

AGREEMENT NO.

AGREEMENT BETWEEN  
THE CITY OF LOS ANGELES AND  
PACIFIC CRUISE SHIP TERMINALS, LLC

THIS AGREEMENT ("Agreement") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board") and PACIFIC CRUISE SHIP TERMINALS, LLC, a California limited liability corporation, 720 East E Street, Wilmington, California 90744 ("Short-Term Operator").

WHEREAS, City requires the professional, expert and technical services of Short-Term Operator on a temporary or occasional basis to assist the City in managing and operating the passenger cruise ship terminal located at Berths 91-93 of the Port of Los Angeles described and depicted in Exhibit A ("Cruise Terminal"); and

WHEREAS, Short-Term Operator possesses extensive experience in managing and operating facilities similar to the Cruise Terminal and, in fact, has managed and operated the Cruise Terminal for several years;

WHEREAS, Short-Term Operator, by virtue of training and experience, is well qualified to provide such services to City; and

WHEREAS, City does not employ personnel with the required expertise nor is it feasible to do so on a temporary or occasional basis;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY SHORT-TERM OPERATOR

A. Short-Term Operator hereby agrees to render to City, as an independent contractor, certain professional, technical and expert services of a temporary and occasional character as set forth in Exhibit B ("Scope of Work").

B. Short-Term Operator, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between City and Short-Term Operator, Short-Term Operator is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Scope of Work, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, the City, or any other governmental entity.

C. Short-Term Operator acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work. Short-Term Operator and City acknowledge and agree that Short-Term Operator is not obligated to perform any

services outside the Scope of Work and any services performed outside the Scope of Work are performed as a volunteer and shall not be compensable by the City under this Agreement.

D. The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of the Executive Director or his or her designee ("Executive Director"), whether performance is undertaken by Short-Term Operator or third-parties with whom Short-Term Operator has contracted ("Subconsultants"). Obligations of this Agreement, whether undertaken by Short-Term Operator or Subconsultants, are and shall be the responsibility of Short-Term Operator. Short-Term Operator acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to City and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Short-Term Operator alone. Upon Executive Director's written request, Short-Term Operator shall supply City's Harbor Department ("Department") with all agreements between it and its Subconsultants.

E. This Agreement is subject to each and every of the rates, terms and conditions of Tariff No. 4 of City's Harbor Department as it now exists or may be amended or superseded ("Tariff"). Short-Term Operator represents and warrants that it has received, read and understands the rates, terms and conditions of Tariff and covenants that, at all times during the term of this Agreement, it shall maintain a complete and current Tariff at the address set forth above. Except as otherwise set forth in this Agreement, Short-Term Operator is contractually bound by all Tariff rates, terms and conditions as if the same were set forth in full herein. City in its sole and absolute discretion shall determine if a conflict exists between a provision of this Agreement and a Tariff provision. In the event of such conflict, this Agreement shall at all times prevail.

## II. SERVICES TO BE PERFORMED BY CITY

A. City shall furnish Short-Term Operator, upon its request, all documents and papers in possession of City which may lawfully be supplied to Short-Term Operator and which are necessary for it to perform its obligations.

B. The Executive Director or his or her designee is designated as the contract administrator for City and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Short-Term Operator and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article X (Termination) hereof.

C. Short-Term Operator shall provide Executive Director with reasonable advance written notice if it requires access to premises of Department other than the Cruise Terminal. Subsequent access rights, if any, shall be granted to Short-Term Operator at the sole reasonable discretion of Executive Director, specifying conditions Short-Term Operator must satisfy in connection with such access. Short-Term Operator

acknowledges that such areas may be occupied or used by tenants or contractors of City and that access rights granted by Department to Short-Term Operator shall be consistent with any such occupancy or use.

### III. EFFECTIVE DATE AND TERM OF AGREEMENT

A. Subject to the provisions of Charter Section 245, the effective date of this Agreement shall be the date of its execution by Executive Director upon authorization of the Board, with the obligations hereunder deemed to have commenced as of January 1, 2011. Short-Term Operator is aware that the City Council, pursuant to Charter Section 245 of the City of Los Angeles, has the right to review this Agreement. Accordingly, in no event shall this Agreement become effective until the sixth Council meeting day after Board action or the City Council's approval of the Agreement.

B. This Agreement shall be in full force and effect commencing from the date of execution and shall expire on September 30, 2012..

C. City and Short-Term Operator acknowledge and agree that Operating Agreement No. 2264 is of no force or effect.

### IV. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes the City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

The Board, in awarding this Agreement, has appropriated sufficient funds to meet the estimated expenditure of funds for the first fiscal year; however, the Board is under no legal obligation to appropriate funds for future fiscal year(s).

The City, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefor. The Short-Term Operator is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Short-Term Operator is not obligated or required to perform any work under the Agreement at any time in which no appropriation for the Agreement has been made, the Short-Term Operator agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60-day period. The Short-Term Operator is responsible for maintaining all insurance and bonds during this 60-day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

V. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, City shall pay and reimburse Short-Term Operator on a monthly basis at the rates set forth in Exhibit C.

B. Short-Term Operator shall submit invoices in quadruplicate to City monthly following the effective date of this Agreement for services performed during the preceding month. Each such invoice shall be signed by the Short-Term Operator and shall include the following certification:

"I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement No. \_\_\_\_\_ and that payment has not been received. I further certify that I have complied with the provisions of the City's Living Wage Ordinance.

\_\_\_\_\_  
(Short-Term Operator's  
Signature)

C. Short-Term Operator must include on the face of each itemized invoice submitted for payment its Business Tax Registration Certificate number, as required at Article VIII of this Agreement. No invoice will be processed for payment by City without this number shown thereon. All invoices shall be approved by the Executive Director or his or her designee prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of City business, the same may be approved, and paid.

In conformity with Exhibit C, Short-Term Operator on a monthly basis shall submit appropriate supporting documents with each invoice such that each invoice states the name, date, and duration of vessel calls that occurred during the month which is the subject of such invoice. All invoices due and payable shall be paid within sixty (60) calendar days following City's receipt thereof. An exemplar invoice is attached hereto as Exhibit G.

