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Antonio R. Villaraigosa Mayor, City of Los Angeles

Board of Harbor
Commissioners

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Executive Director

March 2, 2012

Honorable Members of the
City Council of the
City of Los Angeles

CD No. 15

Attention: Mr. Michael Espinosa, City Clerk's Office

SUBJECT: **CHARTER SECTION 606** – PERMIT NO. 897 WITH CATALINA
CHANNEL EXPRESS, INC. FOR PREMISES IN SAN PEDRO, AT
BERTHS 94 AND 95

Pursuant to Section 606 of the City Charter, enclosed for your approval is Permit 897 granted by the City of Los Angeles Harbor Department to the Catalina Channel Express, Inc., which was approved by the Board of Harbor Commissioners at its meeting held January 5, 2012.

RECOMMENDATION:

1. The City Council, subject to approval of the Mayor, approve Permit No. 897 granted by the City of Los Angeles Harbor Department to Catalina Channel Express, Inc.;
2. Adopt the determination by the Los Angeles Harbor Department that the proposed action is exempt from the California Environmental Quality Act (CEQA) in accordance with Article II Section 2(i) of the Los Angeles City CEQA Guidelines; and
3. Return to the Board of Harbor Commissioners for further processing.

Respectfully submitted,

KORLA G. TONDREAULT
Commission Secretary

cc: Trade, Commerce & Tourism Committee
Councilman Rosendahl, encs.
Councilman LaBonge, encs.
Councilman Buscaino, encs.
Christine Yee Hollis, CLA, encs.
Pamela Finley, Mayor's office, encs.

Alvin Newman, CAO, encs.
Lisa Schechter, CD4, encs.
Aaron Gross Government Affairs, encs.
Robert Henry, encs.



**THE PORT
OF LOS ANGELES**
Executive Director's
Report to the

Board of Harbor Commissioners

DATE: DECEMBER 28, 2011

FROM: REAL ESTATE DIVISION

SUBJECT: RESOLUTION NO. 12-7242 - PROPOSED PERMIT NO. 897
WITH CATALINA CHANNEL EXPRESS, INC. FOR PREMISES IN SAN
PEDRO, AT BERTHS 94 AND 95

SUMMARY:

Catalina Channel Express, Inc. (Catalina) currently occupies 170,678 square feet (s.f.) of land in San Pedro, at Berths 95/96 under Permit No. 768. Proposed Permit No. 897 (Permit), a successor to Catalina's current Permit No. 768, would authorize Catalina to undertake construction, operation, and maintenance of a public passenger facility for a 25-year term at the proposed Premises, Berths 94/95. Catalina is making a substantial investment of approximately \$2.8 million for the relocation.

It is necessary to relocate Catalina, and its associated ancillary operations, from Berth 96 to accommodate the expansion of the China Shipping terminal. Failure to have Berth 96 available for the China Shipping Expansion in a timely fashion could subject the City of Los Angeles Harbor Department (Harbor Department) to penalties if the failure results in delaying the China Shipping expansion project. Thus, it is necessary to relocate Catalina to a new site and complete facility improvements essential to the relocation as quickly as possible.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Approve Permit No. 897 with Catalina Channel Express, Inc.;
2. Direct the Board Secretary to transmit the Permit to the City Council for approval pursuant to Charter Section 606;
3. Authorize the Executive Director to execute and the Board Secretary to attest to the Permit upon Board approval contingent upon approval by the City Council; and
4. Adopt Resolution No. 12-7242.

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SUBJECT: PROPOSED PERMIT NO. 897 WITH CATALINA CHANNEL EXPRESS, INC.

DISCUSSION:

Background – The current Catalina relocation strategy is to provide space for passenger staging and vessel berthing at the Berth 94 cruise terminal facility, which is an area already suitable for passenger use, requires relatively minimal improvements, and little, if any, impact on current cruise passenger operations. Catalina will continue to occupy and utilize its existing maintenance building and adjacent water area at Berth 95 and will be making an investment of approximately \$2.8 million to accomplish the relocation by making the improvements described below, including the adaptive re-use of the existing maintenance building to accommodate passenger needs.

Proposed Permit Summary

Effective Date: The Permit shall become effective following execution by the Harbor Department and Catalina, and upon the last approval required by City's Charter and Administrative Code (Effective Date).

Premises: On the Effective Date, the Permit shall entitle Catalina to use and occupy Premises consisting of:

- a. Use of Parcel 1 - consisting of approximately 7,620 s.f. which includes approximately 7,400 usable s.f. of improved warehouse building;
- b. Use of Parcel 2 - consisting of approximately 27,768 s.f. of unimproved space;
- c. Preferential use of Parcel 3 – consisting of approximately 36,137 s.f. of water area and 5,680 s.f. of improved wharf area at Berth 94;
- d. Use of Parcel 4 – consisting of approximately 23,091 s.f. of berth and water area at Berth 95;
- e. Use of Parcel 5 – consisting of approximately 1,449 s.f. of land area at Berth 95;
- f. Preferential use of Parcel 6 – consisting of approximately 17,230 s.f. of water area at Berths 94/95; and
- g. Preferential use of Parcel 7 – consisting of approximately 15,923 s.f. of paved land area.

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SUBJECT: PROPOSED PERMIT NO. 897 WITH CATALINA CHANNEL EXPRESS, INC.

Use: The purpose of the proposed Permit is for the construction, operation, and maintenance of a public passenger facility primarily for transporting passenger to and from Catalina Island for:

- a. The berthing/mooring of charter vessels and passenger operations;
- b. The fueling of vessels, lube and oil service, minor engine repair and minor cosmetic repair of Catalina vessels which include only those vessels owned and operated by Catalina in connection with the Permitted Uses for the Premises, and no other vessels. For all other major services, especially major engine overhaul and or replacement(s), vessel painting, dry-docking, etc., Catalina shall have such major services conducted away from the Premises, and if conducted in the Harbor District, they shall be conducted at properly permitted shipyard facilities.
- c. Business offices, ticket sales, tour sales, food and beverage, including alcoholic beverages, tour-related businesses, and tourism related business, within the Premises, by vendors, concessionaires, licensees, or otherwise.
- d. Special events, private parties and commercial filming purposes.

Term: 25 years

Improvements:

Tenant Improvements

Catalina shall be responsible for all tenant improvements constructed on the Premises. The Premises will be granted on an "as is" condition, with exception of the improvements to be provided by the Harbor Department as described below.

The tenant improvements include the adaptive re-use of an existing building remodeled to accommodate new offices, ticketing, café, cocktail bar and passenger waiting areas, and updating the building with new energy efficient systems and materials, as well as the installation of new low maintenance landscaping and hardscaping for exterior passenger waiting areas.

Catalina shall be responsible for submission and approvals of all plans, permits and associated documents for the construction of all tenant improvements, as required by any and all regulatory agencies, including, but not limited to, obtaining a General Permit

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from the Chief Harbor Engineer and permits from the Los Angeles Department of Building and Safety. Following termination of the proposed Permit, all improvements constructed by Catalina on the Premises shall become, at the Harbor Department's option, property of the Harbor Department.

Harbor Department Improvements

The Harbor Department shall be responsible for the following:

- a. Reconfiguration, paving, asphalt slurry seal and re-striping of parking area with special attention to the appropriate resolution of traffic flow for passenger drop-off and bus areas; and
- b. Wharf improvements (Parcel 3) as determined to be necessary after inspection by Harbor Department personnel; with pilings to be replaced, as deemed appropriate, for the safe berthing and mooring of Catalina passenger vessels.

The Harbor Department shall not be responsible for stubbing of electrical, water, gas, sewer, or any other utility lines.

Compensation: Catalina shall pay the higher of one of two forms of compensation for the use of the Premises, (1) a fixed minimum compensation and (2) a percentage compensation. The percentage compensation described below is waived in the first five years of the term, and adjusted in the second five years of the term, to compensate Catalina for the approximately \$2.8 million investment that it will put into improving the Premises. Catalina has applied for a grant to assist with the cost of improving the Premises; should it receive all or a portion of the request grant funds, the waiver and adjustment of the percentage rent during the first ten years would be eliminated or reduced in rough proportion to the amount of the grant funds it receives.

1. Fixed Monthly Compensation

Years 1-5 Compensation

The minimum compensation schedule for first five years is:

Period	Annual Minimum	Monthly Minimum
Year 1	\$60,324	\$5,027
Year 2	\$70,380	\$5,865
Year 3	\$80,436	\$6,703
Year 4	\$90,492	\$7,541
Year 5	\$100,543	\$8,379

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Years 6-25 Compensation

The minimum compensation for each remaining five-year period shall be reset based on the estimated rental value of the Premises, as may be determined by a third party appraiser, pursuant to Order of the Board.

Consumer Price Index (CPI) Adjustments

Following Year Six, the Fixed Minimum Compensation will be subject to annual adjustments pursuant to a CPI index.

2. Percentage Compensation

Years 1-5 of Permit term: Percentage rent compensation shall be waived for the first five years of the Permit term.

However, if Catalina receives at least \$1 million in grant monies as reimbursement for their improvement costs, then the Percentage Compensation for Years 1-5 shall be 2.5 percent; and if Catalina receives \$2 million or more in grant monies as reimbursement for their improvement costs, then the Percentage Compensation for Years 1-5 shall be 5 percent.

Years 6-10 of Permit term: Harbor Department will receive the monthly minimum rent or 4 percent of all gross receipts per month, whichever is the greater.

However, if Catalina receives \$1 million or more in grant monies as reimbursement for their improvement costs, then the Percentage Compensation for Years 6-10 shall be 5 percent.

Years 11-15 of Permit term: Harbor Department will receive the monthly minimum rent or 5 percent of all gross receipts per month, whichever is the greater.

Years 16 – 25 of Permit term: Percentage Compensation for each remaining five-year period shall be reset, as may be determined by a third party appraiser, pursuant to Order of the Board.

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Environmental:

Catalina shall agree to the following:

- a. Compliance with all applicable environmental provisions of the Harbor Department's Leasing Policy, City's Environmental Management Policy, and applicable measures of the San Pedro Bay Clean Air Action Plan (CAAP), and the Water Resources Action Plan (WRAP). To include obligations of the Vessel Speed Reduction Program and low sulfur fuel, as applicable.
- b. Compliance with all California Environmental Quality Act requirements and the final mitigation measures identified and adopted by the Board in the San Pedro Waterfront FEIS/FEIR and the China Shipping FEIS/FEIR, as applicable.

Maintenance:

Catalina shall be responsible for the repair and maintenance of all structures and improvements within the Premises except for the following structural maintenance and repairs which shall be performed by the Harbor Department at Harbor Department's expense:

- a. Wharf structure, meaning the beams, girders, subsurface support slabs, cones, decks, bulkheads and pre-stressed concrete piling, pile caps, mooring bollards, and any and all mooring dolphins, but not including paving or the fendering system;
- b. Boat launch ramp within Parcel 6, and adjacent paved slope in Parcel 4, of the Site Plan depicted on Exhibit A of the Permit;
- c. Rock slopes; and
- d. Underground sewer and storm drain lines, excluding damage, if any, caused by Catalina's operations.

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SUBJECT: PROPOSED PERMIT NO. 897 WITH CATALINA CHANNEL EXPRESS, INC.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of Permit No. 897 for construction, operation, and maintenance of a public passenger facility at Berths 94/95 including the adaptive reuse of an existing building for terminal operations. Catalina will be relocating from Berth 96 as required by the China Shipping expansion. The relocation of Catalina was included and analyzed in the China Shipping FEIS/FEIR and the San Pedro Waterfront FEIS/FEIR which were certified on December 8, 2008 and September 29, 2009, respectively. As an activity for which the underlying project has previously been evaluated for environmental significance and processed according to the requirements of the California Environmental Quality Act (CEQA), the Director of Environmental Management has determined that the proposed action is exempt from CEQA in accordance with Article II Section 2(i) of the City of Los Angeles CEQA Guidelines.

ECONOMIC BENEFITS:

This Board action to approve a permit will have no direct employment effect; the one-time expenditure of \$2.8 million on improvements by Catalina Express is estimated to support the equivalent of 39 one-year jobs (direct and secondary) through the construction period.

FINANCIAL IMPACT:

The expected rate of return projected for the proposed 25-year permit with Catalina is 12.1% whereas under the Minimum Annual Guarantee (MAG) scenario the projected rate of return is 5.3% versus blended targets of 10.6% and 7.9%, respectively. Total construction costs (construction only – doesn't include design or materials/equipment) have been budgeted at \$800K in FY11/12 for the temporary relocation of Catalina Express. Funds are budgeted under Account 54510, Cost Center 1042, Program Number 000.

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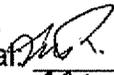
SUBJECT: PROPOSED PERMIT NO. 897 WITH CATALINA CHANNEL EXPRESS,
INC.

CITY ATTORNEY:

The proposed Permit has been approved as to form and legality by the Office of the City Attorney.

TRANSMITTAL:

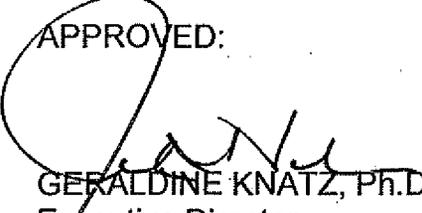
1. Proposed Permit No. 897

FIS Approval:  (initials)
CA Approval:  (initials)


KARL K.Y. PAN
Interim Director of Real Estate


KATHRYN McDERMOTT
Deputy Executive Director

APPROVED:


GERALDINE KNATZ, Ph.D.
Executive Director

GK:KM:KP:CW:JS:PVT:raw
Author: P. Tubert
BL400raw Catalina Permit

PERMIT NO. 897
GRANTED BY THE CITY OF LOS ANGELES
TO
CATALINA CHANNEL EXPRESS, INC.

THIS PERMIT ("Agreement" or "Permit") is made and entered into this ____ day of _____, 2012, by and between THE CITY OF LOS ANGELES, a municipal corporation ("City") acting by and through its Board of Harbor Commissioners ("Board"), and CATALINA CHANNEL EXPRESS, INC., a California corporation, Berth 95, San Pedro, CA 90731 ("Tenant").

Section 1. Agreement.

City hereby delivers, and Tenant hereby accepts, the Premises hereinafter described, subject to the terms and conditions provided herein.

Section 2. Effective Date; Term and Holdover.

2.1 Effective Date. This Agreement shall become effective following execution by City and Tenant, and upon the last approval required by City's Charter and Administrative Code ("Effective Date"), the date of its approval by the City Council of City ("Council"), pursuant to Section 606 of City's Charter.

