntary or by operation of law (hereafter collectively referred to as "transfer"), shall be valid for any purpose. For purposes of this subsection, the term "by operation of law" includes but is not limited to: (1) the placement of all or substantially all of Operator's assets in the hands of a receiver or trustee; or (2) a transfer by Operator for the benefit of creditors; or (3) transfers resulting from the death or incapacity of any individual who is a Operator or of a general partner of a Operator (except as provided in subsection (E) below).

B. Right to Terminate. Notwithstanding any other provision of this Agreement, any transfer or attempted transfer by Operator of this Agreement or interest granted by the Agreement in violation of any subsection of this Section

shall entitle the Executive Director to terminate this Agreement after first providing Operator seven (7) calendar days notice of termination.

C. Transfers of Stock.

1. If Operator is either a privately held corporation or a corporation whose stock is not listed on the New York, American, NASDAQ, or Pacific Stock Exchange and more than twenty five percent (25%) of the outstanding shares of voting stock of Operator is traded (whether in one transaction or a series of transactions) during any twelve (12) month period, Operator shall notify Executive Director in writing within ten (10) days after the transfer date. If a transfer of more than twenty five percent (25%) of the outstanding shares of voting stock of Operator occurs, Grantee, at its option, may terminate this Agreement.

If Operator is a corporation whose stock is listed on the New York, American, NASDAQ, or Pacific Stock Exchange, Operator shall notify Grantee in writing if more than fifty percent (50%) of the outstanding shares of voting stock of Operator are transferred pursuant to a merger or stock purchase agreement. Operator shall provide such notice no later than ten (10) days after the transfer date. If a transfer of more than fifty percent (50%) of the outstanding shares of voting stock of Operator occurs, Grantee, at its option, may terminate this Agreement.

2. If Operator is a partnership, any transfer or attempted transfer by any general partner of Operator of more than twenty-five percent (25%) of its partnership interest in Operator, shall be a prohibited assignment of Operator's interest in this Agreement within the meaning of the preceding subsections. Notwithstanding the foregoing, any such transfer of a general partner's interest consequent upon the death of a general partner to the immediate members of his or her family who will be immediately and personally involved in the operation of the partnership shall not be deemed a transfer within the meaning of this Section.

3. Grantee shall have the authority - but no obligation - to modify the foregoing conditions based on the facts of a particular case.

D. Subleases. Operator's right to sublease the Zone Site is conditioned upon the prior written approval of the Grantee.

E. Miscellaneous Conditions. Any consent given by City to Operator to transfer this Agreement or any interest therein or right or privilege thereunder shall not be construed as consent to any other such transfer. Moreover the City's consent to such a transfer shall not alter Operator's obligation to be at all times primarily responsible for compliance with all covenants, conditions and provisions of this Agreement.

### 15.03 Disclosure of Interest

Prior to execution of this Agreement, Operator shall furnish Grantee with copies of its Articles of Incorporation, its by-laws, its most recent annual report, and its most recent Form 10(k). At the time of its annual reporting of information to Grantee as required by paragraph 10.01, Operator shall provide to Grantee copies of changes to its Articles of Incorporation or by-laws, if any such changes have occurred since the initial or most recent filing of documents under this paragraph, and also shall provide Grantee, at that time, with a copy of its most recent annual report and Form 10(k), if not previously provided.

## ARTICLE XVI. - MISCELLANEOUS PROVISIONS

### 16.01 Mandatory Operator Training

The Operator's FTZ designee shall attend at least eight (8) hours per year of professional training that is related to foreign-trade zone operation. Training will be offered from time to time at the Zone, and other Grantee-approved programs may be used to meet this requirement. The Grantee and Operator agree that educational sessions on foreign-trade zone operations conducted at seminars and conferences of the National Association of Foreign-Trade Zones may be used to meet this requirement.

### 16.02 Past Due Obligations

Any and all amounts required hereunder to be paid by Operator to Grantee, or which are to be paid "with interest" or which Grantee advances on behalf of Operator, which are not paid when due shall bear interest at the following rate: the legal rate provided by law for judgments in California plus three percent (3%), or the posted announced prime rate of the Bank of America, Los Angeles, California on the date payment is due, plus one percent (1%), whichever is greater. The interest rate shall be per annum from the due date until paid, unless otherwise specifically provided herein but the rate shall be modified from time to time as the legal rate or prime rate change.