D. For payment and processing, all invoices should be mailed to the following address:

Accounts Payable Section  
Harbor Department, City of Los Angeles  
P.O. Box 191  
San Pedro, CA 90733-0191

## VI. RECORDKEEPING AND AUDIT RIGHTS

A. Short-Term Operator shall keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records shall be readily accessible to and open for inspection and copying at the premises by City, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Short-Term Operator for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

B. During the term of this Agreement, City may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Short-Term Operator and Subconsultants arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Short-Term Operator, Subconsultants or any individual or entity acting for or on behalf of Short-Term Operator or a Subconsultant, and (c) without regard to whether such writings have previously been provided to City. Short-Term Operator shall be responsible for obtaining access to and providing writings of Subconsultants. Short-Term Operator shall provide City at Short-Term Operator's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by City, which request shall specify the scope of the audit. City's right shall also include inspection at reasonable times of the Short-Term Operator's office or facilities which are engaged in the performance of the Scope of Work. Short-Term Operator's failure to comply with this Article VI shall constitute a material breach of this Agreement and shall entitle City to withhold any payment due under this Agreement until such breach is cured.

## VII. SHORT-TERM OPERATOR IS AN INDEPENDENT CONTRACTOR

Short-Term Operator, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of City. Short-Term Operator shall not represent itself as an agent or employee of the City and shall have no power to bind the City in contract or otherwise.

## VIII. BUSINESS TAX REGISTRATION CERTIFICATE

The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This Code Section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Department. See Exhibit D.

## IX. INDEMNIFICATION AND INSURANCE

### A. 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, Short-Term 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 Short-Term 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 Short-Term 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.

### B. Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Short-Term Operator's insurance documents. Short-Term 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 Short-Term Operator's behalf.

### C. General Liability Insurance

Short-Term 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 Short-Term Operator's normal limits of liability but not less than Five Million Dollars (\$5,000,000) 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 Short-Term Operator. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Short-Term 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.

D. Fire Legal Liability

In addition to and concurrently with the aforesaid insurance coverage, Short-Term Operator shall also procure and maintain, fire legal liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000) per occurrence, covering legal liability of Short-Term Operator for damage or destruction by fire or explosion to the works, structures and improvements owned by City provided that said minimum limits of liability shall be subject to adjustments by Executive Director to conform with the deductible amount of the fire insurance policy maintained by the Board. Such policy may provide for waiver of subrogation in favor of Short-Term Operator so long as permitted by the Board's fire insurance policy. The same cancellation notice as required for the commercial general liability policy described above must be included. Short-Term Operator's insurance broker or agent shall submit for approval on Short-Term Operator's behalf said insurance to the City's online insurance compliance system Track4LA® at <http://track4la.lacity.org/>.

E. Automobile Liability Insurance

Short-Term 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 Short-Term Operator's normal limits of liability but not less than Five Million Dollars (\$5,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision 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.

F. Workers' Compensation and Employer's Liability

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

G. Carrier Requirements

All insurance which Short-Term 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.

H. 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.

I. 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 Short-Term Operator.

J. Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Short-Term 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 Short-Term 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 Short-Term Operator.

K. Right to Self-Insure

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

1. Short-Term Operator has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Short-Term Operator must have a formal resolution of its board of directors authorizing self-insurance.
2. Short-Term 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. Short-Term 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. Short-Term Operator agrees that any insurance carried by Department is excess of Short-Term Operator's self-insurance and will not contribute to it.
5. Short-Term Operator provides the name and address of its claims administrator.
6. Short-Term Operator submits a Financial Statement or Balance Sheet prior to Executive Director's consideration of approval of self-insurance and annually thereafter evidence of financial capacity to cover the self-insurance.
7. Short-Term 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. Short-Term Operator has complied with all laws pertaining to self-insurance.

L. Accident Reports

Short-Term 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 Short-Term 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 Short-Term Operator, its officers or managing agents.

X. PERSONAL SERVICE AGREEMENT

A. During the term hereof, Short-Term Operator agrees that it will not enter into other contracts or perform any work at the Cruise Terminal without the written permission of the Executive Director where the work may conflict with the interests of the Department.

B. Short-Term Operator acknowledges that it has been selected to perform the Scope of Work because of its experience, qualifications and expertise. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Short-Term Operator may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Article I. All Subconsultants whom Short-Term Operator utilizes, however, shall be deemed to be its agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Short-Term Operator from its obligations under this Agreement or to impose any obligation on the City to such Subconsultant(s) or give the Subconsultant(s) any rights against the City.

XI. AFFIRMATIVE ACTION

The Short-Term Operator, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit E.

XII. 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 the 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.

XIII. COMPLIANCE WITH APPLICABLE LAWS

Short-Term Operator shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of Executive Director.

XIV. 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.

XV. TRADEMARKS, COPYRIGHTS, AND PATENTS

Short-Term Operator agrees to save, keep, hold harmless, protect and indemnify the City and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by City of any materials supplied by Short-Term Operator in the performance of this Agreement.

XVI. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement and any recommendations made by Short-Term Operator relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Short-Term Operator or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement.

In addition, Short-Term Operator is required to safeguard such information from access by unauthorized personnel.

#### XVII. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the Department shall be addressed to Director of Real Estate, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, and notice to Short-Term Operator shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

#### XVIII. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Short-Term Operator declares that its authorized TIN is 76-3064950. No payments will be made under this Agreement without a valid TIN.

#### XIX. SERVICE CONTRACTOR WORKER RETENTION POLICY AND LIVING WAGE POLICY REQUIREMENTS

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 5771 on January 13, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Short-Term Operator shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this Agreement and otherwise pursue legal remedies that may be available.

#### XX. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

The Short-Term Operator and/or any Subconsultant are obligated to fully comply with all applicable state and federal employment reporting requirements for the Short-Term Operator and/or Subconsultant's employees.

The Short-Term Operator and/or Subconsultant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. The Short-Term Operator and/or Subconsultant will fully comply with all lawfully served Wage and Earnings Assignment

Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. The Short-Term Operator or Subconsultant will maintain such compliance throughout the term of this Agreement.