2.2 Term. The term of the Permit shall be for twenty-five (25) years, beginning on the Effective Date.

2.3 Holdover After Expiration Date. Tenant shall not hold over any part of the Premises after the Expiration Date unless it submits a written request to hold over all or part of the Premises to the Executive Director of City's Harbor Department ("Executive Director"), and Executive Director thereafter approves such request in writing. Any holdover shall be deemed an extension of this Agreement on a month-to-month basis and on the same terms and conditions as set forth in this Agreement, except that, if Executive Director, prior to the Expiration Date, has not provided written approval of a written request from Tenant to hold over, the Compensation (as defined in Section 5) applicable at the commencement of such holdover, at the sole and absolute discretion of Executive Director, may be increased up to one hundred fifty percent (150%) of the Compensation last in effect before such holdover commenced. If Executive Director has provided written approval of a written request from Tenant to hold over prior to the Expiration Date, the Compensation applicable at the commencement of such holdover shall be the Compensation last in effect before such holdover commenced. City and Tenant acknowledge and agree that: (a) this Section 2.3 shall neither be deemed nor treated as a limitation or waiver of any rights or remedies of City provided in this Agreement or at law (all of which are reserved, including, without limitation, an action for unlawful detainer), an option to extend the Agreement, express or implied commitment to pursue or issue any approvals or

entitlements, or express or implied permission for Tenant to remain on the Premises after the Expiration Date; and (b) City expressly reserves the right to require Tenant to surrender possession of the Premises to City as provided in this Agreement on the Expiration Date or sooner termination of this Agreement.

Section 3. Premises.

3.1 Description. On the Effective Date, the Permit shall entitle Tenant to use and occupy Premises as depicted on Exhibit A hereto ("Site Plan") consisting of:

- (a) Use of Parcel 1 - consisting of approximately 7,620 square feet of improved warehouse building;
- (b) Use of Parcel 2 - consisting of approximately 27,768 square feet of unimproved space;
- (c) Preferential use of Parcel 3 - consisting of approximately 36,137 square feet of water area and 5,680 square feet of improved wharf area;
- (d) Use of Parcel 4 - consisting of approximately 23,091 square feet of berth and water area at Berth 95;
- (e) Use of Parcel 5 - consisting of approximately 1,449 square feet of land area at Berth 95;
- (f) Preferential use of Parcel 6 - consisting of approximately 17,230 square feet of water area; and
- (g) Preferential use of Parcel 7 - consisting of approximately 15,923 square feet of paved land area.

Parcels 1 through 7 shall collectively be known as the "Premises."

3.2 Premises Subject to Tariff. Tenant accepts the Premises and shall undertake the Permitted Uses set forth in Section 4.1 subject to each and every of the terms and conditions provided herein, and 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"). Tenant 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 in Section 15.9 below. Except as otherwise set forth in this Agreement, Tenant is contractually bound by all Tariff rates, terms and conditions as if the same were set forth in full herein. 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.

3.3 Reservations. This Agreement and the Premises are and shall be at all times subject to the reservations listed below and additional reservations City may reasonably require after the Effective Date, of which Tenant shall receive advance written notice, for which Tenant shall receive no compensation unless otherwise provided. City shall minimize any interference with the Permitted Uses to the extent possible.

3.3.1 Utility or other Rights-of-Way. Rights-of-way for sewers, pipelines (public or private), conduits for telecommunications, electric, gas, and power lines, as may from time to time be determined to be necessary by Board, including the right to enter upon, above, below or through the surface to construct, maintain, replace, repair, enlarge or otherwise utilize the Premises for such purpose, without compensation or abatement of rent and with as minimal interference with the Permitted Uses as possible. If Board makes such determination of necessity, City shall issue a written right of entry or other entitlement to the applicable third-party requiring it and/or its parent to name Tenant as an additional insured on any insurance policies required by City and to defend and indemnify Tenant from and against any claims, demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including expenses incurred in defending against legal action that arise from or are related to such third-party's entry onto the Premises.

3.3.2 Streets and Highways. Rights-of-way for streets and other highways and for railroads and other means of transportation which are apparent from a visual inspection of the Premises or which shall have been duly established or which are reserved herein.

3.3.3 Prior Exceptions. All prior exceptions, reservations, grants, easements, leases or licenses of any kind whatsoever that appear of record in the office of the Recorder of Los Angeles County, California, or in the official records of City or any of its various departments.

3.3.4 Mineral Rights Excluded. All minerals and mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil, gas and water rights, together with the full, exclusive and perpetual rights to explore for, remove and dispose of said minerals, or any part thereof, from the Premises, without, however, the right of surface entry on the Premises as long as such entry does not materially interfere with the Permitted Uses.

3.3.5 Homeland Security. Access, temporary occupancy and other rights reasonably necessary to comply with homeland security or related requirements of local, state and federal law enforcement agencies or City's Harbor Department. City reserves the right to install, maintain and operate on the Premises equipment related to homeland security and/or public safety with seventy-two (72) hours' prior written notice to Tenant.

3.3.6 Environmental Initiatives. Access, temporary occupancy and other rights reasonably necessary to comply with environmental initiatives and/or policies of City, local, state and federal agencies or the City's Harbor Department, provided that the exercise of such rights do not materially interfere with the Permitted Uses.

3.3.7 Telecommunication Equipment. Access, temporary occupancy and the right of City or third-parties selected by City in its sole and absolute discretion to install, operate, maintain and repair telecommunication equipment, without compensation to Tenant unless otherwise agreed to in writing by City.

3.4 Inspection by Tenant. Tenant has inspected the Premises in contemplation of occupying them for the Permitted Uses set forth in Section 4.1 and acknowledges and agrees, subject to the removal of the Lane Victory and associated land facilities, that:

(a) The Premises are suitable for the Permitted Uses. No individual of or affiliated with City has made any representation or warranty with respect to the Premises, or improvements existing or planned, unless the nature and extent of such representation or warranty is described herein in writing, including Exhibit "B".

(b) With respect to Premises or City's Improvements delivered by City and in Tenant's possession, any modification, improvement, or addition to the Premises and any equipment installation subsequently required by the City Fire Department, City Department of Building and Safety, Air Quality Management District, Regional Water Quality Control Board, United States Coast Guard, Environmental Protection Agency, Department of Homeland Security or any other local, regional, state or federal agency in connection with Tenant's undertaking of the Permitted Uses shall be constructed or installed at Tenant's sole cost and expense.

3.5 Board-Authorized Additions to Premises. Land and/or water not exceeding ten percent (10%) of the area granted (as specified in Section 3.1 above) or 20,000 square feet, whichever is greater, may be permanently added to or deleted from the Premises by mutual written agreement of Board and Tenant subject to the following conditions:

(a) So long as such change in area is not temporary within the meaning of Tariff Item 1035 (or its successor) or not temporary as determined by City in its sole reasonable discretion, then the Compensation determined according to the provisions of Section 5 shall be increased or decreased pro rata to reflect any such addition or deletion; and

(b) If permanent changes in the area of the Premises are made on more than one occasion, the cumulative net change in area may not exceed ten

percent (10%) or 20,000 square feet, whichever is greater, of the originally designated area.

3.6 Radio Equipment. Tenant shall coordinate with City's Harbor Department prior to installing any radio or telecommunications equipment to ensure that frequencies do not interfere with public safety communications or radio frequencies.

3.7 City Right of Inspection. City's authorized representatives shall have access to the Premises at any and all reasonable times to determine whether or not Tenant is complying with the terms and conditions of this Agreement, for fire and police/homeland security purposes, to investigate any incidents involving personal injury or property damage, or for any other purpose incidental to the rights and/or duties of City. The right of inspection hereby reserved to City shall impose no obligation on City to make inspections to ascertain the condition of the Premises, and shall impose no liability upon City for failure to make such inspection.

Section 4. Uses.

4.1 Permitted Uses. The purpose of the subject Permit is primarily for the construction, operation and maintenance of a public passenger facility for transporting passengers to and from Catalina Island including:

(a) The berthing/mooring of passenger vessels and passenger operations.

(b) The fueling of vessels, lube and oil service, minor engine repair and minor cosmetic repair of Tenant vessels. Tenant vessels shall include only those vessels owned or operated by Tenant in connection with the Permitted Uses for the Premises, and no other vessels. For all other major services, especially major engine overhaul and or replacement(s), vessel painting, dry-docking, etc., Tenant shall have such major services conducted away from the Premises, and if conducted in the Harbor District, they shall be conducted at properly permitted shipyard facilities.

(c) Business offices, ticket sales, tour sales, food and beverage services, including alcoholic beverages, tour-related businesses, and tourism related business, within the Premises, by Third Party Users as set forth in Section 15.21, licensees, or otherwise, and occasionally for,

(d) Special events, private parties and commercial filming purposes.

Tenant may enter into such other agreements for use of the Premises, consistent with terms of the Permit, and as approved by the Board.

4.2 Limitations on Use. Tenant shall not use or allow the Premises or any part thereof to be used for purposes other than the Permitted Uses without the prior

written approval of Board (which approval may be withheld by the Board in its sole and absolute discretion), and subject to such restrictions, limitations and conditions as may be imposed by Board. Tenant shall not use, nor allow others to use, the Premises for cargo loading or unloading unrelated to passenger baggage.

4.3 Compliance with Applicable Laws. At all times in its use and occupancy of the Premises and in its conduct of operations thereon, Tenant shall comply with all applicable federal, state, county, City or government agency laws, statutes, ordinances, standards, rules, requirements or orders in force on the Effective Date or thereafter enacted, promulgated or issued ("Applicable Laws"). In addition to the foregoing, Tenant shall comply immediately with any and all directives issued by Executive Director or his or her authorized representative under authority of any such law, statute, ordinance, rule or regulation.

4.4 Increased Insurance Risks. Following the Effective Date, should an event occurring in or about the Premises, and arising from Tenant's use and occupation of the Premises, cause either cancellation or increased rates with respect to any insurance that City may have on the Premises or on adjacent premises, or cause either cancellation or increased rates with respect to any other insurance coverage for the Premises or adjacent premises, upon receipt of written notice from City that cancellation of insurance or increased insurance rates is threatened or has occurred, Tenant immediately shall take appropriate steps to ensure that City is not adversely affected. In City's sole reasonable discretion, such steps may include Tenant: correcting the condition; providing any necessary insurance; paying the increased cost of City's insurance; and/or indemnifying City against any uninsured or underinsured loss on a claim.

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

4.6 State Tidelands Act. This Agreement, the Premises and Tenant's use and occupancy thereof shall at all times be subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929, (Stats. 1929, Ch. 651), as amended, and Article VI of the Charter of the City of Los Angeles relating to such lands. Tenant shall not undertake any use of the Premises, even a Permitted Use, which is or will be inconsistent with such limitations, conditions, restrictions and reservations.

4.7 Load Limits. City warrants and represents that the load limits at Berth 94 are as follows: Uniform Load is 100 pounds per square feet (psf) and the Truck Load is 5 tons. Tenant shall allow no loading in excess of such limits without the prior written consent of City's Harbor Department, which consent may be provided by a Harbor Engineer's Permit or a Heavy Lift Permit. Upon receipt of a notice from City that the load limits have been exceeded, Tenant immediately shall take all appropriate steps to

correct such condition and, irrespective of such notice, shall, as between City and Tenant, be solely responsible for any cost, expense or damage resulting therefrom.

4.8 Temporary Assignments. By issuing this Agreement, City does not grant to Tenant the sole or exclusive right to use such parcels as it applies to the parcels subject to Preferential Use. Whenever such parcels are not being used, in whole or in part, by Tenant for the Permitted Uses or if City requires such parcels on a project or emergency basis, Executive Director shall have the right, subject to Tenant's consent (which consent shall not be unreasonably withheld), to make temporary assignments to other persons, firms and/or corporations to use the Premises, or any part thereof, as provided in the Tariff. Any direct charges accruing against Tenant from the use of such parcels by a temporary user, and the allocated costs of utilities which Tenant furnishes to such temporary user, shall be paid by such temporary user. City and Tenant agree to negotiate in good faith regarding any other terms and conditions of such temporary assignments. Tenant shall not be liable to City for damages or claims caused by temporary assignees under this provision. Tenant shall not be required to indemnify City pursuant to Section 12.1 below for claims or losses arising from the sole negligence or willful misconduct of any temporary assignee.

4.9 Wilmington Truck Route. City and Tenant acknowledge that Tenant does not directly control the trucks serving the Premises. However, Tenant shall make its best efforts to notify truck drivers, truck brokers and trucking companies that trucks serving the Premises must confine their route to the designated Wilmington Truck Route of Alameda Street and Harry Bridges Boulevard; Figueroa Street from Harry Bridges Boulevard to "C" Street; and Anaheim Street east of Alameda Street. Exhibit "C" hereto is a copy of the Wilmington Truck Route, and may be modified from time to time at the sole and absolute discretion of the Executive Director with written notice to Tenant.

4.10 Tenant to Supply Necessary Labor and Equipment. Tenant shall, at its sole cost and expense, provide all equipment and labor necessary to undertake the Permitted Uses; provided, however, that nothing contained herein shall prevent Tenant from using such equipment as may be installed by City at the Premises upon the payment to City of all applicable charges.

4.11 Maintenance Areas. Tenant shall not conduct or permit any maintenance of mobile or portable equipment on the Premises except in full compliance with all Environmental Laws, Port Environmental Policies, and Mitigation Measures as hereinafter defined.

4.12 Liens. Except where contested by Tenant in good faith in a court of competent jurisdiction, and except for non-delinquent liens arising from taxes or tax assessments, Tenant shall keep the Premises free from liens of any kind or nature arising out of its use and/or occupancy of the Premises, including any liens arising out of any labor performed for or materials furnished to or on behalf of Tenant on the Premises. Tenant agrees that it will at all times defend and indemnify City from and against all claims for labor or materials in connection with the construction, erection or

installation of improvements made by Tenant upon the Premises, or from additions or alterations made thereto, or the repair of the same, by or at the direction of Tenant, and the costs of defending against any such claim, including reasonable attorneys' fees. If a mechanic's or other similar lien shall at any time be filed against City's interest in the Premises, which is not contested by Tenant in good faith in a court of competent jurisdiction, Tenant shall cause the same to be discharged of record within thirty (30) days after the date of filing the same or otherwise free the Premises from such claim or lien and any action brought to foreclose such lien or Tenant shall promptly furnish City with a bond in the amount of the lien plus twenty-five percent (25%) thereof issued by a surety company acceptable to Executive Director, securing City against payment of such lien and against any and all loss or damage whatsoever in any way arising from the failure of Tenant to discharge such lien.