### 16.03 Time of Essence

Time is of the essence of this Agreement and of every term, covenant and conditions hereof.

### 16.04 Construction of Terms and Conditions

This Agreement shall be governed by and construed in accordance with the Act, regulations promulgated thereunder and all amendments thereto and the applicable laws of the State of California.

#### 16.05 Counterparts

This Agreement may be executed in any number of counterparts each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same agreement.

#### 16.06 Further Instruments and Actions

Each party shall deliver such further instruments and take such further action as may be reasonable requested by the other in order to carry out the provisions and purposes of this Agreement.

#### 16.07 Headings

Headings and captions in this Agreement are solely for the convenience of reference and shall not affect the interpretation of this Agreement.

#### 16.08 Conflict of Interest

It is hereby understood and agreed that 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 Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and 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 financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

#### 16.09 Integration

This Agreement contains the complete statement of all the arrangements between the parties with respect to its subject matter and cannot be changed or terminated orally. No waiver of the provisions of this Agreement shall be valid unless in writing signed by the party against whom such waiver is sought to be enforced.

#### 16.10 Separability

If any provision of this Agreement is declared void or defective, that declaration will not effect the validity of any other provision of this Agreement.

#### 16.11 Notices to the Parties

All notices, demands or other writings in this Agreement provided to be given, made or sent by either party hereto to the other shall be deemed to have been fully given, made

or sent when made in writing and deposited in the United States mail postpaid registered or certified and addressed as follows:

For the Grantee To: City of Los Angeles  
Harbor Department  
425 S. Palos Verdes Street  
San Pedro, California 90733  
ATTN: Masashi Morimoto, Marketing Division

For the Operator To: California Cartage Company, LLC  
2401 E. Pacific Coast Highway  
Wilmington, CA 90744  
ATTN: Melissa Curry

The address to which any notice, demand or other writing may be given, made or sent to either party may be changed by written notice given by such party as above provided.

#### 16.12 Legal Action

Attorneys' Fees. If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of or based upon this Agreement, including but not limited to the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to recovery of its costs and reasonable attorneys' fees, including the reasonable value of the services of the Office of City Attorney or house counsel of Operator.

#### 16.13 Governing Law/Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

#### 16.14 Waiver of Claims

Operator hereby waives any claim against City and Grantee and its officers, agents or employees for damages or loss caused by any suit or proceedings directly or indirectly challenging the validity of this Agreement, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable or delaying the same or any part thereof from being carried out.

#### 16.15 Wage and Earning Assignment Orders/Notices of Assignments

The Operator or any subs is obligated to fully comply with all applicable state and federal employment reporting requirements for the Operator and/or sub's employees.

The Operator and/or subs shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally. The Operator or subs will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code § § 5230 et. seq. The Operator or subs will maintain such compliance throughout the term of the Agreement.

#### 16.16 State Tidelands Grants

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929, (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Operator agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

#### 16.17 City's Business Tax Ordinance - BTRC Number

If the Operator is operating a site within the City of Los Angeles, then the Operator represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the City's Business Tax Ordinance (Article 1, Chapter 2, Sections 21.00 et seq., of the Los Angeles Municipal Code). If applicable, the Operator will, upon request, provide evidence that said certificate has been obtained. If required, the Operator shall maintain, or obtain as necessary, all such certificates required by it under the ordinance and shall not allow such certificate to be suspended or revoked.

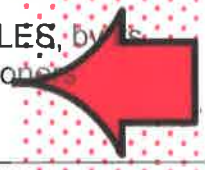
#### 16.18 Equal Benefits Policy

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

IN WITNESS WHEREOF, the parties have executed this Agreement on the dated first hereinabove written.