XXI. EQUAL BENEFITS POLICY

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

XXII. COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12)

The Short-Term Operator and/or any Subconsultants are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising by Short-Term Operator and any Subconsultants for certain elected City officials or candidates for elected City office. Short-Term Operator and any Subconsultants shall comply with these limitations wherever applicable. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available.

XXIII. 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. Short-Term Operator agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

XXIV. INTEGRATION

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises,

representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

#### XXV. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

#### XXVI. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

#### XXVII. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

#### XXVIII. MODIFICATION IN WRITING

This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

XXIX. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

XXX. EXHIBITS; ARTICLES

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to Articles are to Articles of this Agreement unless stated otherwise.

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

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

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Executive Director

Attest: \_\_\_\_\_  
Secretary

PACIFIC CRUISE SHIP TERMINALS,  
LLC

Dated: 9/16/11

By [Signature]

Stefano Borzone, President

Attest [Signature]

JANIFER C. MOOSE, SECRETARY  
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

2/21, 2011  
CARMEN A. TRUTANICH, City Attorney  
THOMAS A. RUSSELL, General Counsel

By [Signature]  
STEVEN Y. OTERA, Deputy

Account # _____	W.O. # _____
Ctr/Div # _____	Job Fac. # _____
Proj/Prog # _____	
Budget FY: Amount:	
_____	_____
_____	_____
_____	_____
TOTAL	_____
<b>For Acct/Budget Div. Use Only:</b>	
Verified by: _____	_____
Verified Funds Available: _____	_____
Date Approved: _____	_____