4.13 Parking. The Premises do not include areas designated for parking. The City shall be responsible for providing adequate parking, adjacent to the Premises, to Tenant for Tenant's Permitted Uses. Such parking shall be provided after the Effective Date, as provided in Exhibit "B", and as set forth in Section 7.1.1, and City shall reconfigure, pave, asphalt slurry seal and re-stripe these parking areas located at the rear of Berths 94-95, with special attention to the appropriate resolution of traffic flow and passenger drop-off and bus areas, and shall provide Tenant with parking that is functionally equivalent for the entire term of the Permit.

Section 5. Compensation.

5.1 Tenant shall pay to the City two (2) forms of compensation for use of the Premises, a fixed minimum monthly compensation ("Fixed Minimum Compensation") and an annual percentage compensation ("Percentage Compensation") (hereinafter collectively "Compensation.")

5.2. Said Compensation shall be due and payable as set forth below each month during the term and shall be made payable to City of Los Angeles Harbor Department and mailed to the following address:

City of Los Angeles
Harbor Department
P.O. Box 514300
Los Angeles, CA 90051-4300

or to such other address as Executive Director may designate in writing.

5.3 Fixed Minimum Compensation: Tenant shall pay in advance to the City on or before the first day of each and every month of the term of this Agreement a Fixed Minimum Compensation, as set forth in this Section 5.

5.3.1 During the first five (5) years of this Agreement Tenant shall make monthly payments, in lawful money of the United States as follows:

First Year: Five Thousand Twenty Seven Dollars (\$5,027).
Second Year: Five Thousand Eight Hundred Sixty Five Dollars (\$5,865).
Third Year: Six Thousand Seven Hundred Three Dollars (\$6,703).
Fourth Year: Seven Thousand Five Hundred Forty One Dollars (\$7,541).
Fifth Year: Eight Thousand Three Hundred Seventy Nine Dollars (\$8,379).

5.3.2 Thereafter, the Fixed Minimum Compensation payable under this Agreement shall be re-set each successive five (5) year period pursuant to the method set forth in Section 5.11 below. Following year six (6), the Compensation rate shall also be subject to annual adjustments pursuant to the Consumer Price Index (CPI) index, as set forth below.

5.3.3 Consumer Price Index Adjustment—In the event of an adjustment pursuant to the CPI, Fixed Minimum Compensation shall equal the prior year's annual Fixed Minimum Compensation adjusted for inflation by multiplying the prior year's annual Fixed Minimum Compensation by the CPI of the current year and then dividing it by the CPI of the prior year (adjusted annual Fixed Minimum Compensation = annual Fixed Minimum Compensation x (CPI July 20CY (CY=Current Year) ÷ CPI July 20PY (PY=Prior Year))). CPI is the Consumer Price Index for All Items, All Urban Consumers ("CPI - U") for the Los Angeles-Riverside and Orange Counties, as published by the U.S. Department of Labor, Bureau of Labor Statistics as series CUURA421SAO for July of each year. If the publication of said index is discontinued, then a successor index selected by the Executive Director in his/her sole but reasonable discretion shall be substituted. CPI will have a three percent (3%) cap for each adjustment.

5.4 Percentage Compensation: Percentage Compensation shall be defined as a percentage of Gross Receipts (as defined below) that exceeds the Fixed Minimum Compensation on an annual basis. The term "Gross Receipts," as used herein, shall include all charges, sales, fees and commissions made or earned by Tenant, (if with respect to the entire Premises, its assignees, sublessees, as distinct from Third Party Users) from any business, use or operation, or any combination thereof, originating, transacted or performed, in whole or in part, on the Premises pursuant to this Agreement. "Gross Receipts" includes, but is not limited to, monies collected from rentals, services, food, beverages and the sale or delivery of goods, wares and merchandise, exclusive of retail sales taxes, excise taxes and other direct taxes on the consumer. No set off or deduction against Gross Receipts is permitted unless provided herein.

5.4.1 Years 1-5 of Permit term: Collection of Percentage Compensation shall be waived for the first five (5) years of the Permit term; provided however, if Tenant receives grant funds in reimbursement of its construction costs for Tenant Improvement of at least One Million Dollars (\$1,000,000), then the Percentage Compensation shall be two point five percent (2.5%) of Gross Receipts that exceeds the Fixed Minimum Compensation on an annual basis; and if the Tenant receives Two Million Dollars (\$2,000,000) or more grant funds, then the

Percentage Compensation for the first five (5) years shall be five percent (5%) of Gross Receipts that exceeds the Fixed Minimum Compensation on an annual basis.

5.4.2 Thereafter, Tenant shall be obligated to pay to City for each and every year of the term of this Agreement Percentage Compensation as follows:

5.4.2.1 Years 6-10 of Permit term: Tenant shall pay to City for each and every month of the term of this Agreement, Percentage Compensation equal to four percent (4%) of Gross Receipts that exceeds the Fixed Minimum Compensation on an annual basis, provided however, if Tenant receives an amount in excess of One Million Dollars (\$1,000,000) in grant funds in reimbursement for the cost of Tenant Improvements, Percentage Compensation for years six (6) thru ten (10) shall be five percent (5%) of Gross Receipts that exceeds the Fixed Minimum Compensation on an annual basis.

5.4.2.2 Years 11 - 15 of Permit term: Tenant shall pay to City for each and every month through the fifteenth year of the term, Percentage Compensation equivalent, if any, to five percent (5%) of Gross Receipts that exceeds the Fixed Minimum Compensation on an annual basis.

5.4.3 Tenant shall have prepared and delivered to City within fifteen (15) days after the end of each month, on a form prepared by the Los Angeles Harbor Department or in a format approved by the Los Angeles Harbor Department, a written statement signed by Tenant's duly authorized officer or a representative showing in reasonable detail the elements and amount of Gross Receipts during the year. Payment of the Percentage Compensation shall accompany the written statement.

5.4.3.1 Tenant shall further have prepared and delivered to City on or before the one hundred and eightieth (180th) day following the end of each fiscal year beginning in the sixth year of the term of this Agreement, and on or before the one hundred and eightieth (180th) day after the end of the term of this Agreement, a complete, certified, reviewed annual statement, prepared by a Certified Public Accountant and signed by Tenant's duly authorized officer or representative, showing in reasonable detail the elements and amounts of Gross Receipts during the preceding year or fraction thereof. At the time the annual statement is submitted by Tenant to City, Tenant shall pay to City the amount of Percentage Compensation, if any, due.

5.4.4 The Percentage Compensation is due and payable within fifteen (15) days following the end of the preceding month. Should the term of this Agreement commence on a day other than the first day of a calendar year, the

Percentage Compensation for the first fractional month and the month beginning immediately thereafter shall be due within fifteen (15) days following the end of the month beginning immediately after the first fractional month. The payment for the last fractional month shall be made within fifteen (15) days following the end of the term of this Agreement.

5.4.5 Percentage Compensation for any month-to-month tenancy beyond the term of this Agreement shall be paid in the same manner as if the term of this Agreement had commenced with the first day of such holdover. In the event of a holdover, Tenant shall pay Percentage Compensation monthly. And in the event the period of holdover lasts longer than one year, the Percentage Compensation paid shall be subject to monthly reconciliation for each preceding month by submission by Tenant of a written statement signed by Tenant's duly authorized officer or a representative showing in reasonable detail the elements and amount of Gross Receipts during the period in question and a complete, reviewed annual statement, prepared by a Certified Public Accountant and signed by Tenant's duly authorized officer or representative, showing in reasonable detail the elements and amounts of Gross Receipts during the preceding year or fraction thereof.

5.4.6 In the event the varying nature of the business causes the amount of Percentage Compensation for a period year to fluctuate, Tenant may be eligible for a refund from the City. The amount of the refund is the difference between (1) the amount of Compensation actually paid during the Permit year (assuming Tenant has paid all Compensation as it becomes due during the Permit year), and (2) Tenant's annual Gross Receipts multiplied by the percentage figure set forth above. In no event shall Tenant's total Compensation be less than the Fixed Minimum Compensation. Tenant shall be entitled to the credit only if the Compensation payments due during the Permit year have been timely made pursuant to Sections 5.3 and 5.4.3. If Tenant is eligible for a refund, City shall reimburse Tenant for any undisputed credit due within ninety (90) days of the submission of reviewed financials pursuant to subsection 5.4.3 above.

5.5 Compensation Deposit. For the first five (5) years of the term of this Agreement, Tenant shall deposit the sum of Sixteen Thousand Seven Hundred Fifty Eight Dollars (\$16,758) with Board at the address shown in subsection 5.2 above prior to the issuance of the Permit granted by this Agreement. To the extent City has a Compensation Deposit from Tenant as of the Effective Date, the Tenant may offset the amounts on such deposit against any Compensation Deposit then due. Following Year Five (5) of the term, Tenant shall deposit the sum equal to two (2) months Fixed Minimum Compensation, as determined by the Board. Said deposit shall be held as a guarantee to cover delinquent Compensation. In the event all or a part of the deposit is used to apply against Compensation due and unpaid, Tenant shall immediately make another deposit in an amount equal to the amount so used, so that at all times during the term of this Agreement said deposit shall be maintained in the sum stated above.

5.6 Business Curtailment. For any period during which Tenant has ceased or substantially curtailed the operation and conduct of its business under this Agreement for reasons other than partial or total destruction of the demised Premises, Tenant shall pay Percentage Compensation for that period at the rate at which Percentage Compensation was paid during the three (3) immediately prior years of the term of this Agreement, or during the period in which this Agreement has been in effect, whichever is the shorter period of time.

5.7 Delinquent Compensation Payments. Compensation payments required to be made by this Section 5 which have not been paid within ten (10) calendar days of the date such payments are due ("grace period") shall be subject to a service charge assessed as simple interest at the rate of 1/30 of two percent (2%) of the invoice amount remaining unpaid each day. Tenant acknowledges it knows the day of the month its Compensation charges are due and that the ten (10) calendar day grace period commences from the Compensation due date, not the date of City's invoice. Said service charge shall be imposed even if all or a portion of any sum on deposit as a guarantee against delinquent Compensation is applied to the amount due. The City has the unqualified right, upon thirty (30) days' prior notice to Tenant, to change the level of the delinquency service charge.

5.8 Records and Accounts. All books, accounts and other records showing the affairs of Tenant with respect to its business transacted at, upon or over the Premises shall be maintained locally, and shall be subject to examination, audit and transcription by Executive Director or any person designated by him; and in the event it becomes necessary to make such examination, audit or transcription at any place other than within fifty (50) miles of the Premises, then all costs and expenses necessary or incident to such examination, audit or transcription shall be paid by Tenant. These records shall be retained during the term of this Agreement so that the records for the four (4) most recent years are available. After this Agreement terminates, Tenant shall maintain the records for the four (4) most recent years for at least two (2) years. Upon request in writing by Executive Director or his designated representative, Tenant shall furnish a statement of the exact location of all records and the name and telephone number of the custodian of these records. The statement shall be submitted within fifteen (15) days of the request and shall contain such detail and cover such period of time as may be specified in any such request.

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

5.10 Supervision of Business Practices. The nature and manner of conducting any and all business activities on the Premises shall be subject to reasonable regulation by Board. In the event such business is not conducted in a reasonable manner as determined by Board, it may direct that corrective action be taken by Tenant or its Third Party Users or sublessees to remedy such practices and upon failure to comply therewith within thirty (30) days of Tenant receiving such written

notice, or as otherwise reasonably agreed to by the parties. Board may declare this Agreement terminated.

Pursuant to the provisions of Section 608 of the City Charter and the Tide and Submerged Land Grant referred to in Section 4.6 of this Agreement, Tenant its Third Party Users and sublessees shall use the Premises in such a manner so that there shall be no discrimination made, authorized or permitted in the rates, tolls, or charges or in the facilities provided for any use or service in connection therewith.

Tenant shall also conduct its business and cause the businesses of its Third Party Users and sublessees upon the Premises to be conducted in a first-class manner. Tenant shall furnish and maintain a standard of service at least equal to that of the better class of similar businesses providing similar services and facilities in the City of Los Angeles and adjacent communities during the entire term of this Agreement.

Board reserves the right to have access to and inspect the schedule of rates and prices for services and facilities performed or provided upon the Premises. In the event that after Tenant has been advised and given a reasonable opportunity to confer with Board, and to the extent applicable, the California Public Utilities Commission, and to justify any rate or price challenged by it as unreasonable or noncompensatory, and Board has determined such rate or price to be unreasonable or inappropriate for the services rendered or the facilities provided, such rates or prices shall be modified by Tenant as directed by Board and as permitted by the California Public Utilities Commission.

5.11 Renegotiation of Compensation. The Compensation to be paid by Tenant to Board for each five (5) year period or any portion thereof following the first five (5) year period of the term of this Agreement shall be readjusted, except with respect to the Percentage Compensation, the first readjustment of which pursuant to this Section 5.11 shall occur after the period set forth in Section 5.4.2.3 above, following the fifteenth (15) year, but which Percentage Compensation thereafter shall be readjusted for each five (5) year period or any portion thereof. Such Compensation shall be mutually agreed upon between Tenant and Board at some time not more than nine (9) months and not less than three (3) months before the beginning of each such period. The Compensation shall be established by order of Board provided that if Compensation has not been determined by the beginning of the new Compensation period, Compensation for the new period, subject to the final Compensation being negotiated, shall be one hundred fifty percent (150%) of the Compensation for the former period, which shall be paid in the same manner as provided in Section 5.1 et seq of this Agreement, except that the Board, at its sole discretion, by written notice to Tenant, may reduce the percentage increases of one hundred fifty percent (150%) to a lesser amount. If negotiation for the new Compensation has not begun six (6) months prior to expiration of each five (5) year period, Tenant shall immediately set a date with City to discuss the readjustment of Compensation. If Tenant and Board cannot agree upon the amount of such Compensation, the Compensation for the new period shall be determined in the following manner:

Three appraisers shall be appointed. One appraiser shall be appointed by Board, one by Tenant and the third by the two appraisers so appointed. Each appraiser shall be instructed to follow and shall comply with the Appraisal Scope of Work attached hereto as Exhibit "D". Each appraiser shall at minimum possess the qualifications set forth in the Appraiser Qualifications attached hereto as Exhibit "E". If such Compensation has not been mutually agreed upon within the time above prescribed, Board shall give to Tenant a written notice demanding an appraisal of the fair rental value of the Premises and naming the person appointed by Board to act as an appraiser on its behalf. With respect to Percentage Compensation, the appraisers shall base any new Percentage Compensation on commercially reasonable percentages for the locale for similar types of business. Within fifteen (15) days from the service of such notice, Tenant shall appoint an appraiser and notify Board of such appointment. If either party shall not have notified the other in writing of the appointment of its appraiser, the Presiding Judge of the Superior Court of the State of California for the County of Los Angeles shall, upon the request of either party, appoint the appraiser for the party so in default. If the two appraisers so chosen shall be unable to agree upon the third appraiser within ten (10) days after the appointment of the second appraiser, the third appraiser shall be appointed by said Presiding Judge. Any vacancy shall be filled by the party who made the original appointment to the vacant place.