Dated: \_\_\_\_\_, 2016

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



**SIGN  
HERE**

By \_\_\_\_\_  
EUGENE D. SEROKA  
Executive Director

Attest \_\_\_\_\_  
AMBER M. KLESGES  
Board Secretary

Date May 3, 2016

CALIFORNIA CARTAGE  
COMPANY, LLC

By \_\_\_\_\_  
Melissa K. Avery, B.M. CES  
(Print/Type Name and Title)

Attest Veronica L. Lopez  
Veronica L. Lopez  
(Print/Type Name and Title)

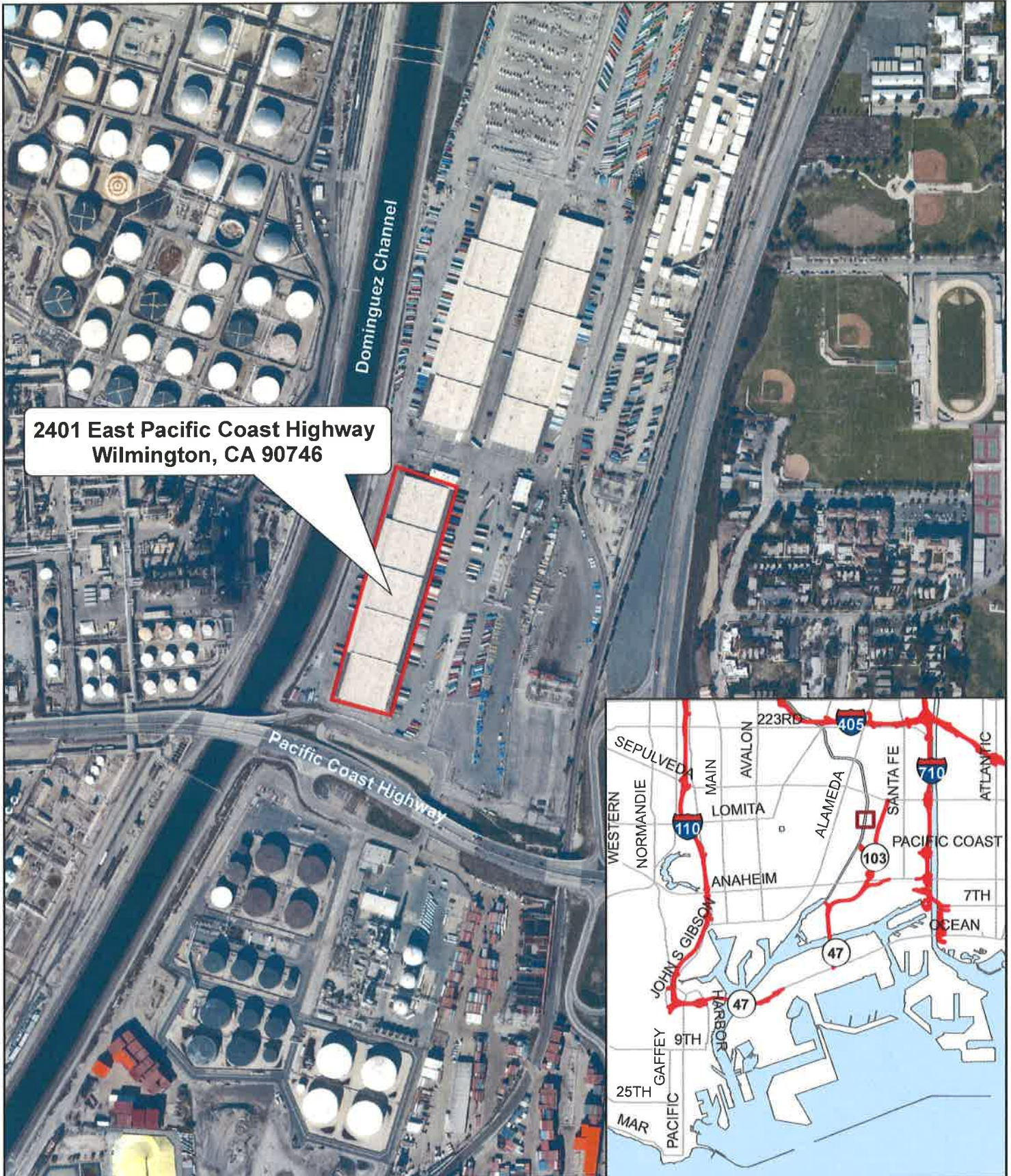
APPROVED AS TO FORM AND LEGALITY

May 4, 2016  