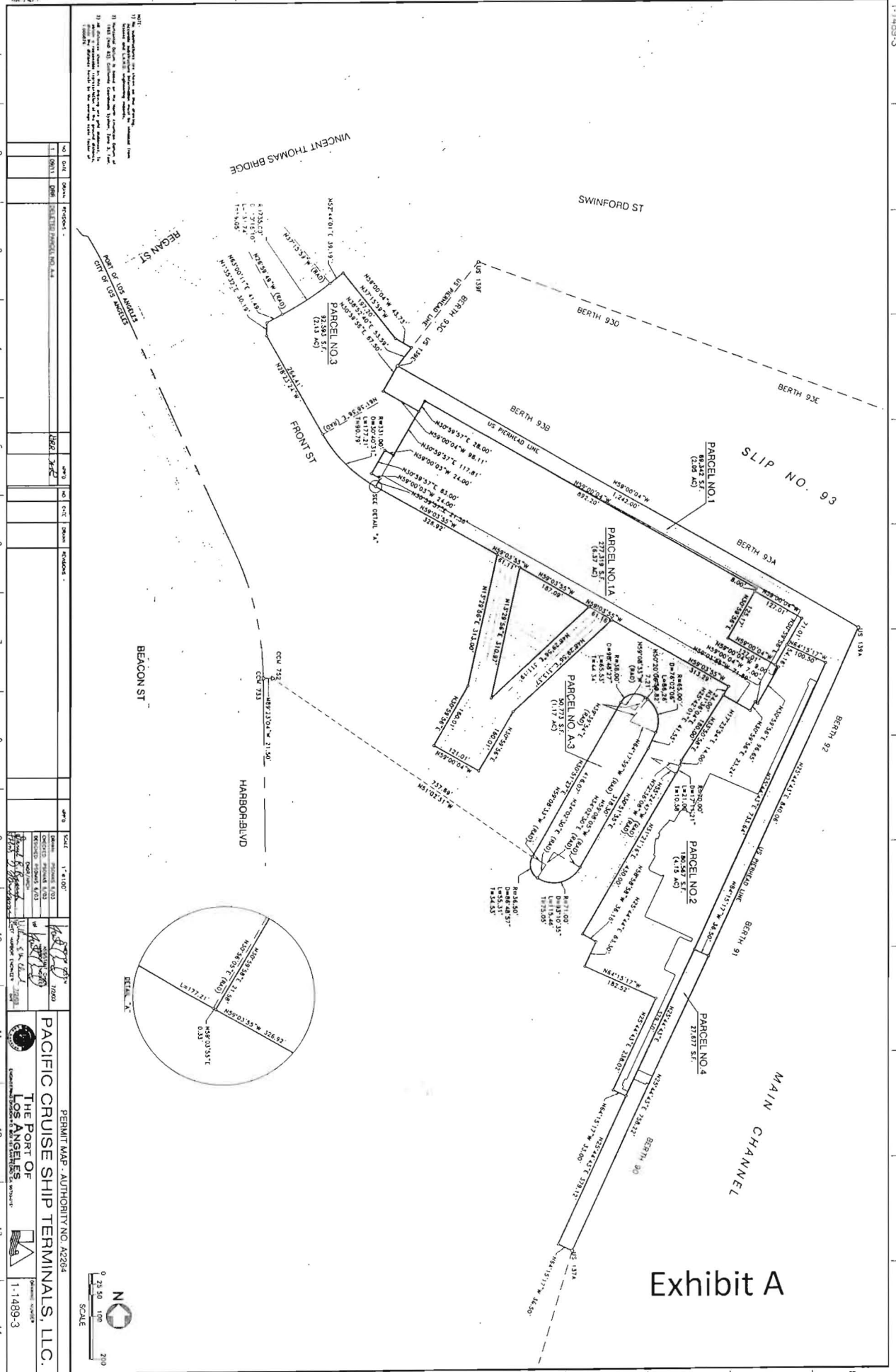


Exhibit A

# EXHIBIT B

## SCOPE OF WORK

### 1. Passenger Cruise Terminal Management – Facilities:

- A) Short-Term Operator shall provide all equipment (excluding gangways) and gear necessary to manage and oversee all Cruise Terminal operations, including berthing of passenger vessels except for actual docking, embarkation and debarkation of passengers and goods, terminal maintenance (depicted in Terminal Maintenance Schedule attached to this Exhibit B to be performed by Short-term Operator), Cruise Terminal security as outlined in Section 3 of Exhibit B, and collection of all Cruise Terminal fees and charges in accordance with this Agreement. In addition, the Short-term Operator may also offer and provide services outside the scope of this Agreement, upon request of passenger vessel operators; such services shall be by separate arrangement between Short-term Operator and such vessel operators. If any such services are provided, it does not alter the amount of the Flat Fee (a fee paid by the City to the Short-Term Operator on per vessel call to operate the Cruise Terminal as detailed in Exhibit C) City pays to the Short-Term Operator. Short-Term Operator shall be required to meet all City requirements including, but not limited to, securing permits to provide any such services;
- B) Short-Term Operator shall manage all facilities operations, including but not limited to: janitorial services, terminal security as outlined in Section 3 of Exhibit B, safe berthing of passenger vessels except for actual docking, gangway and elevator/escalator operation;
- C) Short-Term Operator shall coordinate with Federal Inspection Services to maximize rapid, convenient and efficient movement of passengers and handling of baggage; and
- D) Short-Term Operator shall coordinate with City's parking operator to maximize safe and efficient flow of traffic into and out of the Cruise Terminal.
- E) As between Short-Term Operator and City, costs for electricity, water, sewage and gas at the Cruise Terminal shall be borne by City.

### 2. Vessel Scheduling:

- A) Short-Term Operator shall develop, maintain, and update quarterly a comprehensive schedule of vessel arrivals, departures, and berthing assignments and submit it to the City upon approval and execution of this agreement and two weeks before every quarter thereafter;

- B) Short-Term Operator shall coordinate arrivals and departures of passenger vessels and coordinate berthing assignments with vessel operators, in cooperation with Executive Director or her designee and in accordance with berthing priority rights set forth in permits;
- C) Short-Term Operator shall ensure the appropriate positioning of City-owned passenger gangways for the operation of Cruise Terminal at all times. Short-Term Operator shall coordinate gangway arrangements with vessel operators assigned to Berth 87-90, on as needed basis (Exhibit A);
- D) Short-Term Operator shall coordinate and attend all vessel docking and undocking and, upon vessel departures, document and inform the City's Wharfingers Division and Port Police of any observed damage to wharf, pilings, fender system and Cruise Terminal premises. Short-Term Operator shall take all reasonable commercial action to recover the costs of any damage to wharf, pilings, fender system and Cruise Terminal premises from the cruise lines, in conjunction with the Wharf Damage Policy for the Harbor Department and notify the Harbor Department immediately of any delay in the collections of these damages;
- E) Short-Term Operator shall coordinate and cooperate with the Coast Guard and all City, state and federal agencies and authorities with regulatory jurisdiction over passenger Cruise Terminal operations to provide and ensure safe transit operations, working conditions and emergency services for the protection of all passengers, dockworkers, Cruise Terminal employees and visitors on the Cruise Terminal premises; and
- F) Short-Term Operator shall coordinate with stevedore companies and ground service operators, and shall operate in a manner that provides equal and open access to all companies hired by cruise lines directly.

### **3. Cruise Terminal Security:**

- A) Short-Term Operator shall provide United States Coast Guard-approved Cruise Terminal Security Plan in compliance with 33 CFR 128 et seq. and International Ships and City Facility Security ISPS Code. Short-Term Operator shall include Berth 87 as part of this security plan and shall have no other entitlement to Berth 87. The Executive Director or her designee shall have the right to request a change in the security plan if the City requests a change in the footprint of security plan and designate a Cruise Terminal Security officer and an alternate in compliance with 33 CFR 105.205. Provide and implement a security officer training program in compliance with 33 CFR 105.210;

Short-Term Operator shall designate a Cruise Terminal Security Officer and an alternate in compliance with NVIC 04-02, provide and implement a security officer training program in compliance with NVIC 04-02. During each vessel call, Short-Term Operator or designated Sub-consultant shall provide a Site Security Manager to implement all provisions of the approved Facility Security Plan, train and supervise security personnel.

provide a sufficient number of trained security officers to assure adequate security for efficient operation of the Cruise Terminal;

- B) During non-ship days, at its sole expense, the Short-Term Operator shall provide two trained, competent and efficient security guards on the Cruise Terminal on a 24-hour basis, one of whom shall be stationed at the Cruise Terminal entry gate, and the other shall patrol the Cruise Terminal premises;
- C) Short-Term Operator shall not be responsible to provide vessel-assigned security staff, but may, upon request of the vessel operator, provide such additional vessel-assigned security under separate arrangement with the vessel, at the cost of such vessel;
- D) Short-Term Operator shall provide and enforce the wearing of identification badges for all of Short-Term Operator's employees on the Cruise Terminal;
- E) Short-Term Operator shall provide sufficient functioning security screening equipment [e.g., x-rays, magnetometers, explosive detectors] to screen 100 percent of passengers, crews, visitors and baggage at the Cruise Terminal in accordance with the provisions of the Security Plan;
- F) Short-Term Operator shall provide sufficient and effective security communications equipment to facilitate 100 percent of the security operations required at the Cruise Terminal in accordance with the provisions of the Security Plan; and
- G) Short-Term Operator shall provide additional safety and security procedures and equipment as may from time to time be further required by City, State, And Federal authorities with jurisdiction over passenger Cruise terminal operations.

#### **4. Administrative Services:**

- A) Short-Term Operator shall provide staff to manage and operate the Cruise Terminal. Short-Term Operator shall also provide office supplies and other equipment necessary to facilitate the management of all supervisory obligations, Cruise Terminal Maintenance Schedule as attached to this Exhibit B, vessel scheduling, Cruise Terminal security, financial administration, record and reporting obligations including meter reading for utilities;
- B) For "Non-permit Cruise Operators," Short-Term Operator shall invoice and take all reasonable commercial action for collection of fees from the cruise lines and remit to the City all applicable fees within 30 calendar days after the vessel departure, Tariff Charges within 30 calendar days of all vessel departure and applicable Vessel Charge Fees (charges for utility services, including water, AMP-electricity, gas and sewer etc. provided to vessels) within 30 calendar days after the vessel departure, together with any additional services provided to each vessel that docks at the Cruise Terminal, such as trash collection, janitorial, or sweeper services. Short-Term Operator shall also be

responsible for remittance of all charges accruing at the Cruise Terminal including late fees and penalties. Short-Term Operator shall notify the Harbor Department immediately of any delay in the collections of these fees and penalties;