The appraisers shall file their opinions concerning the fair rental value of the Premises in writing with Board within sixty (60) days after the appointment of the third appraiser. Such opinions shall take into consideration the uses permitted under this Agreement and all of its terms, conditions and restrictions. Such opinions shall also take into consideration all of the factors and data relating to such value which may properly be considered in determining the fair value of leaseholds under the laws of eminent domain in the State of California. If any appraiser fails to file his opinion within said sixty (60) days, a new appraiser shall be appointed in the manner prescribed above.

Upon the filing of three opinions, Board shall properly set a date for, and on said date hold, a public hearing. At such hearing, said opinions and such other evidence of the fair Compensation value of the Premises as may be presented by Tenant or others shall be received and considered. The Board may reject and refuse to consider any appraisal prepared by an appraiser who lacked the qualifications identified in Exhibit "E", or which did not comply with the scope of work described in Exhibit "D". Based upon said opinions and such other evidence, Board's adopted policy on rate of return, and any other relevant factors, Board shall determine the fair Compensation value of the Premises and shall establish the same by order as the Compensation to be paid by Tenant for the five (5) year period under consideration, except that if the Tenant rejects the amount determined for a re-adjusted Percentage Compensation, Tenant may terminate this Agreement and comply with the Restoration and Surrender of Premises provisions of Section 11.

Each party shall pay the costs and expenses of the appraiser appointed by it, together with fifty percent (50%) of the costs and expenses of the third appraiser.

The monies paid at the one hundred fifty percent (150%) rate shall count against the new Compensation which shall accrue from the date the new five (5) year period commences. If the new Compensation is more than the Compensation paid at the one hundred fifty percent (150%) rate, Tenant shall immediately pay City the difference due for the period in question. If the new Compensation is less than the amount paid at the one hundred fifty percent (150%) rate, Tenant shall be entitled to a credit against future sums owed to City under this Agreement. No interest shall accrue on the amount due to City or Tenant pursuant to this provision except to the extent Tenant fails to pay any deficiency within thirty (30) days of a billing from City. If interest is due, it shall accrue at the rate provided in Item No. 270 of Port of Los Angeles Tariff No. 4 (or its successor), currently consisting of simple interest of 1/30 of two percent (2%) of the invoice amount remaining unpaid each day.

5.12 Disputed Payments. Tenant recognizes that disputes may arise over monies due City in accordance with this Agreement. Tenant and City shall make a good faith effort to resolve any disputes as expeditiously as possible. Tenant agrees, upon receiving a billing from City which it disputes, to deposit the disputed amount in the form of cash, or certificate of deposit, in City's name in an escrow account to be mutually agreed upon by the parties within sixty (60) days of the date of billing. The deposit shall be held in the escrow account pending the resolution of the dispute. Each party shall share the costs of the escrow account on a 50/50 basis. If the dispute is resolved in City's favor, City shall receive the money and all accumulated interest. If the dispute is resolved in Tenant's favor, Tenant shall receive the money and all accumulated interest. Tenant understands that its failure to provide a deposit acceptable to City within sixty (60) days shall be considered a material default of this Agreement and City shall be entitled to cancel this Agreement upon thirty (30) days' written notice. If Tenant is obligated to pay City any charges due under Port of Los Angeles Tariff No. 4 (or its successor) pursuant to this Agreement, then failure to provide a deposit shall require Tenant to make all payments in accordance with Item No. 265 of the Tariff and Tenant shall be removed from the Credit List authorized by Item No. 260 of the Tariff or as amended or superseded. This subsection 5.12 shall not apply to any one billing for a disputed amount exceeding One Hundred Thousand Dollars (\$100,000), provided Tenant shall be required to deposit One Hundred Thousand Dollars (\$100,000) with City. If City prevails in the dispute and the amount due City exceeds One Hundred Thousand Dollars (\$100,000), Tenant shall pay the difference due within fifteen (15) days with interest at the rate set forth in Section 5.7 from the date of City's initial billing to Tenant.

5.13 Services and Utilities. Unless otherwise provided for herein, Tenant shall pay all charges for services furnished to the Premises or used in connection with its occupancy, including, but not limited to, heat, gas, power, telephone, water, light and janitorial services, and pay all deposits, connection fees, charges and meter rentals required by the supplier of any such service, including City.

5.14 Effective Date of Compensation. The effective date of Compensation shall be the date as established by the approval of the Certificate of Occupancy,

temporary or otherwise, from the Los Angeles Department of Building and Safety, or when the Chief Harbor Engineer reasonably determines that the City Improvements are substantially complete, whichever is later. Use of the Premises during the construction period, when Tenant cannot conduct passenger operations, shall be granted on a no-charge basis.

Section 6. Tenant's Environmental Obligations During Term of Agreement.

6.1 Tenant shall agree to the following:

Definitions.

6.1.1 Environmentally Regulated Material. "Environmentally Regulated Material" shall mean any hazardous or toxic substance, material, or waste at any concentration that is or becomes regulated by the United States, the State of California, or any local or governmental authority having jurisdiction over the Premises. Environmentally Regulated Material includes but is not limited to:

(a) Any "hazardous substance" as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") (42 U.S.C. Sections 9601-9675) in its present or successor form;

(b) "Hazardous waste" as that term is defined in the Resource Conservation and Recovery Act of 1976 ("RCRA") (42 U.S.C. Sections 6901-6992k) in its present or successor form;

(c) Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance or requirement (including consent decrees and administrative orders imposing liability or standard of conduct concerning any hazardous, dangerous or toxic waste, substance or material, now or hereinafter in effect);

(d) Radioactive material, including any source, special nuclear, or byproduct material as defined in 42 U.S.C. Sections 2011-2297g-4 in its present or successor form;

(e) Asbestos in any form or condition;

(f) Polychlorinated biphenyls ("PCBs") and substances or compound containing PCBs; and

(g) Petroleum products.

6.1.2 Environmental Laws. "Environmental Laws" shall mean the environmental laws and implementing regulations which are a subset of the Applicable Laws defined in Section 4.3 and which are applicable to the Premises and/or Tenant's use and/or occupancy thereof, in their form as of the Effective Date or as subsequently amended, or as may be promulgated during the term of this Agreement or any holdover. Such Environmental Laws include but are not limited to:

- (a) CERCLA and its implementing regulations;
- (b) RCRA and its implementing regulations;
- (c) The federal Clean Water Act (33 U.S.C. Sections 1251-1376, et seq.) and its implementing regulations;
- (d) The California Porter Cologne Water Quality Control Act (California Water Code, Division 7) and its implementing regulations;
- (e) The federal Clean Air Act (42 U.S.C. Sections 7401-7601) and its' implementing regulations;
- (f) The California Clean Air Act of 1988 and its implementing regulations;
- (g) The state Lewis Air Quality Act of 1976 and its implementing regulations; and
- (h) Any other applicable federal, state, or local law, regulation, ordinance or requirement (including consent decrees and administrative orders imposing liability or standard of conduct) now or hereinafter in effect which concerns Environmentally Regulated Material, the Premises and/or Tenant's use and/or occupancy thereof.

6.1.3 Term Release. "Term Release" shall mean a spill, discharge or any other type of release of Environmentally Regulated Material that occurs on the Premises during the term of this Agreement or any holdover, whether caused by Tenant or a third-party (other than invitees under a temporary assignment pursuant to Section 4.8 or third-parties whose access to the Premises has been requested by City pursuant to Section 3.3), that contaminates or threatens to contaminate City's Improvements, adjacent harbor waters, soil, sediment, groundwater or air of the Premises or of adjacent premises (including soil, sediment, groundwater or air of those adjacent premises).

6.1.4 Term Contamination. "Term Contamination" shall mean all contamination of improvements, adjacent harbor waters, soil, sediment, groundwater or air of the Premises or of adjacent premises (including soil,

sediment, groundwater or air of those adjacent premises) resulting from all Term Releases.

6.1.5 Term Characterization Work Plan. "Term Characterization Work Plan" shall mean the written work plan submitted by Tenant to City, the sufficiency of which is subject to City's reasonable approval, that details all work (including sampling and analysis) necessary to generate a written characterization of the nature and extent of contamination (including contamination of air, soil and water) caused by a Term Release or Term Releases and that includes detailed programs for sampling and chemical analysis of soil and groundwater, which programs shall conform with Environmental Laws, accepted principles of environmental science, established regulatory protocols and the Port of Los Angeles "Site Characterization Guidance Manual" as it exists as of the Effective Date or as it may be subsequently amended ("Site Characterization Guidance Manual"). Tenant acknowledges receipt of a copy of such Manual. Following the Effective Date, Tenant shall be solely responsible for obtaining and maintaining the current version of the Site Characterization Guidance Manual.

6.1.6 Term Characterization Report. "Term Characterization Report" shall mean the written report submitted by Tenant to City, the sufficiency of which is subject to City's reasonable approval, that details all findings made as a result of performing the Term Characterization Work Plan and that conforms with the Site Characterization Guidance Manual.

6.1.7 Term Remediation Action Plan. "Term Remediation Action Plan" shall mean the written plan submitted by Tenant to City, the sufficiency of which is subject to City's reasonable approval, that addresses remediation of all contamination caused by Environmentally Regulated Material in soil, harbor waters, groundwater and sediment as identified in the Term Characterization Report, that conforms with Tenant's obligations as set forth below in Section 6.2 and that includes a discussion of remedial action alternatives for restoration of the Premises and a timetable for each phase of restoration. The Term Remediation Action Plan shall comply with Environmental Laws, established regulatory protocols, accepted principles of environmental science and the Site Characterization Guidance Manual.

6.2 Tenant Responsibility for Term Contamination.

6.2.1 Tenant shall remediate or cause the remediation of any Term Releases by removing or effecting the removal of all contaminated soil, water, groundwater, sediment or other material it may place or may have placed on site such that no encumbrances, such as deed or land use restrictions, be imposed on the property as a result of such Term Releases and/or Term Contamination.

6.2.2 Subject to Section 6.2.3, except for conditions of the Premises that existed prior to the Effective Date, Tenant bears sole responsibility for full compliance with any and all Applicable Laws regarding the use, storage, handling, distribution, processing, and/or disposal of Environmentally Regulated Material, regardless of whether the obligation for such compliance or responsibility is placed on the owner of the land, on the owner of any improvements on the Premises, on the user of the land, or on the user of the improvements. Tenant agrees that any claims, damages, fines or other penalties asserted against or levied on City and/or Tenant as a result of noncompliance with any Applicable Laws shall be the sole responsibility of Tenant and that Tenant shall indemnify and hold City harmless from any and all such claims, damages, fines and penalties, as well as any costs expended to defend against such claims, damages, fines and penalties, including attorneys' fees. City, at its sole option, may pay such claims, damages, fines and penalties resulting from Tenant's noncompliance with any of the aforementioned authorities, and Tenant shall indemnify and reimburse City for any such payments.

6.2.3 Tenant acknowledges and agrees that it has reviewed and approved the scope of work document attached hereto as Exhibit "F" which document constitutes the plan for developing the written depiction of the environmental condition of the Premises. When a draft Baseline Report becomes available, it shall be transmitted to Tenant for Tenant's review and comment within forty-five (45) days. City shall finalize the Baseline Report. Once the final Baseline Report becomes available, it shall be substituted for Exhibit "F" of this Agreement without further action by Board, City or Tenant upon its transmittal to the Tenant by the Executive Director, and at which time and hereinafter shall become effective and operative as the "Baseline Report."

6.2.4 City and Tenant acknowledge that prior to the Effective Date, the Premises were occupied by users including Tenant for approximately twenty (20) years under an entitlement separate from this Agreement ("Tenant Prior Occupancy") and others and that as a result of such prior use and occupancy, the Premises on the Effective Date possess levels of contamination depicted in the Baseline Report ("Existing Contamination"). As to City, Tenant bears no responsibility for Existing Contamination that was not caused by Tenant during its prior occupancy. If Catalina Channel Express, Inc. caused any Existing Contamination, Tenant shall bear full responsibility, financial and otherwise, for remediating such contamination.

6.2.5 Tenant acknowledges and agrees that a presumption shall exist that any contamination not specifically depicted and analyzed in the Baseline Report constitutes Term Contamination for which, as between City and Tenant, Tenant is solely responsible. City shall provide written notice of the existence of any such contamination to Tenant. Tenant may rebut such presumption by providing to City, within one hundred and twenty (120) days of City's written notice, conclusive evidence demonstrating that such contamination is not Term

Contamination. Otherwise, such presumption shall be deemed confirmed making Tenant solely responsible for such contamination. Whether any information submitted by Tenant rebuts the aforementioned presumption shall be within City's sole and absolute discretion, exercised reasonably and in good faith. This provision shall survive the expiration or earlier termination of this Agreement.

6.3 Environmentally Regulated Material on Premises.

Tenant shall not cause or permit any Environmentally Regulated Material to be generated, brought onto, handled, used, stored, transported from, received or disposed of (hereinafter sometimes collectively referred to as "handle" or "handled") in or about the Premises, except for: (i) limited quantities of standard office and janitorial supplies containing chemicals categorized as Environmentally Regulated Material; (ii) Environmentally Regulated Material handled as cargo while undertaking a Permitted Use; and (iii) Environmentally Regulated Material handled in conformity with Tenant's ECP as referenced in Section 6.5.2. Tenant shall handle all such Environmentally Regulated Material in strict compliance with Environmental Laws in effect during the term of this Agreement or any holdover.