MICHAEL N. FEUER, City Attorney  
JANNA B. SIDLEY, General Counsel

By \_\_\_\_\_  
HELEN J. SOK, Deputy City Attorney

HJS:jpr  
05/02/16  
Attachments

# FTZ 202 Site 1-A California Cartage Co. LLC



**Exhibit A**  
**Transmittal 2**

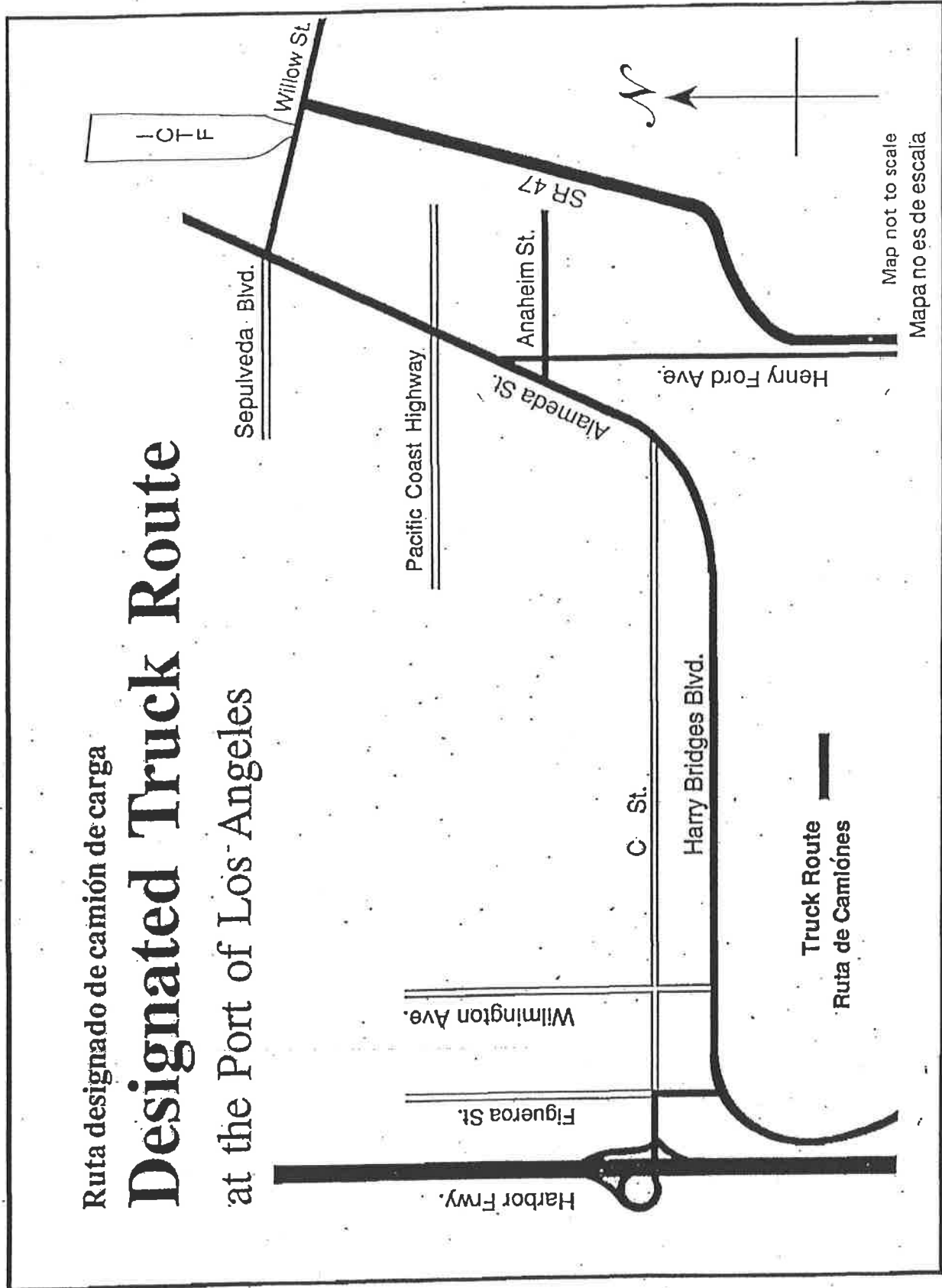
0 240 480 960 1,440  
Feet

Harbor Department  
Planning & Economic Development  
Map Produced 1/2015



TRUCKS ENTERING AND LEAVING THE PORT MUST USE THE ROUTE SHOWN BELOW.  
CAMIONES ENTRANDO Y SALIENDO EL PORTO DEVEN DE USAR LA RUTA INDICADO ABAJO.