- C) For "Permit Cruise Vessel Operators," Short-Term Operator shall invoice and remit to the City all applicable utility (water) and vessel charge fees within 30 calendar days after the vessel departure. Short-Term Operator shall notify the Harbor Department immediately of any delay in the collections of these fees and penalties. Short-Term Operator shall also provide the City applicable data with respect to wharfage and dockage;
- D) Short-Term Operator shall participate in an annual review of Lay Day Fees (charge to vessels per calendar day). Short-Term Operator shall also participate in a review of Flat Fee and Cruise Terminal operating expenditures;
- E) Short-Term Operator shall comply and facilitate City's use of the Cruise Terminal for special events, motion pictures etc., upon receipt of written notice from the City. City and Short-Term Operator intend that the conduct of special events, motion pictures, etc. at the Cruise Terminal remain cost-neutral to Short-Term Operator. To that end, the City will invoice and retain 100 percent of receipts associated with such activity and Short-Term Operator may obtain for its own benefit hold-harmless or indemnity agreements from the third-parties conducting such special events or motion pictures.
- F) Short-Term Operator is to provide the City 90 days' prior written notice of any anticipated shortfalls with respect to Cruise Terminal capacity in the event that the size and passenger volume of a scheduled vessel or vessels is anticipated to exceed the Cruise Terminal capacity or require additional Cruise Terminal service area; the City may procure and utilize a tent(s) for these purposes, and the Short-Term Operator may be required to remove and relocate equipment as needed to accommodate this tent(s) at their sole cost. All costs associated with providing tent(s), including, but not limited to, erecting, maintaining, permitting, removing, providing temporary utilities, lavatories, seating, carpeting, and cleaning of tent(s) area shall be at City's expense and be paid directly by the City. In addition, the Short-Term Operator shall work with the City and cruise vessels in emergency situations to expediently resolve the issues;

Short-Term Operator is to provide the City 90 days' prior written notice of any anticipated shortfalls with respect to Cruise Terminal capacity in the event that the size and passenger volume of a scheduled vessel or vessels is anticipated to exceed the Cruise Terminal capacity or require additional Cruise Terminal service area. If the City elects not to provide a tent, but transport of passengers is required, costs associated with providing passengers transport shall be at City's expense;

- G) Short-Term Operator shall promote use of the Facility, solicit new business for the City at the Cruise Terminal and work with City's Business Development Division to solicit new business including joint sale calls, joint hosting of cruise executives, representation at industry events, etc.;

- H) Short-Term Operator shall be responsible for repair and maintenance of items outlined in the Terminal Maintenance Schedule to be performed by Short-Term Operator in the attached Maintenance Exhibit;
- I) Short-Term Operator shall pay all license fees, taxes, and assessments with the exception of possessory property tax;
- J) Short-Term Operator shall remit to the City 100 percent of gross revenues collected by the Short-Term Operator from every business activity conducted on the Cruise Terminal under concession agreements within 30 days after the end of month. Short-Term Operator shall have the right to enter into concession agreements for the sale of goods and food services at the Cruise Terminal with prior written consent and approval of the Executive Director. In addition, the Short-Term Operator shall coordinate and work with concessionary operators;
- K) Adhering to the terms and conditions of the Cruise Terminal Security Plan, Short-Term Operator shall allow access to Cruise Terminal visitors and City employees for business purposes;
- L) Short-Term Operator shall cooperate and proactively work with the Real Estate Division staff to identify deficiencies and ensure that all systems and equipment provided by the City are in excellent operational order including, but not limited to, HVAC, electrical, plumbing, carpentry, piling, painting, roofs, and all City-owned interior fixtures, equipment and furniture;
- M) Short-Term Operator shall maintain coordination and liaison with the Real Estate Division reporting promptly all information affecting the functioning of the passenger Cruise Terminal and preparing and providing to Executive Director a quarterly written report on the progress and status of Cruise Terminal operations, including all significant events during the reporting period;
- N) Under the terms and conditions set forth with Section L, Short-Term Operator shall report to the City in writing any Cruise Terminal accidents within 15 days upon occurrence;
- O) Short-Term Operator shall submit monthly financial statements prepared according to Generally Accepted Accounting Principles (GAAP) that provide for the accounting of all revenue and expenditure of the for Non-Permit Cruise Vessel Operators and Permit Cruise Vessel Operators; and
- P) Short-Term Operator shall utilize a standard form "Customer Service Agreement" in the form attached to this Exhibit B, in connection with the provision of passenger Cruise Terminal service facilities to passenger vessels. Short-Term Operator agrees that there shall be no change in the form of the agreement as set forth unless approved in advance in writing by the Executive Director or her designee. A copy of each, of Short-Term

Operator's Customer Service Agreements with its customers and invitees at the Cruise Terminal, together with any amendments thereto, shall be filed with the Executive Director or her designee.

**5. City Responsibilities:**

- A) City at its sole cost shall be responsible for maintenance and repair, utility cost, labor and operational cost for all Alternative Maritime Power ("AMP") activities.
- B) City at its sole cost shall be responsible for maintaining and repairing the pier, wharves, bulkheads, and fender system(s) at the premises, including all repairs occasioned by reasonable wear and tear and action of elements.

## TERMINAL MAINTENANCE SCHEDULE

<b>City Responsibility at City's Expense</b>
Roofs and solar systems
Exteriors of structures, including exterior painting
Wharf Structure
Fender system damage repair
Wharf bulkheads
Rock slopes
Maintenance dredging
Replacement of deteriorated electrical conduit and pipeline system
Fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems
Vehicular ramps and parking deck at berth 93, second level as to repairs
HVAC servicing and repair
Backflow devices and potable water systems and damage from water spillage
Re-lamping of terminal wharf and backland light standards
Interior painting
Storm drain inlet maintenance and cleaning
Cleaning clogged drains, including toilet/urinal stoppages and associated damage
Emergency generator unit maintenance
Passenger gantries and gangways repairs, and their electrical supply systems and back-up power supply
Replacement of all light bulbs
Wheel stop maintenance, traffic lines and traffic flow systems
Fence and gate maintenance within the premises
Rolling and sliding door maintenance
Window, door glass replacement
Carpet, tile and vinyl floor replacements and furniture replacements
All mechanical, electrical, hydraulic, air equipment, and devices used by short term operator to maintain City-owned machinery and equipment
Replacement of elevators and escalators
Repair all mechanical equipment located on the premises owned by the City
Recharging and servicing of fire extinguishers
Surface paving, wharf and backland damager repair, and janitorial maintenance
As-needed maintenance of landscape irrigation systems
As-needed watering of landscaping subject to availability and lawful use of water
As-needed plant replacement, cleaning, weeding and fertilizing of landscaping
Maintenance and repair of surveillance systems and terminal access control systems
Maintenance and repair Alternative Maritime Power (AMP) System
<b>Terminal Maintenance Schedule to be Performed by Short-term Operator</b>
Elevator maintenance and repair
Escalator maintenance and repair
Gangway maintenance
<b>Terminal Maintenance Schedule to be Performed by Short-term Operator (Continued)</b>