6.4 Tenant Obligations In the Event of a Term Release.

6.4.1 Upon occurrence of a Term Release, Tenant, at its sole cost and expense, shall initiate and complete the procedure set forth below in Sections 6.4.2 through 6.4.11. Executive Director may alter, supplement or delete any of the procedures set forth in Sections 6.4.2 through 6.4.11 at his or her sole reasonable discretion by giving Tenant reasonable written notice of such alteration, supplementation or deletion.

6.4.2 Immediately, to facilitate emergency or other response, and in accordance with Environmental Laws and in no event later than fourteen (14) calendar days following its discovery of the Term Release, Tenant shall provide a written report to City that details all known information regarding such release and any resultant contamination, which information shall include but not be limited to: (i) the date, time and specific location of the release; (ii) the specific type and quantities of materials released; (iii) the cause(s) or suspected cause(s) of the release; (iv) photographs of the release and any and all equipment or fixtures involved; (v) corrective action taken or planned to be taken by or on behalf of Tenant to address the cause or suspected cause of the release; and (vi) the names and contact information of individuals and entities acting for or on behalf of Tenant to address the release, including environmental consultants.

6.4.3 According to a schedule prescribed in writing by Executive Director or the applicable governmental agency with jurisdiction, Tenant shall make or cause to be made any and all necessary corrective actions to address the cause

or suspected cause of the Term Release, including but not limited to equipment repairs and/or replacements.

6.4.4 Within thirty (30) calendar days following its discovery of the Term Release, Tenant shall provide written notification of the Term Release and any resultant contamination to all applicable regulatory agencies as required by Environmental Laws, with copies of such notification(s) to City;

6.4.5 Within thirty (30) calendar days following its discovery of the Term Release, Tenant shall provide written notification to City of the consultant(s), if any, Tenant plans to utilize in connection with the Term Characterization Work Plan. Such written notification shall set forth the names of the individuals forming the consultant team, and their qualifications. City shall approve such consultants in its sole reasonable discretion.

6.4.6 Subject to any schedule or protocol required by any governmental agency with jurisdiction which schedule or protocol shall take precedence over these Sections 6.4.6 through and including 6.4.11, within thirty (30) calendar days following City's approval of Tenant's consultant, Tenant shall submit the Term Characterization Work Plan to City for its written approval. Provided Tenant delivers to City a complete Term Characterization Work Plan as hereinabove required, City shall use its best reasonable efforts to expeditiously approve or disapprove such plan. Tenant shall provide additional information upon request of City if City deems the Term Characterization Work Plan inadequate.

6.4.7 Within forty-five (45) calendar days following City's transmittal of its written approval of the Term Characterization Work Plan, Tenant shall commence and complete investigation and testing in accordance with the plan, and shall provide to City the results of such investigation and tests as they become available.

6.4.8 Within one hundred twenty (120) calendar days following City's written approval of the Term Characterization Work Plan, Tenant shall submit the Term Characterization Report to City for its written approval. Tenant shall provide additional information upon request of City if City deems the Term Characterization Report inadequate. Concurrently, Tenant shall submit a report detailing all corrective action taken by Tenant to address the cause or suspected cause of the Term Release. Tenant shall supplement such corrective action if so requested by City.

6.4.9 If so requested in writing by Executive Director, within sixty (60) calendar days following such request, Tenant shall prepare at its sole cost and expense and submit to City for its approval the Term Remediation Action Plan, together with a list of the consultants Tenant proposes to execute such plan and such consultants' qualifications (both organizationally and broken down by

consultant team member), both of which City shall approve in its sole reasonable discretion. Provided Tenant delivers to City a complete Term Remediation Action Plan, City shall use its best efforts to approve or disapprove such plan in a timely manner. Tenant shall provide additional information upon request of City if City deems the Term Remediation Action Plan inadequate.

6.4.10 Within a timeframe reasonably established and communicated to Tenant by City following City's written approval of the Term Remediation Action Plan, Tenant shall complete or cause the completion of all work contemplated by the Term Remediation Action Plan. If, in the sole and absolute determination of Executive Director, such contamination resulting from the Term Release cannot be remediated on site to the satisfaction of City, Tenant shall remove and properly dispose of all soil, water, groundwater, sediment or other material contaminated by the Term Release and, in the cases of soil or sediment contamination, replace same with clean soil or material suitable to City.

6.4.11 The adequacy of Tenant's execution of any Term Remediation Action Plan shall be within the sole reasonable discretion of Executive Director. Tenant shall notify Executive Director in writing when it believes it has completed all work contemplated by the Term Remediation Action Plan. If, upon investigation, Executive Director reasonably concludes that additional tasks must be fulfilled in order to complete all work contemplated by the Term Remediation Action Plan, Tenant shall complete such tasks forthwith. Upon fulfillment of such tasks, Tenant again shall notify Executive Director in writing, which will re-initiate the approval process for execution of a Term Remediation Action Plan.

6.4.12 If Tenant fails to wholly or partially fulfill any obligation set forth in the preceding Sections 6.4.2 through 6.4.11, City may (but shall not be required to) take all steps it deems necessary to fulfill such obligation. Any action taken by City shall be at Tenant's sole cost and expense and Tenant shall indemnify and pay for and/or reimburse City for any and all costs (including any administrative costs) City incurs as a result of any such action it takes.

6.5 Environmental Compliance.

6.5.1 In its use and occupancy of the Premises, Tenant shall comply (and shall immediately halt and remedy any incident of non-compliance) with: (a) Environmental Laws; (b) all applicable environmental policies, rules and directives of City's Harbor Department ("Port Environmental Policies") as set forth on Exhibit "G-1" hereto; and (c) the environmental mitigation measures ("Mitigation Measures") and Mitigation Monitoring and Reporting Program set forth collectively in Exhibit "G-2" hereto.

6.5.2 Tenant shall establish and thereafter observe and maintain a written program to facilitate such compliance in accordance with the format and content and other requirements set forth on Exhibit "G-2" hereto, which program

shall be referred to as the "Environmental Compliance Program" or "ECP." City's review and approval of such ECP shall not relieve Tenant of its obligations pursuant to this Section 6.5.

6.5.3 Following the Effective Date, upon mutual written agreement of Board and Tenant, Board may revise Exhibit "G-2".

6.6 Environmental Audits. Tenant shall perform written audits of its ECP, periodically as required by the Executive Director but in no event more frequently than annually. The results of such audits shall be maintained on Premises for review by City. City shall have the right to conduct, at its sole cost and expense, periodic audits of Tenant's compliance with the ECP and management of Environmentally Regulated Material. Tenant shall provide access to backup materials supporting the ECP necessary for City to conduct such audits. City shall provide Tenant with copies of any written reports or results of such audits promptly upon completion of such documents.

6.7 Waste Disposal. In discharging its obligations under this Section 6, if Tenant disposes of any soil, material or groundwater contaminated with Environmentally Regulated Material, within thirty (30) days of Tenant's receipt of original documents, Tenant shall provide City copies of all records, including a copy of each uniform hazardous waste manifest indicating the quantity and type of material being disposed of, the method of transportation of the material to the disposal site and the location of the disposal site. The name of the City of Los Angeles, the Port of Los Angeles or the City's Harbor Department shall not appear on any manifest document as a generator of such material.

6.8 Laboratory Testing. In discharging its obligations under this Section 6, Tenant shall perform any tests using a State of California Department of Health Services certified testing laboratory or other similar laboratory of which City shall approve in writing. By signing this Agreement, Tenant hereby irrevocably directs any such laboratory to provide City, upon written request from City, copies of all of its reports, test results, and data gathered. As used in this Section 6.8, "Tenant" includes agents, employees, contractors, subcontractors, and/or invitees of the Tenant.

6.9 Survival of Obligations. Except as otherwise provided in this Section 6, this Section 6 and the obligations herein shall survive the expiration or earlier termination of this Agreement.

Section 7. Improvements

7.1 City's Improvements.

7.1.1 Plans and Specifications. City in consultation with Tenant has prepared or shall prepare plans and specifications for the construction, erection and installation of City's Improvements referenced in and listed and described in the attached Exhibit "B", Section B, which City Improvements, including the

relocation of the Lane Victory, shall be pursued with all due diligence and dispatch on a time is of the essence basis. Any plans and specifications approved prior to the date of Tenant's execution of this Agreement shall be deemed approved by Tenant upon such execution. Any additional plans and specifications shall be submitted to Tenant for inspection and approval, which approval shall not be unreasonably withheld. In the event Tenant fails to approve or disapprove such plans and specifications within thirty (30) days from City's transmittal thereof, the plans and specifications shall be deemed approved by Tenant.

7.1.2 Implementation of Plans and Specifications. When the plans and specifications have been approved by Tenant (or if Tenant shall fail to approve or disapprove the plans and specifications within thirty (30) days after City's transmittal thereof), City may advertise for bids and, within a reasonable period of time after receipt of bids, award a contract or contracts for work described in the plans and specifications.

7.1.3 City shall deliver City's Improvements as set forth on Exhibit "B".

7.1.4 Allocation of Risk and Responsibility. City warrants and represents that it shall have City's Improvements constructed in compliance with the plans and specifications referenced in Section 7.1.1.

7.2 Alteration of Premises by Tenant.

7.2.1 Alterations Require City Authorization. Tenant acknowledges City's interest in controlling the manner in which physical changes are made to the Premises after the Effective Date, other than the improvements permitted by ADP. No. 111222-162, and covenants that, other than maintenance and repair undertaken in compliance with Section 8, it shall make no Tenant Improvements, alterations, additions or changes to the Premises including but not limited to the construction of works or improvements or the changing of the grade of the Premises ("Alteration") without obtaining City's prior written authorization to undertake such Alteration.

7.2.2 Authorization Procedure. Tenant shall obtain written authorization to undertake an Alteration according to the following procedure:

7.2.2.1 If Tenant desires to undertake an Alteration, Tenant shall submit to City a complete Application for Discretionary Projects that attaches a complete set of drawings, plans, and specifications reflecting the proposed Alteration. Such drawings, plans and specifications shall be prepared and stamped by a licensed engineer registered in the State of California. Tenant bears sole responsibility for the completeness of such submittal.

7.2.2.2 The Harbor Engineer shall have the right to require changes to the drawings, plans and specifications Tenant submits in connection with such

Application for Discretionary Projects. If Harbor Engineer orders such a change and Tenant believes that such a change will have any detrimental effect on the structural integrity of the works, project or improvements, or increase any hazard to life or property, Tenant shall immediately notify him/her. If Tenant fails to provide such notification, the drawings, plans and specifications shall be treated for all purposes as if they had been originally prepared by Tenant, as changed. Harbor Engineer's approval of Tenant's submittal, if any, will be reflected by issuance of a Harbor Engineer's General Permit.

7.2.2.3 Tenant acknowledges that, in addition to obtaining a Harbor Engineer's General Permit, Tenant additionally may be required to obtain permits and authorizations with respect to the proposed Alteration from City, federal and state bodies ("Non-Harbor Department Permits"), the issuance of which City's Harbor Department does not control. In any event, obtaining the Harbor Engineer's General Permit and any Non-Harbor Department Permits necessary to undertake the proposed Alteration is and shall be the sole responsibility of Tenant. Pursuant to Section 4.3, every Alteration made by Tenant shall conform with Applicable Laws, as well as with the plans and specifications as approved by Harbor Engineer.

7.2.2.4 Tenant acknowledges that issuance of the Harbor Engineer's General Permit by City's Harbor Department shall be conditioned upon Tenant's demonstration that it has obtained all other permits and authorizations with respect to the proposed Alteration as may be required by entities other than City's Harbor Department.

7.2.2.5 Upon completion of all work necessary to construct the Alteration, Tenant shall provide City with written confirmation that such work conformed with all permits issued, and "as-built" plans and/or drawings for such work in a form acceptable to Harbor Engineer. Tenant acknowledges that City may perform inspections of the Alteration to ensure that such Alteration conformed with the permits issued. Tenant shall undertake any corrective measures reasonably requested by City as a result of such inspections.

7.2.3 Notice of Commencement and Completion of Work. Tenant shall give advance written notice to Harbor Engineer of the date it will commence any construction. Within thirty (30) days of completion of construction, Tenant shall provide written notice to Harbor Engineer of the date of such completion, copies of "as-built" plans for such construction, copies of all permits issued in connection with such construction and copies of all documentation issued in connection with such completed construction, including but not limited to inspection reports and certificates of occupancy.

7.2.4 Cost of Permits. Tenant, at its sole cost and expense, shall obtain all permits necessary for such construction and shall require by contract that its

construction contractors and subcontractors comply with all applicable federal, state, regional, and local statutes, ordinances, rules and regulations.

7.2.5 Cost of Construction. All construction by Tenant pursuant to this Section 7 shall be at Tenant's sole cost and expense. Tenant shall keep the Premises and improvements constructed free and clear of liens for labor and materials and shall hold City harmless from any responsibility in respect thereto.

7.2.6 Property of Tenant. All property brought onto the Premises by Tenant, or in the care, custody or control of Tenant, to undertake the Permitted Uses or otherwise shall be and remain the property of Tenant, subject to the terms and conditions contained herein, and shall be there at the sole risk of Tenant. Tenant hereby waives all claims against City with respect to such property, except for injury or damage to such property caused by City's sole negligence or willful misconduct.

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

If Tenant neglects, fails or refuses within the time specified in said notice to begin or fails to prosecute diligently to complete the work of locating any pipeline or any other substructure under Tenant's control or servicing Tenant's operation within the Premises granted herein, the City shall have the right to enter onto the Premises and perform the work designated in the notice. All subsurface exploration required by the provisions contained herein whether performed by Tenant or City shall be performed at Tenant's expense. In addition, Tenant agrees to bear the cost of any and all damage of whatever nature caused by any act, omission, or negligence of the City and any and all of its boards, officers, agents, consultants, and employees in the performance of said subsurface exploration as required by this provision. Work performed by City or City's contractors under this provision does not alter Tenant's obligation to maintain the Premises in a safe condition, both during and after completion of the work.