Ruta designado de camión de carga  
**Designated Truck Route**  
at the Port of Los Angeles



95-93

## EXHIBIT C - AFFIRMATIVE ACTION PROGRAM PROVISIONS

### Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

- A. During the performance of City contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
  - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
  - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  - 3. The contractor shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify on an electronic or hard copy form to be supplied, that the contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- D. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

- E. The failure of any contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.
- F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.
- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the City. The plan shall be subject to approval by the

Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve

months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.

M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
  6. The entry of qualified women, minority and all other journeymen into the industry; and
  7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
- P. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.

## LICENSE

THIS LICENSE("License") is made to be effective \_\_\_\_\_, 2013 (the "Effective Date") by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Licensor") and CALIFORNIA CARTAGE COMPANY, LLC, a California Corporation ("Licensee").

## RECITALS

A. Licensor is the grantee of exclusive possessory rights in and to certain real property and improvements located thereon situated in the City of Los Angeles, County of Los Angeles, State of California, pursuant to an agreement between Licensor and the City of Los Angeles acting by and through its Board of Harbor Commissioners entitled Site Preparation and Access Agreement, effective as of May 8, 2013 (the "SPAA") subject to the terms and conditions of the SPAA. Such real property and improvements are herein referred to as the "BNSF Licensed Property and Improvements."

B. Licensee has for some period prior to the effective date of the SPAA been the occupant of the portion of the BNSF Licensed Property and Improvements under City of Los Angeles Revocable Permit No 95-40 more particularly depicted and/or described on Exhibit "A" attached hereto and incorporated herein (the "Premises"). Licensee desires to continue its occupation of the Premises on the terms and conditions set forth in this License. Licensee owns that certain personal property described on Exhibit "B" attached hereto and incorporated herein (the "Licensee Personal Property").

## AGREEMENTS

In consideration of the mutual covenants contained herein, the parties agree to the following:

### GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license for the use and occupancy of the Premises for the Permitted Uses (defined below), subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below.
2. Term. This License shall commence on the Effective Date and shall continue until terminated by Licensor by thirty days' prior written notice to Licensee
3. No Disturbance. Licensee shall not disturb any existing third party uses or installations on the Premises as of the Effective Date, or any, remediation, relocation of rights of way, construction or improvements of Licensor or Licensor's lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such activities or improvements.
4. Permitted Uses. Licensee shall use the Premises solely for: (i) completion of remediation and restoration provisions of Permit 95-40 to the maximum extent practicable (ii) operation, maintenance, repair of the existing improvements owned or controlled by Licensee and removal of existing improvements and remediation as required under this License (collectively, the "Improvements") and (ii) Parking employee vehicles, truck parking and for purposes incidental thereto and not for any other purpose without the prior written consent of Licensor (collectively, items (i) and (ii) are referred to hereinafter as the "Permitted Uses"). Licensee shall not use the Premises for any other purpose.
5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.
6. Warranty. Licensee represents and warrants that it has complied with, to the maximum extent practicable, its obligations under Permit 95-40 Section 5, Restoration Bond

## COMPENSATION

### 7. License Fees.

- 7.1 Licensee shall pay as compensation for the use of the Premises, in advance, during the term of the License, which may be paid in equal monthly installments of **ONE THOUSAND SEVEN HUNDRED THREE DOLLARS AND 40/100 (\$1,703.40)** ("Base License Fee"). Such Base License Fee shall increase 3% annually during the term of the License. Billing or acceptance by Licensor of any Base License Fee payment shall not imply a definite term or otherwise restrict either party from canceling this License as provided herein. Either party hereto may assign any receivables due it under this License; provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this License. All rent and other monetary payments under this License from Licensee to Licensor shall be delivered solely to the following address:

BNSF Railway Company  
P.O. Box 676160  
Dallas, TX75267-6160

Licensor shall have the right to designate at any time and from time to time a different address for delivery of such payments by written notice to Licensee pursuant to the notice provisions of **Section 29** below. No rent or other payment sent to any other address shall be deemed received by Licensor unless and until Licensor has actually posted such payment as received on the account of Licensee, and Licensee shall be subject to all default provisions hereunder, late fees and other consequences as a result thereof in the same manner as if Licensee had failed or delayed in making any payment.