Restroom janitorial cleaning of floors, walls, mirrors, fixtures and refilling or replacement of towel and soap dispensers, light bulbs prior to each vessel arrival,
Area vacuuming of carpets after each vessel arrival.
As-needed spot stain treatment of carpets. Quarterly cleaning of carpets
At least quarterly wash windows. Additional washing as needed
High dusting on a quarterly basis
Cleaning of interior casework and other surfaces prior to each vessel arrival
As-needed sweeping of exterior pedestrian ways accessible by vehicles and passengers
Cleaning exterior pedestrian ways on a monthly basis
Semi-annually wash of exterior walls to a height of four feet
As-needed cleaning of interior walls, doors and sliding doors, but no less than semi-annually
Quarterly clean all fixed and portable signs and railings

## CUSTOMER SERVICE AGREEMENT

WHEREAS, Pacific Cruise Ship Terminals LLC (hereinafter called "PCST"), a California limited liability company, has obtained certain operating rights from the Harbor Department of the City of Los Angeles (hereinafter called "City" or "Port"), in certain premises and facilities located in Los Angeles Harbor including, but not limited to, those described in Operating Agreement (hereinafter called "Agreement"), and operates a vessel passenger terminal thereon; and

WHEREAS, (Cruise Line) (hereinafter called "Customer") desires to utilize said terminal facility and to engage the services of PCST in connection therewith;

NOW, THEREFORE, the parties hereto agree as follows with respect to the provision of terminal facilities and services for Customer's passenger vessels at the Port.

### I

#### TERMINAL SERVICES

A. PCST will furnish Customer with the following facilities and services for and with respect to passenger vessels owned and operated by Customer, and their passengers, in accordance with Operating Agreement No. \_\_\_\_ Granted by the City of Los Angeles to PCST.

1. Positioning and operation of gangways for the embarkation or debarkation of passengers and crew;
2. Collection from Customer and remittance to Port all applicable charges accruing at the premises pursuant to Port of Los Angeles Tariff No. 4 (hereinafter "Tariff"), and other associated charges including passenger fees, wharfage, dockage, lay day fees, security fees, sweeper fees, and water fees, as they now exist or may hereafter be amended;
3. Customs and baggage inspection areas;
4. Maintenance of terminal facility in a reasonable condition;
5. Making and coordinating berth assignments for Customer's vessels. (NOTE: It is specifically agreed that the Port shall have the absolute right to make all berth assignments.);
6. The posting of signs necessary for the direction and movement of passengers and visitors; and

Customer Service Agreement

7. Providing necessary coordination and liaison among Customer and its vessels and Port.

B. PCST shall provide, or cause to be provided, labor, equipment, and other facilities necessary to enable it to perform its obligations to Customer hereunder. Any persons performing any service or operations pursuant to PCST's obligations hereunder shall not be, or be considered to be, employees of Customer or subject to the direction or control of Customer. It is the express intent of the parties hereto that in performing its obligations under this Agreement, PCST is and shall remain an independent contractor. It is expressly understood and agreed that PCST may, at its sole option, contract with third parties for the performance of its services and obligations required hereunder.

II

**COMPENSATION AND OBLIGATIONS OF CUSTOMER**

A. Unless, as may otherwise be agreed to in writing by PCST, not later than thirty (30) days in advance of arrival of each of Customer's vessels at the terminal facility, Customer shall deposit with PCST in U.S. dollars an amount to compensate Operator for, but not limited to, anticipated Lay Day fees, wharfage fees, passenger fees, utility fees, and extraordinary service fees. Absent such deposit, Customer's vessel(s) will not be allowed to dock at the terminal facility. Said deposit shall apply against charges incurred by Customer and its vessel(s).

- B. Within fifteen (15) days after receipt of invoice, Customer will:
  1. Pay to PCST the amount in U.S. dollars necessary to reimburse PCST for all expenses and disbursements incurred or paid by PCST on Customer's behalf at Customer's request;
  2. Pay to PCST for facilities and services provided by PCST the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) per calendar day per vessel call; and
  3. As instructed within the invoice, pay to PCST or Port the amount in U.S. dollars necessary to compensate PCST or Port for all relevant charges pursuant Tariff as the same now exists or may hereafter be amended.
  4. In the event that the proceeds from Customer's advance deposit exceed the amount necessary to cover actual expenditures, as provided for within Section II(A), excess proceeds shall be reimbursed to Customer within thirty (30) days after vessel's sailing.

## Customer Service Agreement

No interest is payable to Customer by PCST or Port on deposits if the deposits are subsequently refunded.

5. In the event of a material breach of the terms of this Agreement, the injured party may terminate this Agreement by delivering written notice of termination to the breaching party. In no event will PCST or Port be liable for loss of profits, or any indirect, special, or consequential damages arising out of any breach of this Agreement.

C. In the event that Customer fails to pay the billing entity any invoice or other amounts when due or within the time specified in Paragraph II (A), hereof, Customer agrees to pay the billing entity a late payment charge at the rate provided in Tariff, Item No. 270, as the same exists or may hereafter be amended, modified, or superseded. Failure to timely pay tariff and ancillary charges may cause Customer to be required to pay, in cash or cash equivalent, delinquent and future charges in advance of vessel arrival.

D. Not later than the time of each vessel arrival, Customer shall, in writing, advise PCST or its designated agent of the total number of disembarking passengers.