7.2.7.1 Rules Governing Pipelines. After installation, and in any event for the duration of this Agreement, Tenant shall comply with pipeline testing and

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

7.2.7.2 Pipeline Tests or Inspections. Within thirty (30) days from the Effective Date of this Agreement, and at least annually thereafter, Tenant shall provide the Director of Real Estate of City's Harbor Department and the Director of Environmental Management of City's Harbor Department with a master schedule showing dates for pipeline testing and inspection(s) in accordance with the requirements referenced in Section 7.2.7.1 above. The master schedule shall include an itemized list with corresponding line item reference numbers for each pipeline covered under the subject Agreement, corresponding required test(s) or inspection(s), date(s) of test(s) or inspection(s), method(s) of test(s) or inspection(s), applicable agency, the frequency of required test(s) or inspection(s), and the California State Fire Marshall Line No. and the California State Fire Marshall Test ID No., if applicable. If Tenant's existing pipelines are modified, or new pipelines are added to Tenant's Premises, Tenant shall follow the authorization procedure described in Section 7.2.7.1, and provide an updated master schedule with any addition or subtraction of pipelines. This shall cover testing or inspection requirements of all agencies mentioned in Section 7.2.7.1 of this Agreement, as well as any other additional required test(s) or inspection(s).

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

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

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

7.2.7.3 Relocation of Pipelines. At any time during the term of this Agreement, Board shall have the right to make any such change in the route or location of any pipeline constructed or maintained on the Premises by Tenant pursuant to the authority of this Agreement as may be required or made necessary for the progress of harbor development or the performance of any work or improvement within the jurisdiction of Board. If Board shall determine that any such change or relocation is necessary, Board shall give at least ninety (90) days' written notice to Tenant and the work of removal and relocation shall be completed within such time after said written notice as shall be fixed in said notice. The cost of any such removal and relocation shall be borne by Tenant.

7.2.8 Signs. Tenant shall not erect or display, or agree to be erected or displayed, on the Premises, or upon works, buildings and improvements made by Tenant, any advertising matter of any kind, including signs, without first obtaining the written consent of Executive Director and a Harbor Engineer's General Permit. Tenant shall post, erect and maintain on the Premises such signs as Executive Director may direct.

Section 8. Maintenance and Repair.

Except for those items to be repaired and maintained by the City or to be maintained and repaired by City at the Tenants expense identified on Exhibit "H" hereto (which Exhibit "H" may be amended by Executive Director in his or her sole reasonable discretion), Tenant, at its sole cost and expense, shall keep and maintain the Premises, and all buildings, works and improvements of any kind thereon, including the improvements existing on the Premises as of the Effective Date and City's Improvements as depicted and/or described in or on Exhibit "B,"A.(1) in good and substantial repair and condition and shall be responsible for and perform all necessary inspection, maintenance and repair thereof, including preventive maintenance, using materials and workmanship of similar quality to the original improvements. Tenant shall obtain any permits, including but not limited to those issued by City, necessary for such maintenance and repair. City shall reimburse Tenant for any repairs made necessary by use of the Premises by a temporary user pursuant to Section 4.8.

8.1 Failure to Maintain. If Tenant fails to make any repairs or to perform required maintenance within thirty (30) days after receipt of notice from City to do so,

City may, but shall not be obligated to, make such repairs or perform such maintenance. Tenant shall reimburse City for City's costs (as defined in Section 8.2) within thirty (30) days after receipt of City's invoice for work performed. In the event Tenant shall commence such repairs and diligently prosecute the same to completion or shall begin to perform the required maintenance within the thirty (30) day period, City shall refrain from commencing or prosecuting further any repairs or performing any required maintenance until the work has been completed by Tenant. Tenant shall thereafter pay on demand City's costs incurred pursuant to this Section 8.1 prior to Tenant's commencement of repair or maintenance. The making of any repairs or the performance of maintenance by City, which is the responsibility of Tenant, shall in no event be construed as a waiver of the duty or obligation of Tenant to make future repairs or perform required maintenance as herein provided.

8.2 City's Costs. "City's costs" for purposes of this Section 8 shall include, in City's sole reasonable discretion, the cost of maintenance or repair or replacement of property neglected, damaged or destroyed, including direct and allocated costs for labor, materials, services, equipment usage, and other indirect or overhead expenses arising from or related to maintenance, repair or replacement work performed by or on behalf of City.

8.3 Litter and Debris. Tenant, at its sole cost and expense, shall provide sufficient dumpsters or other like containers for trash collection and disposal and keep the Premises free and clear of rubbish, debris and litter at all times. Tenant shall perform periodic inspections and cleaning of the storm water catch basins (including filters), maintenance holes, and drains, maintaining the submerged land underlying the water berthing area at the Premises free and clear of debris from the wharf and from vessels, and cargo loading and unloading operations of vessels berthed at said berths in connection with Tenant's undertaking of the Permitted Uses. Tenant, at its sole cost and expense, further shall keep and maintain the Premises in a safe, clean and sanitary condition in accordance with all applicable federal, state, municipal and other laws, ordinances, rules and regulations.

8.4 Fire Protection Systems. All fire protection sprinkler systems, standpipe systems, fire hoses, fire alarm systems, portable fire extinguishers and other fire-protective or extinguishing systems, with the exception of hydrant systems, or appliances which have been or may be installed on the Premises shall be maintained and repaired by Tenant, at its cost, in an operative condition at all times.

8.5 City Inspections. Tenant shall provide personnel to accompany City's representatives on periodic inspections of the Premises to determine Tenant's compliance with this Agreement.

Section 9. Default and Termination.

9.1 Tenant's Default. The occurrence of any of the following shall constitute a default by Tenant under this Agreement:

(a) Tenant's failure to pay when due any rent required to be paid under this Agreement if the failure continues for three (3) days after written notice of the failure from City to Tenant;

(b) Tenant's failure to perform any other obligation under this Agreement, if Tenant fails to commence to cure the failure within thirty (30) days after delivery of written notice of the failure from City to Tenant, or if the failure continues for ninety (90) days after delivery of such notice;

(c) Tenant's abandonment of the Premises, including but not limited to Tenant's absence from the Premises for three (3) consecutive days (excluding Saturdays, Sundays, California legal holidays, and closures due to the varying nature of the business) while in default of any provision of this Agreement;

(d) To the extent permitted by law:

(1) A general assignment by Tenant or any guarantor of the Agreement for the benefit of the creditors without written consent of City;

(2) The filing by or against Tenant, or any guarantor, of any proceeding under an insolvency or bankruptcy law, unless (in the case of an involuntary proceeding) the proceeding is dismissed within sixty (60) days;

(3) The appointment of a trustee or receiver to take possession of all or substantially all the assets of Tenant or any guarantor, unless possession is unconditionally restored to Tenant or that guarantor within thirty (30) days and the trusteeship or receivership is dissolved;

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

(e) The undertaking of an unreasonable or improper use on the Premises.

9.2 Replacement of Statutory Notice Requirements. When this Agreement requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by Code of Civil Procedure Section 1161 or any similar or successor statute. If City serves a statutory notice pursuant to Code of Civil Procedure Section 1161 et seq. to declare Tenant's default, City may proceed to obtain a judgment and/or order for possession and/or for any other remedy available at law and/or equity without further notice. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Agreement) in the manner required by Section 15.9 shall replace

and satisfy the statutory service-of-notice procedures, including those required by Code of Civil Procedure Section 1162 or any similar or successor statute.

9.3 City's Remedies on Tenant's Default. On the occurrence of a default by Tenant, City shall have the right to pursue any one or more of the following remedies in addition to any other remedies now or later available to City at law or in equity. These remedies are not exclusive but are instead cumulative.

9.3.1 Termination of Agreement. City may terminate this Agreement and recover possession of the Premises. Once City has terminated this Agreement, Tenant shall immediately surrender the Premises to City. On termination of this Agreement, pursuant to Civil Code Section 1951.2 or its successor, City may recover from Tenant all of the following:

(a) The worth at the time of the award of any unpaid rent that had been earned at the time of the termination, to be computed by allowing interest at the rate set forth in Item 270 of the Tariff but in no case greater than the maximum amount of interest permitted by law;

(b) The worth at the time of the award of the amount by which the unpaid rent that would have been earned between the time of the termination and the time of the award exceeds the amount of unpaid rent that Tenant proves could reasonably have been avoided, to be computed by allowing interest at the rate set forth in Item 270 of the Tariff but in no case greater than the maximum amount of interest permitted by law;

(c) The worth at the time of the award of the amount by which the unpaid rent for the balance of the term of the Agreement after the time of the award exceeds the amount of unpaid rent that Tenant proves could reasonably have been avoided, to be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%);

(d) Any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform obligations under this Agreement, including, without limitation, restoration expenses, expenses of improving the Premises for a new tenant (whether for the same or a different use), brokerage commissions, and any special concessions made to obtain a new tenant; and

(e) Any other amounts, in addition to or in lieu of those listed above, that may be permitted by Applicable Law.

9.3.2 Continuation of Agreement in Effect. City shall have the remedy described in Civil Code Section 1951.4, which provides that, when a tenant has the right to sublet or assign (subject only to reasonable limitations), the City may

continue the Agreement in effect after the tenant's breach and abandonment and recover rent as it becomes due. Accordingly, if City does not elect to terminate this Agreement on account of any default by Tenant, City may enforce all of City's rights and remedies under this Agreement, including the right to recover all rent as it becomes due.

9.3.3 Tenant's Subleases. Whether or not City elects to terminate this Agreement on account of any default by Tenant, City may:

(a) Terminate any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the Premises; or

(b) Choose to succeed to Tenant's interest in such an arrangement. If City elects to succeed to Tenant's interest in such an arrangement, Tenant shall, as of the date of notice by City of that election, have no further right to, or interest in, the rent or other consideration receivable under that arrangement.

9.4 Form of Payment After Default. If Tenant fails to pay any amount due under this Agreement within ten (10) days after the due date or if Tenant draws a check on an account with insufficient funds, City shall have the right to require that any subsequent amounts paid by Tenant to City under this Agreement (to cure a default or otherwise) be paid in the form of cash, money order, cashier's or certified check drawn on an institution acceptable to City, or other form approved by City despite any prior practice of accepting payments in a different form.

9.5 Acceptance of Rent Without Waiving Rights. Under Section 15.6, City may accept Tenant's payments without waiving any rights under this Agreement, including rights under a previously served notice of default. If City accepts payments after serving a notice of default, City may nevertheless commence and pursue an action to enforce rights and remedies under the previously served notice of default.

Section 10. Force Majeure.

City and Tenant shall not be deemed to be in default in the performance of the terms, covenants or conditions of this Agreement, if either party is prevented from performing said terms, covenants or conditions by causes beyond its control, including, without limitation, acts of God, the public enemy or public riots; failures due to nonperformance or delay of performance by suppliers or contractors; any order, directive or other interference by municipal, state, federal or other governmental official or agency (other than City's failure or refusal to issue permits for the construction, use or occupancy of City's Improvements or the Premises); any catastrophe resulting from the elements, flood, fire, explosion, or any other cause reasonably beyond the control of a party, but excluding strikes or other labor disputes, lockouts or work stoppages. In the event of the happening of any of such contingencies, the party delayed by force

majeure shall immediately give the other party written notice of such contingency, specifying the cause for delay or failure, and such notice from the party delayed shall be prima facie evidence that the delay resulting from the causes specified in the notice is excusable. The party delayed by force majeure shall use reasonable diligence to remove the cause of delay, and if and when the contingency which delayed or prevented the performance of a party shall cease or be removed, the party delayed shall notify the other party immediately, and the delayed party shall recommence its performance of the terms, covenants and conditions of this Agreement. During any period in which the Premises are not reasonably useable in whole or in part for the Permitted Uses by reason of any cause contemplated by this Section 10, Tenant shall not be relieved of its obligation to pay any Compensation already due to City at the time of the occurrence.

Section 11. Restoration and Surrender of Premises.

11.1 Tenant's Restoration Obligations. On or before the Expiration Date, or any sooner termination of this Agreement, other than by termination pursuant to Section 9 of this Agreement, unless otherwise excused in writing by Executive Director, Tenant shall quit and surrender possession of the Premises to Board leaving all improvements depicted on Exhibit "A" (including but not limited to City's Improvements) in at least as good and useable a condition, acceptable to Executive Director, as the same were in at the time of the first occupation thereof by Tenant under this Agreement, ordinary wear and tear excepted. However, the exception for wear and tear shall not entitle Tenant to damage paving installed by City or any unpaved areas regardless of the nature of Tenant's operations on the Premises. If the condition of the Premises is upgraded during the term of this Agreement, such as by maintenance dredging, Tenant shall restore the Premises to the upgraded condition. Tenant agrees to remove all debris and sunken hulks from channels, slips and water areas within or fronting upon Premises not solely caused by City and arising during Tenant's occupancy. Tenant expressly waives the benefits of the "Wreck Act" (Act of March 3, 1899) 33 U.S.C. Section 401 et seq. and the Limitation of Liability Acts (March 3, 1851, c. 43, 9 Stat. 635) (June 26, 1884, c. 121, Sec. 18, 23 Stat. 57) 46 U.S.C. 189 (Feb. 13, 1893, c. 105, 27 Stat. 445) 46 U.S.C. Sec. 190-196 and any amendments to these Acts if it is entitled to claim the benefits of such Acts. If City terminates this Agreement pursuant to Section 9, Tenant is also obligated to restore the Premises as provided above or to pay the cost of restoration if City chooses to perform the work. In connection with the foregoing, Tenant, at its sole cost and expense, shall restore the Premises (including their soil, groundwater and sediment) such that, on the Expiration or Termination Date, they will be returned to City:

- (a) Free of Term Contamination (as defined in Section 6.1.4) and in at least as good of a condition as the condition depicted in the Baseline Report. As between City and Tenant, Tenant shall bear sole responsibility for Term Contamination and any costs related thereto;

(b) Free of any encumbrances including but not limited to deed or land use restrictions as a result of any Term Release (as defined in Section 6.1.3) and/or any liens (UCC, federal or state tax or otherwise) on the Premises or on fixtures or equipment, or personal property left on the Premises;

(c) Free of all above- and below-ground works, structures, improvements and pipelines of any kind, (collectively referred to as "Structures"), placed on the Premises by Tenant. If the Premises have been improved by a prior tenant or by both City and a prior tenant, then such Structures which are left on the Premises at Tenant's request or for Tenant's benefit shall also be the responsibility of Tenant except as may be otherwise specified by this Agreement; and

(d) In a clean, level, graded and compacted condition with no excavations or holes resulting from Structures removed.

11.2 Restoration Procedure. Tenant, at its sole cost and expense, shall initiate and complete the procedure set forth below in Sections 11.2.1 through 11.2.4 and comply with any other conditions reasonably imposed by Executive Director. Provided that Tenant discharges its obligations under this Section 11.2 expeditiously and in good faith, City shall reasonably endeavor to ensure that such discharge disturbs as little as reasonably possible Tenant's undertaking of the Permitted Uses. Executive Director may alter or delete any of the procedures set forth in Sections 11.2.1 through 11.2.4 at his or her sole and absolute discretion.