- 7.2 Licensee acknowledges that Licensor utilizes the rental collection system involving direct deposit of monies received through a financial institution selected by Licensor, which precludes Licensor's ability to exercise rejection of a Base License Fee payment before Licensee's check is cashed. Licensee agrees that as a condition of Licensor granting this License, Licensee hereby waives any rights it may have under law to force continuation of this License due to Licensor having accepted and cashed Licensee's Base License Fee remittance. Licensor shall have the option of rejecting Licensee's payment by refunding to Licensee the Base License Fee amount paid by Licensee, adjusted as set forth in this License, and enforcing the termination provisions of this License.
- 7.3 Licensee shall pay the Base License Fee and all additional amounts due pursuant to **Sections 23 and 24** as and when the same become due and payable, without demand, set-off, or deduction. Licensee's obligation to pay Base License Fee and all amounts due under this License is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach under this License by Licensor, shall release Licensee of its obligation to pay Base License Fee and all amounts due as required by this License.
- 7.4 If any Base License Fee or any payment under **Sections 23 and 24** or any other payment due by Licensee hereunder is not paid within five (5) days after the date the same is due, Licensor may assess Licensee a late fee ("Late Fee") in an amount equal to 5% of the amount which was not paid when due to compensate Licensor for Licensor's administrative burden in connection with such late payment. In addition to the Late Fee, Licensee shall pay interest on the unpaid sum from the due date thereof to the date of payment by Licensee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.
- 7.5 Licensee understands and agrees it is responsible for complete restoration and remediation of the Premises in accordance with **Section 26.1**, including the cleanup of any hazardous material contamination on or arising from the use of the Premises, before the expiration or earlier termination of this License. For any reason, if such Restoration Obligations are not completed before such expiration or earlier termination, Licensee is obligated to pay compensation to Licensor in accordance with **Section 7.1** during such restoration and remediation period.

8. Security Deposit. With and in addition to its first payment under Section 7.1, Licensee shall pay as a security deposit for the use of the Premises, in advance, an amount equal to **FIVE THOUSAND ONE HUNDRED DOLLARS**

(\$5,100.00). The security deposit under this section is refundable upon completion of all Licensee's obligations under **Section 26** of this License. Licensor's withholding or repayment of the security deposit under this section, or any portion thereof, does not affect Licensor's ability to pursue any remedy under this License or available under the law.

9. Costs and Expenses.

9.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

9.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 10** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, repair and maintenance of the Improvements or the performance of any other activities in connection with the Permitted Uses unless provided by PHL. Licensee shall bear the cost of flagger services and other safety measures provided by Licensor, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 9**.

10. Payment Terms. All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

11. Reserved Rights of Use. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

11.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;

11.2 to construct, maintain, renew, use, operate, change, modify and relocate any equipment, tracks or additional facilities, improvements, structures and related appurtenances upon, over, under or across the Premises; or

11.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the operation of the Premises by Licensee for the purpose specified in **Section 4** above.

12. (Intentionally Deleted.)

LICENSEE'S OPERATIONS

13. Maintenance, Repair and Removal of the Improvements.

13.1 (Intentionally Deleted.)

13.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.

13.3 Licensee shall only enter the Premises at the location(s) and using the route(s) designated on Exhibit "A."

13.4 Any contractors or subcontractors performing work on the Improvements or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

- 13.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to endanger or interfere with (i) the construction, existence, demolition or use of present or future tracks, roadbeds, and/or appurtenances thereto, buildings, vehicles, structures, equipment or other property of Licensor on or about the Premises, or any remediation or relocation of rights-of-way, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 13.6 Licensee shall, at its sole cost and expense, maintain, repair and operate the Improvements in such a manner and of such material that the Improvements will not at any time endanger or interfere with (i) the construction, existence, demolition or use of present or future tracks, roadbeds, and/or appurtenances thereto, buildings, vehicles, structures, equipment or other property of Licensor on or about the Premises, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 26** hereof.
- 13.7 Licensor may direct one or more of its field engineers to observe or inspect the operation, repair and/or maintenance of the Improvements at any time for compliance with Legal Requirements (defined below). If ordered at any time to halt repair and/or maintenance of the Improvements by Licensor's personnel due to any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Improvements, it being solely Licensee's responsibility to ensure that the Improvements are repaired and maintained in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 13**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Sections 9 and 10**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