E. Not later than seventy-two (72) hours following each vessel departure, Customer shall provide PCST or its designated agent a vessel wharfage statement or a manifest stating the total number of passengers who embarked and disembarked, vessel stores, and cargoes loaded or discharged at Port.

F. Not less than thirty (30) days prior to each arrival of Customer's vessels, Customer will provide PCST with all information and instructions, including berthing diagrams, necessary to enable PCST to perform its services and obligations hereunder.

G. As they occur, Customer shall advise PCST of any changes in scheduled arrival and departure times.

H. For the purpose of this Operating Agreement, "Lay Day Fees" shall be defined as revenues collected from Customers that defray direct costs incurred by the Operator or City associated with maintaining and operating the passenger cruise terminal facilities provided at the premises. Such direct terminal facilities costs include, but are not limited to, terminal-related expenses such as utilities (gas and electricity), terminal-related security, maintenance and repair, terminal-related sweepers, janitorial services, administrative expenses, office supplies and terminal equipment, audit costs, insurance and other miscellaneous expenses.

III

**LIABILITY AND INDEMNITY**

A. Customer shall at all times relieve, indemnify, protect, and save harmless PCST and City of Los Angeles ("City"), and any and all of their boards, officers, agents, employees, and shareholders from any and all claims, demands, actions, proceedings, losses, liens, costs, and judgments of any kind and nature whatsoever, including expenses incurred in defending against legal actions, for death of or injury to persons or damage to property, including property owned by or under the care and custody of City or PCST, and for civil fines and penalties to the extent that same arise from or are caused directly or indirectly by:

1. Any dangerous, hazardous, unsafe or defective condition of, in, or on the terminal facility or Customer's vessel(s), of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the premises by Customer, its officers, agents, employees, sublessees, licensees, invitees, or vessel(s);
2. Any operation conducted upon or any use or occupation of the terminal facility by Customer, its officers, agents, employees, sublessees, licensees, invitees, or vessel(s), under or pursuant to the provisions of this Agreement or otherwise;
3. Any act, omission, or negligence of Customer or its officers, agents, employees, sublessees, licensees, invitees, or vessel(s) on or with respect to the terminal facility regardless of whether any act, omission, or negligence of City or PCST, their officers, agents, employees, or contractors contributed thereto;
4. Any failure of Customer, or its officers, agents, employees, or invitees, to comply with any of the terms or conditions of this Agreement, or any applicable federal, state, regional, or municipal law, ordinance, rule, or regulation relating thereto; or
5. The conditions, operations, uses, occupations, acts, omissions, or negligence referred to in subdivisions 1, 2, 3, and 4 of this Section III (A), existing or conducted upon or arising from use or occupation by Customer or its invitees on any other premises within the Port, as defined in the Charter of the City of Los Angeles.

## Customer Service Agreement

Indemnitor shall have sole responsibility for strict compliance with:

1. all applicable safety and health regulations, and
2. all other state and federal regulations which may be applicable to indemnitor and/or indemnitees jointly.

Customer also agrees to indemnify and pay for all damages or loss suffered or sustained by PCST or by City relating to or arising from damage to the terminal facility, including piers, pilings, and fenders upon which it is located, including, but not limited to, damage to or loss of PCST and City property, and loss of PCST and Port revenue from any source caused by or arising out of the conditions, operations, uses, occupants, acts, omissions, or negligence referred to in subdivisions 1, 2, 3, 4, and 5 of this Section III (A). The term "persons" as used in this section shall include, but not be limited to, officers and employees of Customer while acting within the course and scope of employment provided, however, the burden of proof shall be on Customer to establish that any employee-caused damage was not within the scope of his employment.

Customer shall provide indemnitees with a certificate of insurance evidencing comprehensive general liability insurance coverage of not less than Five Million Dollars (\$5,000,000) per person and per occurrence. Indemnitees shall be named as additional insured on the policy and evidenced on the certificate of insurance.

Customer shall comply with all applicable state and federal workers' compensation laws and provide a certificate of insurance or evidence of qualified self-insurance.

Customer shall cause each insurance policy obtained by it to provide that the insurer waives all right of recovery by way of subrogation against indemnitees in connection with any injury or damage covered by any policy.

The foregoing indemnity shall survive the expiration or earlier termination of this Agreement.

## IV

### SECURITY

A. Customer agrees to comply with security requirements of the cruise terminal in compliance with the Facility Security Plan (FSP) as instructed by the Facility Security Officer (FSO). Customer also agrees to utilize a Declaration of Security (DOS) in compliance with NVIC 04-02 and CFR 105 and CFR 128.

B. Customer agrees to comply with security requirements and the threat level adopted by the Los Angeles World Cruise Terminal and to compensate Operator for the

Customer Service Agreement

security services provided and necessary to comply with the approved Facility Security Plan (FSP).

**V**

**PORT OF LOS ANGELES PILOTAGE SERVICE**

A. Every vessel owner and operator understands and agrees that vessels, their owners and operators using pilots offered by the City of Los Angeles agree to be contractually bound to the terms and conditions of Tariff or its successor. Vessel owners' and operators' attention is particularly directed to Item 305 of Tariff, which provides that any pilot provided by the City of Los Angeles to assist the vessel is the borrowed servant of the vessel, and that neither the City nor the pilot is liable for any accident except as provided in Tariff Item 305. Vessel owners and operators agree that the vessel master at all times remains in control of the vessel and that pilot assistance is advisory only. Such owners and operators are aware that pilotage trip insurance may be purchased from the City if they wish to cover pilotage-associated risks.

**VI**

**RESPONSIBILITY FOR WHARF DAMAGE**

A. Notwithstanding the foregoing, if damage to the wharf structure is caused by the acts or failure to act of Customer, its officers, agents, employees or invitees, Customer shall be responsible for all costs, direct or indirect, associated with repairing the damage. Customer is also obligated to pay PCST compensation during such repairs as determined by the fair rental value of the affected portion of the wharf in question.