11.2.1 Not later than two (2) years before the Expiration Date and sooner if requested in writing by Executive Director, Tenant shall submit to City a written plan hereinafter referred to as the "Site Vacation Plan," the sufficiency of which is subject to City's reasonable approval, that includes:

(a) If a Term Release has occurred or is reasonably suspected, a work plan detailing all work (including sampling and analysis) necessary to generate a written characterization of the nature and extent of contamination (including contamination of air, soil and water) on the Premises and that includes detailed programs for sampling and chemical analysis of soil and groundwater, which programs shall conform with applicable Environmental Law, accepted principles of environmental science, established regulatory protocols and the Port of Los Angeles Site Characterization Guidance Manual. Such work plan shall be developed with specific reference to determining the then-current environmental condition of the Premises as compared to the condition of the Premises as set forth in the Baseline Report (as defined in Section 6.2.3) and whether any instances of unremediated Term Contamination (as defined in Section 6.1.4) exist. Such work plan shall identify all consultants Tenant intends to use to generate the written characterization. City shall approve such consultants in its sole reasonable discretion;

(b) If a Term Release has occurred or is reasonably suspected, a work plan detailing all work necessary to obtain, at Tenant's sole cost and expense, environmental and other entitlements (pursuant to CEQA, the National Environmental Protection Act ("NEPA") and any other applicable Environmental Laws) necessary to undertake the work contemplated by Section 11.2.1(a);

(c) A description of all liens on the Premises, Structures, and/or on fixtures and/or equipment or personal property intended to be left on the Premises following the Expiration Date;

(d) A description of all claims, causes of action, orders or enforcement actions then pending against or in connection with the Premises, the undertaking of the Permitted Uses, and/or this Agreement;

(e) All work including but not limited to demolition, grading and disposal, necessary to remove Structures. Tenant shall identify any contractors or consultants proposed to undertake such work, which shall be approved by City in its sole reasonable discretion; and

(f) A written schedule with milestones acceptable to City in its sole reasonable discretion under which entitlements pursuant to Section 11.2.1(b) will be obtained and operations on the Premises will be ramped-down in advance of their cessation on the Expiration Date and the Premises will be readied for turnover to the City on the Expiration Date.

11.2.2 If a Term Release has occurred or is reasonably suspected, Tenant shall, following City's written approval of Tenant's Site Vacation Plan and not later than eighteen (18) months before the Expiration Date, or sooner if requested in writing by Executive Director, submit to City a written report hereinafter referred to as the "Preliminary Site Closure Report," the sufficiency of which is subject to City's reasonable approval, that includes:

(a) All findings of the characterization required by Section 11.2.1 with substance and format that conforms with the Site Characterization Guidance Manual identified in Section 6.1.5;

(b) If the characterization required by Section 11.2.1 results in a finding that Term Contamination exists, a remediation action plan to City, the sufficiency of which is subject to City's reasonable approval, that addresses remediation of all such Term Contamination and that (i) conforms with Section 11.1; and (ii) includes a discussion of remedial action alternatives for restoration of the Premises and a timetable for each phase of restoration ("Expiration Remediation Action Plan"). The Expiration Remediation Action Plan shall conform with applicable

Environmental Law, established regulatory protocols, accepted principles of environmental science and the Site Characterization Guidance Manual. Consultants or contractors selected by Tenant to perform such work shall be subject to City's reasonable written approval;

(c) A report detailing the status of the removal of any liens identified in connection with Section 11.2.1;

(d) A report detailing the status of any claims, causes of action, orders or enforcement actions identified in connection with Section 11.2.1; and

(e) An updated schedule with milestones acceptable to City in its sole reasonable discretion under which operations on the Premises will be ramped-down in advance of their cessation on the Expiration Date and the Premises will be readied for turnover to the City on the Expiration Date.

11.2.3 Following City's written approval of Tenant's Preliminary Site Closure Report, and not later than one (1) year before the Expiration Date, or sooner if requested in writing by Executive Director, Tenant shall:

(a) Commence remediation of any Term Contamination in accordance with the Expiration Remediation Action Plan. Consultants or contractors selected by Tenant to perform such work shall be subject to City's reasonable written approval;

(b) Provide a report detailing the status of the removal of any liens identified in connection with Section 11.2.1;

(c) Provide a report detailing the status of any claims, causes of action, orders or enforcement actions identified in connection with Section 11.2.1; and

(d) Provide an updated schedule with milestones acceptable to City in its sole reasonable discretion under which entitlements pursuant to Section 11.2.1(b) will be obtained and operations on the Premises will be ramped-down in advance of their cessation on the Expiration Date and the Premises will be readied for turnover to the City on the Expiration Date.

11.2.4 Not later than six (6) months before the Expiration Date, or sooner if requested in writing by Executive Director, Tenant shall have:

(a) Completed the remediation required by the Expiration Remediation Action Plan, and have submitted to City a report certified by the consultant(s) performing the remediation confirming same;

(b) Resolved and removed all liens identified in connection with Section 11.2.1 to the reasonable satisfaction of City;

(c) Resolved all claims, causes of action, orders or enforcement actions identified in connection with Section 11.2.1 to the reasonable satisfaction of City and any governmental agencies with jurisdiction over such claims, causes of action, orders or enforcement actions;

(d) Obtained, at its sole cost and expense, all necessary entitlements pursuant to Section 11.2.1(b); and

(e) Submitted an updated schedule with milestones acceptable to City in its sole reasonable discretion under which operations on the Premises will be ramped-down in advance of their cessation on the Expiration Date and the Premises will be readied for turnover to the City on the Expiration Date.

11.2.5 Subject to orders or directives issued by any regulatory agency with jurisdiction which orders or directives shall take precedence over this Section 11.2.5, the adequacy of Tenant's execution of the Expiration Remediation Action Plan shall be within the sole reasonable discretion of Executive Director. Tenant shall notify Executive Director in writing when it believes it has completed all work contemplated by the Expiration Remediation Action Plan.

11.3 Restoration Indemnity. In addition to and not as a substitute for any remedies provided by this Agreement or at law or equity, Tenant shall defend, indemnify and hold harmless City from any and all claims and/or causes of action brought against City and from all damages and costs which arise out of or are related to:

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

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

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

11.4 Relocation Assistance. Nothing contained in this Agreement shall create any right in Tenant or any sublessees of Tenant for relocation assistance or payment from City upon expiration or termination of this Agreement (whether by lapse of time or otherwise). Tenant acknowledges and agrees that it shall not be entitled to

any relocation assistance or payment pursuant to the provisions of any state or federal law, including Title 1, Division 7, Chapter 16 of the California Government Code (Sections 7260 et seq.) with respect to any relocation of its business or activities upon the expiration of the term of this Agreement or upon its earlier termination or upon the termination of any holdover.

11.5 Demolition of Improvements; Acceptance of Improvements. If Tenant's improvements are not removed on or before the earlier to occur of the date of the termination of this Agreement or the Expiration Date, City shall have the right to remove and/or demolish the same at Tenant's cost. In that event, Tenant agrees to pay to City, upon demand, City's costs (as defined in Section 8.2) of any such removal or demolition. Notwithstanding the foregoing, City reserves the right to accept any works, buildings or other improvements upon the Premises, including a change in the grade thereof, constructed or altered pursuant to this Section 11 in lieu of restoration of the Premises to their condition prior to such construction or Alteration.

Section 12. Indemnity and Insurance.

12.1 Indemnity. Except as may arise from the sole negligence or willful misconduct of City, Tenant shall at all times relieve, indemnify, protect and save harmless City and any and all of its boards, officers, agents and employees from any and all claims and demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), for death of or injury to persons, or damage to property, including property owned by or under the care and custody of City, and for civil fines and penalties that may arise from or be caused directly or indirectly by:

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

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

(c) Any act, error, omission, willful misconduct or negligence of Tenant, its officers, agents, employees, sublessees, licensees or invitees, regardless of whether any act, omission or negligence of City, its officers, agents or employees contributed thereto;

(d) Any failure of Tenant, its officers, agents or employees to comply with any of the terms or conditions of this Agreement or any applicable federal, state, regional, or municipal law, ordinance, rule or regulation; or

(e) The conditions, operations, uses, occupations, acts, omissions or negligence referred to in subsections (a) through (d) above, existing or conducted upon or arising from the use or occupation by Tenant or its invitees on any other premises within the "Harbor District," as defined in City's Charter.

Tenant also agrees to indemnify City and pay for all damages or loss suffered by City and City's Harbor Department, including but not limited to damage to or loss of City property, to the extent not insured by City, and loss of City revenue from any source, caused by or arising out of the conditions, operations, uses, occupations, acts, omissions or negligence referred to in this Section 12.1. The term "persons" as used in this Section 12.1 shall include, but not be limited to, officers and employees of Tenant.

Tenant shall also indemnify, defend and hold City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution of the value of the Premises, damages for loss or restriction on use of rentable or useable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Agreement term as a result of Term Contamination for which Tenant is otherwise responsible for under the terms of this Agreement. This indemnification of City by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean up, remedial, removal or restoration work required by any federal, state or local governmental agency because of Term Contamination present in the soil or groundwater on or under the Premises. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement and shall apply regardless of the active or passive negligence of City and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on City.

12.2 Insurance. Tenant shall procure and maintain at its expense and keep in force at all times during the term of this Agreement the following insurance:

(a) **Commercial General Liability.** Commercial general liability insurance, including contractual liability, auto liability and property damage insurance written by an insurance company authorized to do business in the State of California, or approved by the California Department of Insurance as a surplus lines insurer eligible to do business in California, rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if a Best's Rating is not available) with Tenant's normal limits of liability, but not less than Five Million Dollars (\$5,000,000) for injury or death to one person and Five Million Dollars (\$5,000,000) for injury or death to more than one person arising out of each accident or occurrence and Five Million Dollars (\$5,000,000) for property damage for each accident or occurrence. Said limits shall provide first dollar coverage except that the 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 Tenant. The retention

or self-insurance provided shall provide that any other insurance maintained by the Department shall be excess of Tenant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Where Tenant operates watercraft, liability coverage for such craft must be provided as follows:

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

(2) Protection and indemnity coverage with combined single limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury, illness, death, loss of or damage to the property of another, Jones Act risks or equivalent thereto internationally, and pollution liability to which it is agreed that the additional insured and cancellation notice provisions as required and described below must be included. Pollution liability shall include coverage for bodily injury, including death and mental anguish, property damage, defense costs and cleanup costs. Such coverage shall contain a defense of suits provision and a severability of interest clause.

The submitted policy shall, in addition, provide the following coverage either in the original policy or by endorsement substantially as follows:

"Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that City, Board, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all operations, uses, occupations, acts and activities of the insured under Permit No. ____, and under any amendments, modifications, extensions or renewals of said Permit regardless of whether such operations, uses, occupations, acts and activities occur on the Premises or elsewhere within the Harbor District.

"The policy to which this endorsement is attached shall provide a ten (10) days' prior written notice of cancellation for nonpayment of premium, and a thirty (30) days' prior written notice of cancellation for any other reasons to the Harbor Department's Risk Manager;

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

"In the event of one of the named insureds incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had

been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability; and

"Notice of occurrences or claims under the policy shall be made to the Risk Manager of City's Harbor Department with copies to the City Attorney's Office."

(b) Fire Legal Liability. In addition to and concurrently with the aforesaid insurance coverage, Tenant shall also secure and maintain, either by an endorsement thereto or by a separate policy, fire legal liability insurance with a minimum limit of Two Hundred Fifty Thousand Dollars (\$250,000), covering legal liability of Tenant for damage or destruction to the works, buildings and improvements owned by City provided that said minimum limits of liability shall be subject to adjustments by Executive Director to conform with the deductible amount of the fire insurance policy maintained by Board, with waiver of subrogation in favor of Tenant so long as permitted by Board's fire insurance policy, upon thirty (30) days" prior written notice thereof to Tenant at any time during the term of this Agreement. Neither City nor Board should be named as additional insureds on this policy.

(c) All Risk Insurance. Tenant shall secure, and shall maintain at all times during the term of this Agreement and any holdover, fire and extended coverage insurance covering ninety percent (90%) of the replacement value of the works, buildings and improvements erected or owned by Tenant on the Premises, with such provision in the policies issued to cover the same, or in riders attached thereto, as will provide for all losses over Two Hundred Fifty Thousand Dollars (\$250,000) to be payable to Board to be held in trust for reconstruction. In the event of loss or damage by fire to any of such buildings or improvements, Tenant shall undertake replacement or reconditioning of such items within ninety (90) days following any such loss. In the event Tenant shall undertake such replacement or reconditioning within said period of ninety (90) days, such proceeds shall be released by Board to Tenant as payments are required for said purpose. Upon the completion of such replacement or reconditioning to the satisfaction of Executive Director, any balance thereof remaining shall be paid to said Tenant forthwith. In the event Tenant fails to undertake such replacement or reconditioning within said period of ninety (90) days, such proceeds shall be retained by City.

(d) Environmental Impairment Liability Insurance. Should Tenant's operations involve the storage or use of any type of hazardous materials or pollutants, the Tenant will be required to maintain environmental impairment liability insurance which shall include coverage for bodily injury, property damage, including third-party claims for on-site and off-site bodily injury and property damage, clean-up and defense, with a limit of at least Five Million Dollars (\$5,000,000) per occurrence, which is to remain in effect at least five (5) years after the termination of the Agreement.

(e) **Workers' Compensation.** Tenant shall secure the payment of compensation to employees injured while performing work or labor necessary for and incidental to performance under this Agreement in accordance with Section 3700 of the Labor Code of the State of California. Tenant shall file with the City one of the following: 1) a certificate of consent to self-insure issued by the Director of Industrial Relations, State of California; 2) a certificate of Workers' Compensation insurance issued by an admitted carrier; or 3) an exact copy or duplicate thereof of the policy certified by the Director or the insurer. Such documents shall be filed prior to delivery of Premises. Where Tenant has employees who are covered by the United States Longshore and Harbor Workers' Compensation Act, Tenant shall furnish proof of such coverage to the City. It is suggested that Tenant consult an insurance professional of its choosing to determine whether its proposed operation methods will render its employees subject to coverage under such Act. All Workers' Compensation insurance submitted to City shall include an endorsement providing that any carrier paying benefits agrees to waive any right of subrogation it may have against City.