14. Repairs; Maintenance.

- 14.1 Licensee shall, at its sole expense, take good care of the Premises (including all Improvements) and shall not do or suffer any waste with respect thereto and Licensee shall promptly make all necessary or desirable Repairs to the Premises. The term "Repairs" means all reasonable repair and maintenance necessary to keep the Premises (including all Improvements) in good condition and includes, without limitation, replacements, restoration and renewals when necessary. Licensee shall keep and maintain any paved areas, sidewalks, curbs, landscaping and lawn areas in a clean and orderly condition, and free of accumulation of dirt and rubbish.
- 14.2 Licensor shall not have any liability or obligation to furnish or pay for any services or facilities of whatsoever nature or to make any Repairs or alterations of whatsoever nature in or to the Premises, including but not limited to structural repairs, or to maintain the Premises in any manner. Licensee acknowledges that Licensor shall have no responsibility for management of the Premises.

LIABILITY AND INSURANCE

15. Liability and Indemnification.

- 15.1 For purposes of this License: (a) "Indemnitees" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and

agents; (b) "Liabilities" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, governmental oversight and government administrative enforcement costs) environmental or otherwise; and (c) "Licensee Parties" means Licensee or Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

- 15.2 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ANY CONTRACTOR(S) IT ALLOWS ONTO THE PREMISES TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):
- 15.2.1 THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,
- 15.2.2 ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,
- 15.2.3 LICENSEE'S OCCUPATION AND USE OF THE PREMISES BEFORE OR AFTER THE EFFECTIVE DATE OF THIS LICENSE, AND ANY OBLIGATION OR LIABILITY IT HAS ASSUMED WITH REGARD TO THE OCCUPATION AND USE OF THE PREMISES,
- 15.2.4 THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE (OR ANY OF ITS CONTRACTORS) BEFORE OR AFTER THE EFFECTIVE DATE OF THE LICENSE, OR
- 15.2.5 ANY ACT OR OMISSION OF ANY LICENSEE PARTY.
- 15.3 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.
- 15.4 IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND IF APPLICABLE SHALL CAUSE ITS CONTRACTOR TO RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.
- 15.5 THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.
- 15.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any

Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

15.7 The provisions of this Section 15 shall survive any termination or expiration of this License.

16. Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.

17. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:

17.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$1,000,000 each occurrence and an aggregate limit of at least \$2,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor's employees.

No other endorsements limiting coverage may be included on the policy.

17.2 Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000, and include coverage for, but not limited to the following:

- Bodily injury and property damage.
- Any and all vehicles owned, used or hired.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

17.3 Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

17.4 Railroad Protective Liability Insurance. If construction is to be performed on the Premises by Licensee, Licensee or Licensee's contractor shall procure Railroad Protective Liability insurance naming only Licensor as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. If further maintenance of the Improvements is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

17.5 Other Requirements:

17.5.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

17.5.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property, or property under Licensee's care, custody, or control.

17.5.3 Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.

17.5.4 Prior to entering the Premises, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.

17.5.5 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

17.5.6 If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

17.5.7 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

17.5.8 Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

- 17.5.9 If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.
- 17.5.10 Failure to provide evidence as required by this **Section 17** shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.
- 17.5.11 The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 17.5.12 For purposes of this **Section 17**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.
- 17.5.13 By executing this License, Licensee represents and warrants that it has procured and will maintain during the life of this License the insurance policies and coverages set forth in this **Section 17**.

## COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

### 18. Compliance with Laws, Rules, and Regulations.

- 18.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, directives, covenants, restrictions, or decisions, orders or judgments of any court of competent jurisdiction ("**Legal Requirements**") relating to the maintenance, repair, operation and removal of the Improvements and the use of the Premises, including remediation of the Premises.
- 18.2 Prior to any contractor(s) of Licensee entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.contractororientation.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.
- 18.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, permits, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to maintain, repair, own, operate and remove the Improvements, remediate the Premises, and otherwise to perform its obligations hereunder with respect to the Permitted Uses in accordance with the terms and conditions hereof.
- 18.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 18.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Improvements or otherwise to carry out the Permitted Uses, or conduct any remediation, in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