B. Damage occurring at a vessel's assigned berth during its use of such berth is presumed to be the responsibility of such vessel. Otherwise, all damage to the premises shall be presumed to be the responsibility of all Customers calling at the wharf structure within the period from the previous inspection until the time at which damage is discovered. As such, all Customers calling at the premises during the period in which damage has occurred and later noted will equitably share the financial burden associated with such damage and agree to be responsible for all such damage, as indicated in Section VI(A).

**VII**

**GENERAL PROVISIONS**

A. All rates and compensation for facilities and services specified herein are based in whole or in part on existing costs of labor, services, and materials. In the event of a change in same, PCST shall promptly advise Customer thereof. Customer

## EXHIBIT C

### COMPENSATION AND PAYMENT

The Short-Term Operator shall receive the following compensation for its services:

1. \$9,655 per vessel call (regardless of number of days the vessel may be at berth at the Cruise Terminal during such call) ("Fixed Fee") payable, upon monthly submission of an invoice stipulating the name, date, services provided and duration of vessel calls that have occurred for that monthly period.
2. Fixed Fee is inclusive of all charges, no additional reimbursement for any other service or operating item shall be paid by the City. Payment of the Fixed Fee will not be made by the City to the operator in advance of any vessel call.
3. Notwithstanding the foregoing, should a vessel on a single call remain at berth at the Cruise Terminal in excess of the number of days scheduled by the vessel owner, Short Term Operator shall receive \$3,186 ("Daily Fee") for each such excess day for up to ten (10) days. If such vessel remains at berth at the Cruise Terminal beyond ten (10) days, Short-Term Operator shall receive no compensation from City.
4. Beginning January 1, 2012 and each year thereafter, the Fixed Fee and Daily Fee will adjust in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-W) for Urban Wage Earners and Clerical Workers, All Items, Los Angeles-Riverside-Orange County, CA. The price adjustment rate will be determined by comparing the percentage difference between the monthly CPI of the effective date of the Agreement and each year thereafter. The percentage difference between those two CPI figures will be the price adjustment rate.

Short-Term Operator and City shall cooperate with one another to determine the invoice amount for services provided by Short-Term Operator beginning on January 1, 2011 through the Effective Date. As to such invoice within sixty (60) calendar days ~~of the Effective Date~~, from the receipt of such invoice, City shall pay and reimburse Short-Term Operator per the rate set forth in Exhibit C, with the Short-Term Operator applying credit for any applicable Lay Day and water recovery fees invoiced by the Short-Term Operator. City and Short-Term Operator agree that no late fees or penalties apply beginning on 1/1/2011 through the Effective Date.

## **Business Tax Registration Certificate (BTRC) Number**

The City of Los Angeles, Office of Finance requires all firms that engage in any business activity within the City of Los Angeles to pay City business taxes. Each firm or individual (other than a municipal employee) is required to obtain the necessary Business Tax Registration Certification (BTRC) and pay business tax. (Los Angeles Municipal code Section 21.09 et seq.)

All firms and individuals that do business with the City of Los Angeles will be required to provide a BTRC number or an exemption number as proof of compliance with Los Angeles City business tax requirements in order to receive payment for goods or services. Beginning October 14, 1987, payments for goods or services will be withheld unless proof of tax compliance is provided to the City.

The Tax and Permit Division of Los Angeles Office of Finance, has the sole authority to determine whether a firm is covered by business tax requirements. Those firms not required to pay will be given an exemption number.

If you do NOT have a BTRC number contact the Tax and Permit Division at the office listed below, or log on to [www.lacity.org/finance](http://www.lacity.org/finance), to download the business tax registration application.

### **MAIN OFFICE**

LA City Hall 201 N. Main Street, Rm. 101 (213) 473-5901

**EXHIBIT D**

## **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.

**EXHIBIT E**

- 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.

## Equal Benefits Ordinance

### Sec. 10.8.2.1. Equal Benefits Ordinance

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. Los Angeles law prohibits entities doing business with the City from discriminating in employment practices based on marital status and/or sexual orientation. The City's departments and contracting agents are required to place in all City contracts a provision that the company choosing to do business with the City agrees to comply with the City's nondiscrimination laws.

It is the City's intent, through the contracting practices outlined in this Ordinance, to assure that those companies wanting to do business with the City will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Ordinance are designed to ensure that the City's contractors will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City's property.

#### (c) Equal Benefits Requirements.

(1) No Awarding Authority of the City shall execute or amend any Contract with any Contractor that discriminates in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(2) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the DAA, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance.

(3) A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." The posted statement must also include a City contact telephone number which will be provided each Contractor when the Contract is executed.

(4) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by the Equal Benefits Ordinance.

(d) Other Options for Compliance. Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

**EXHIBIT F**

a. The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits; or

b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

(e) Applicability.

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.

(f) Mandatory Contract Provisions Pertaining to Equal Benefits. Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

EXHIBIT G

**PACIFIC CRUISE SHIP TERMINALS**

May - 2011

<b>VESSEL</b>	<b>CRUISE LINE</b>	<b>BERTH</b>	<b>DAY</b>	<b>DATE</b>	<b>FLAT FEE [\$]</b>	<b>SERVICES PROVIDED</b>
Norwegian Pearl	Norwegian	93	Sun	5/1/2011	9,655.00	Services related to operation & management of Cruise Terminal
Sapphire Princess	Princess	93	Sat	5/7/2011	9,655.00	
Norwegian Star	Norwegian	92	Sat	5/7/2011	9,655.00	
Crystal Symphony	Crystal Cruises	93	Sun	5/8/2011	9,655.00	
Golden Princess	Princess	93	Wed	5/11/2011	9,655.00	
Arcadia	P&O Cruises	93	Thur	5/26/2011	9,655.00	
Arcadia	P&O Cruises	93	Fri	5/27/2011	9,655.00	
<b>TOTAL CALLS</b>					<b>\$67,585.00</b>	

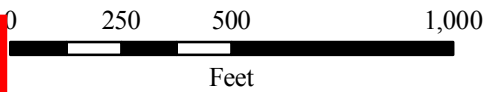
Business Tax Registration Certificate Number: XXXXXXXXXXXX

I certify under the penalty clause.....

# Pacific Cruise Ship Terminals, LLC



TRANSMITTAL 2



Harbor Department  
Planning & Economic Development  
Map Produced 8/2011