19. Environmental.

- 19.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA, the Porter-Cologne Water Quality Act, the Clean Air Act, the Lewis Air Quality Act, their implementing regulations, and any other Legal Requirement relating to the use, storage, release, discharge, generation, transport, disposal or handling of any waste, material, or pollutant regulated under applicable laws (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground or aboveground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
- 19.2 Licensee covenants that it will not use, store, release, discharge, generate, transport, dispose or handle "hazardous waste", "hazardous substances", or any pollutant, contaminant, or dangerous or toxic chemical, or radioactive material, or asbestos, or petroleum products, on or about the Premises as those terms may now or in the future be defined by RCRA, CERCLA or any other any federal, state, or local governmental agency or body (collectively, "Regulated Material"). Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this **Section 19.2.**
- 19.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of Regulated Material on, onto, under, from, or affecting the Premises, (ii) violation of or threatened violation of Environmental Laws, and (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall immediately respond to and address the source of any release of Regulated Material on, onto, under, from, or affecting the Premises and remediate the release to the condition of the Premises immediately before the time of such release or in compliance Environmental Laws or governmental directive, whichever is strictest. Licensee also shall give Licensor prompt and periodic additional notice of all measures undertaken by Licensee or on behalf of Licensee to give any required notification and reporting to governmental authorities, investigate, remediate, respond to or otherwise cure such release or violation. Licensee shall concurrently provide copies of all correspondence and reports relating to any such release to Licensor.
- 19.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws on the Premises which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- 19.5 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by Legal Requirements, Environmental Laws or this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

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### LIENS, CHARGES AND TAXES

#### 23. Liens and Charges.

23.1 Licensee shall promptly pay and discharge any and all liens arising out of any maintenance, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this Section 23 or any other Section of this License.

23.2 Licensee shall pay when due all utilities and other charges of every kind and character, whether foreseen or unforeseen, ordinary or extraordinary, which are attributable to the Term of this License and may become due or levied against the Premises, against Licensee, against the business conducted on the Premises or against the Improvements located thereon during the Term hereof, even though such utilities or other charges may not become due and payable until after termination of this License. Licensee agrees that Licensor shall not be required to furnish to Licensee any utility or other services.

24. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed by any governmental or quasi-governmental body upon the Improvements or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

### DEFAULT, TERMINATION, AND SURRENDER

25. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of Section 17, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:

25.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of Section 28 below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in Section 17.

25.2 Should Licensee not comply fully with the obligations of Section 19 notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.

25.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this Section 25 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

25.4 In addition to and not in limitation of Licensor's rights to terminate as specified as above this License may be terminated by Licensor, at any time, with or without cause, at will, by serving thirty (30) days' written

notice of termination upon Licensee.

- 25.5 This License may be terminated by Licensee upon execution of Licensor's then-current Mutual Termination Letter Agreement. Upon expiration of the time specified in the Mutual Termination Letter Agreement, this License and all rights of Licensee shall absolutely cease.

26. Surrender of the Premises.

- 26.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:

26.1.1 if so directed by Licensor in writing, remove the Improvements and all appurtenances thereto;

26.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises before or after the effective date of this License, and conduct any site characterization and/or site remediation as directed by Licensor;

26.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

26.1.4 remove all Licensee's Personal Property.

- 26.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 26.1** above (the "Restoration Obligations"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

- 26.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for the cost incurred, (ii) upon written notice to Licensee, take and hold the Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Improvements to Licensor for no additional consideration.

- 26.4 Relocation of Business. Upon the termination or expiration of the term of this License, if no new License is entered into, Licensee is obligated to relocate its business at its own expense and to vacate the Premises as provided for herein and no relocation expenses will be paid by Licensor.

MISCELLANEOUS

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If to Licensor:      BNSF Railway Company  
                                 2500 Lou Menk Dr. – AOB3  
                                 Fort Worth, TX 76131  
                                 Attn: Senior Manager Real Estate

If to Licensee:      \_\_\_\_\_  
                                 \_\_\_\_\_  
                                 \_\_\_\_\_  
                                 Attn: \_\_\_\_\_

30. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Improvements are removed and the Premises are restored to its condition as of the Effective Date.
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BNSF Railway Company, a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

LICENSEE:

\_\_\_\_\_, a \_\_\_\_\_

By: Robert A. Curry  
Name: Robert A. Curry  
Title: President  
Date: 8-2-13

This License has been duly executed by the parties hereto as of the date below each party's signature; to be effective, however, as of the Effective Date.

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**LICENSOR:**

**BNSF Railway Company, a Delaware corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**LICENSEE:**

\_\_\_\_\_, a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_