12.2.1 Such insurance procured by Tenant shall include the following features:

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

(b) **Acceptable Evidence and Approval of Insurance.** Electronic submission is the required method of submitting Tenant's insurance documents. Track4LA[®] is the City's online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used primarily by insurance brokers and agents as they submit client insurance certificates directly to the City. It uses the standard insurance industry form known as the ACORD 25 Certificate of Liability Insurance in electronic format. The advantages of Track4LA[®] include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. Tenant's insurance broker or agent shall obtain access to Track4LA[®] at <http://track4la.lacity.org/> and follow the instructions to register and submit the appropriate proof of insurance on Tenant's behalf.

(c) **Renewal of Policies.** Prior to the expiration of each policy, Tenant shall show through submitting to Track4LA[®] that the policy has been renewed or extended or, if new insurance has been obtained, submit

the appropriate proof of insurance to Track4LA®. If Tenant neglects or fails to secure or maintain the required insurance, or if Tenant fails to submit proof of insurance as required above, the City's Harbor Department may, at its option and at the expense of Tenant, may obtain such insurance for Tenant.

(d) **Modification of Coverage.** Executive Director, at his or her discretion, based upon recommendation of independent insurance consultants to City, may request that Tenant increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Tenant. Tenant shall not be obligated to comply with such request if, in its sole reasonable discretion, obtaining a policy with such adjusted limits is not economically feasible. In the event Tenant makes such a determination, it shall provide written notice to City within thirty (30) days following City's written request.

(e) **Accident Reports.** Tenant shall report in writing to Executive Director within fifteen (15) days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Fifty Thousand Dollars (\$50,000) to property, occurring upon the Premises, or elsewhere within the Harbor District, if Tenant's officers, agents or employees are involved in such an accident or occurrence while undertaking the Permitted Uses. Such report shall contain to the extent available: (1) the name and address of the persons involved; (2) a general statement as to the nature and extent of injury or damage; (3) the date and hour of occurrence; (4) the names and addresses of known witnesses; and (5) such other information as may be known to Tenant, its officers or managing agents.

Section 13. Tenant Transfers of Interest in Agreement.

13.1 Transfers Prohibited. Unless processed and approved strictly in accordance with this Section 13, no transfer of this Agreement, or any interest therein or any right or privilege thereunder, regardless of whether accomplished by a separate agreement, sale of stock or assets, merger or consolidation or reorganization by or of Tenant (or any entity that directly or indirectly controls or owns fifty percent (50%) or more of Tenant), or accomplished in any other manner, whether voluntary or by operation of law, including but not limited to assignment, sublease, transfer, gift, hypothecation or grant of total or partial control, or any encumbrance of this Agreement (hereafter collectively referred to as "Transfer"), shall be valid or effective for any purpose. For purposes of this Agreement, "Transfer" also shall include the involvement of Tenant or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise) whether or not a formal assignment or hypothecation of this Agreement or Tenant's assets, which involvement results in a reduction of the net worth of Tenant (defined as the net worth of

Tenant, excluding guarantors, established by generally accepted accounting principles) by an amount greater than twenty-five percent (25%) of such net worth as it was represented at the time of the execution of this Agreement, or at the time of the most recent Transfer to which City has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater. For purposes of this Section 13, the term "by operation of law" includes but is not limited to: (1) the placement of all or substantially all of Tenant's assets in the hands of a receiver or trustee; or (2) a transfer by Tenant for the benefit of creditors; or (3) transfers resulting from the death or incapacity of any individual who is a Tenant or of a general partner of a Tenant (except as provided in Section 13.2.1(e) below).

13.2 Procedure to Obtain Consent to Transfer. Notwithstanding the prohibition set forth in Section 13.1, if Tenant desires to undertake a Transfer, it may seek City's consent thereto. Tenant covenants that before entering into or permitting any Transfer, it shall provide to City written notice at least thirty (30) days before the proposed effective date of the Transfer. Notwithstanding the foregoing, City reserves the right to allow Tenant, on a case-by-case basis, to submit to City for City's consent Transfers that have become effective. In any event, Tenant's written request to City for consent shall hereinafter be referred to as "Transfer Notice."

13.2.1 Tenant's Transfer Notice shall contain each of the following:

(a) Specific identification of the entity or entities with whom Tenant proposes to undertake the Transfer ("Transferee");

(b) Specific and detailed description of the Transferee's entity type, ownership (including identification of all parent and subsidiary entities), background/history, nature of the Transferee's business, Transferee's character and reputation and experience in the operations proposed;

(c) Specific and detailed description of the type of Transfer proposed (e.g., assignment, sublease, grant of control, etc.) and the rights proposed to be transferred;

(d) Specific and detailed description of the operations proposed to be undertaken at the Premises by Tenant and Transferee if City consents to the Transfer which includes a breakdown of the responsibilities and duties of Tenant and Transferee;

(e) All of the terms of the proposed Transfer, including the total consideration payable by Transferee; the specific consideration (if any) payable by Transferee in connection with the Premises and/or uses under this Agreement if the proposed Transfer is part of an acquisition or purchase that involves assets outside this Agreement; the proposed use

of the Premises; the effective date of the proposed Transfer; and a copy of all documentation concerning the proposed Transfer;

(f) The proposed form of a guaranty or guaranties providing greater or substantially the same protection to City as any guaranty in effect prior to or contemporaneous with the proposed Transfer;

(g) A business plan for the Transferee including specific estimates of revenue anticipated under each of the following categories: existing contracts, contracts under negotiation and other specified sources;

(h) A general description of any planned Alterations or improvements to the Premises;

(i) A description of the worth of the proposed Transferee including a reviewed financial statement;

(j) Any further information relevant to the proposed Transfer that City reasonably requests; and

(k) Written authorization in a form acceptable to City allowing City to inspect and review but not to copy, at times and locations reasonably selected by City, any books and records or other information of Tenant or Transferee (or third-parties acting for or on either of their behalves) reasonably determined by City to be necessary for its assessment of Tenant's request for consent.

13.2.2 If City consents to a Transfer, the following limits apply:

(a) City does not agree to waive or modify the terms and conditions of this Agreement;

(b) Such consent does not constitute either consent to any further or other Transfer by either Tenant or Transferee or a bar disqualifying submittal of additional Transfer Notices in accordance with the terms of this Agreement following such consent;

(c) If, following such consent, Tenant remains a party to this Agreement, Tenant shall remain liable under this Agreement and any guarantor shall remain liable under its guaranty;

(d) Such consent shall not transfer to the Transferee any option granted to the original Tenant by this Agreement unless such transfer is specifically consented to by City in writing;

(e) Tenant may enter into that Transfer in accordance with this Section 13 if: (a) the Transfer occurs within six (6) months after City's consent; (b) the Transfer, in the sole and absolute discretion of Executive Director, is on substantially the same terms as specified in the Transfer Notice; and (c) Tenant delivers to City promptly after execution an original executed copy of all documentation pertaining to the Transfer in a form reasonably acceptable to City;

(f) If the Transfer occurs more than six (6) months after City's consent or, in the sole and absolute discretion of Executive Director, the terms of the Transfer materially change from those in the Transfer Notice, Tenant shall submit a new Transfer Notice under this Section 13, requesting City's consent. A material change for purposes of this Section 13 is one the terms of which would have entitled City to refuse to consent to the Transfer initially, or would cause, in the sole and absolute discretion of Executive Director, the proposed Transfer to be more favorable to Transferee than the terms in the original Transfer Notice; and

(g) Tenant and/or Transferee, upon City's written request, shall provide proof, in a form satisfactory in the sole reasonable discretion of the Risk Manager of City's Harbor Department, demonstrating that insurance of the type and limits required by Section 12 is and shall be in full effect at all times in or around the time period in which the proposed Transfer is anticipated to occur. If requested in writing by City, Transferee shall provide a guaranty agreement in a form acceptable to City obligating Transferee to pay any uninsured or underinsured loss on a claim that, in City's sole and absolute discretion, would have been covered by insurance fully compliant with Section 12.

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

13.3 Factors Germane to City Consent. In evaluating any Transfer Notice, it shall not be unreasonable for City to withhold or condition its consent to a Transfer based on the following factors, among others:

(a) The net worth, financial condition and creditworthiness of the Transferee and the existence of any guaranty provided by the Transferee's parent or related entity(ies);

(b) The character, experience and reputation of the Transferee (or its operator) in operating the business contemplated by the Transfer;

(c) Whether the Transfer will negatively impact the short-term or long-term development, land use or other plans of City's Harbor Department, and

whether consent to such Transfer would violate any of the legal duties of City's Harbor Department, including duties owed to other tenants;

(d) Whether the proposed Transfer is consistent with the terms and conditions of this Agreement in existence when Tenant submitted the Transfer Notice and with the laws, rules and regulations applicable to the Premises and Tenant's use thereof;

(e) Whether the information provided by Tenant in connection with Section 13.2.1 justifies such consent;

(f) The Transferee's level of commitment and specific plans to invest to improve the Premises following approval of the proposed Transfer, if any.

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

(a) City reserves the right to recapture any portion of the Premises proposed by Tenant to be subleased (with appropriate amendments to this Agreement, and fair compensation to Tenant for improvements it has made to the recaptured portions of Premises) and to undertake the transaction with the proposed Transferee directly;

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

(c) Tenant shall not collect sublease compensation that exceeds, on a pro rata basis, the Compensation due City from Tenant under Section 5 of this Agreement.

13.5 Charter and Administrative Code. Tenant acknowledges that this Agreement is subject to the Charter of City and the Administrative Code of City and that approval of a Transfer may require action by several separate entities, including but not limited to the Los Angeles City Council.

13.6 Tenant Remedies. If City wrongfully denies or conditions its consent, Tenant may seek only declaratory and/or injunctive relief. Tenant specifically waives any damage claims against City in connection with the withholding or conditioning of consent.

13.7 Indemnity in Favor of City. In addition to and not as a substitute for the indemnities Tenant provides to City pursuant to Section 12 of this Agreement, Tenant shall indemnify, defend and hold harmless City and any and all of its boards, officers, agents, or employees from and against any and all claims and/or causes of action of

any third-party (including but not limited to Transferee) arising out of or related to a proposed Transfer.

13.8 Rent or Performance. City in its sole discretion may accept rent or performance of Tenant's obligations under this Agreement from any person other than Tenant pending approval or disapproval of a Transfer. City's exercise of discretion to accept rent or performance shall be reflected in writing.

13.9 Transfers of Ownership.

13.9.1 The transfer of more than twenty-five percent (25%) of the economic interest in Tenant or any entity that directly or indirectly controls or owns fifty percent (50%) or more of Tenant in one or more transactions, regardless of whether Tenant is a publicly or privately held entity, shall constitute a Transfer within the meaning of Section 13.1.

13.9.2 If Tenant is a partnership, any transfer or attempted transfer by any general partner of Tenant of more than twenty-five percent (25%) of its partnership interest in Tenant in one or more transactions shall be a prohibited Transfer within the meaning of Section 13.1. Notwithstanding the foregoing, if any transfer of a general partner's interest is due to the death of a general partner and results in the transfer to the immediate members of the general partner's family, who will be immediately and personally involved in the operation of the partnership, the City will not unreasonably withhold its consent to such transfer.

13.9.3 If a parent or other entity has guaranteed or otherwise secured any or all of Tenant's obligations under this Agreement and if the ownership, makeup or financial condition of such parent or other entity has, in the sole reasonable discretion of Executive Director, materially changed at any point during the term of this Agreement, the right is reserved for City to require amendments of such guarantee, the provision of new security, or a combination thereof reasonably required by Executive Director to maintain the level of security as provided by the original guarantee. Following the effective date, Tenant shall have a continuing obligation to notify City in writing of any and all events that do or might constitute a material change within the meaning of this Section 13.9.3.

13.9.4 Executive Director shall have the authority - but no obligation - to unilaterally modify the foregoing conditions based on the facts of a particular case.

13.10 Assignments for Security Purposes. Board will consider Tenant's request to assign this Agreement to secure financing of improvements on the Premises on a case-by-case basis. Consent to assignments for security purposes will not be granted unless Tenant and its lenders satisfy the following conditions, among others, which may be reasonably imposed by the Board:

(a) Monies borrowed will be used exclusively to construct improvements on the Premises;

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

(c) The collateral covered by the security agreement securing Tenant's loan shall cover only Tenant's interest in improvements on the Premises, not the interests of City in improvements, and not any improvements or fixtures which, if removed, would leave the Premises untenable. In this Section 13.10, "untenable" means failing to comply with the standards described in Civil Code Section 1941.1 or its successor;

(d) Nothing in the instrument which creates the security interest in the lender shall amend, modify, or otherwise affect the rights of City under this Agreement or any guaranty;

(e) In the event the lender initiates any action to foreclose the interest of Tenant in this Agreement, the lender agrees to deliver to the Board in person or by registered mail a copy of any notice of default sent to Tenant and agrees, ten (10) calendar days in advance of any foreclosure sale, to give written notice to Board by registered mail. Such notices shall be addressed as follows:

Board of Harbor Commissioners
c/o Director of Real Estate Division
P.O. Box 151
San Pedro, CA 90733-0151

Such notice shall specify which of the below alternative courses of action the lender will take with respect to the Agreement and any guaranty. Any and all of the below stated alternatives are contingent upon Board's approval in accordance with the conditions in subsection (f) below. Lender may:

(1) Assume as principal all of the obligations and duties arising on or after the foreclosure conveyance date under the Agreement; or

(2) Assume as principal all of the obligations and duties arising on or after the foreclosure conveyance date under the Agreement, and hire an operator, acceptable to Executive Director, who shall operate the Premises pursuant to the Agreement; or

(3) Assume as principal all of the obligations and duties arising on or after the foreclosure conveyance date, and thereafter reassign the Agreement with the consent of Board by order. Notwithstanding any provision of this Agreement to the contrary, in the event the lender initiates

any action to foreclose the interest of any subsequent assignee of the Agreement, the lender agrees to make the notifications and elections required herein.

The foregoing election by the lender shall be without prejudice to any rights Board may have with respect to Tenant's default of this Agreement; provided, however, that Board shall mail to both Tenant and lender a copy of any written notice of default in the performance of the terms and conditions of the Agreement, by registered mail, return receipt requested, addressed as follows:

(Name and Address of Tenant and lender are to be specified by Tenant. If no lender is specified, notice to Tenant alone is agreed to be sufficient.)

The lender shall have the option to cure such default within the time specified in such notice, provided that if such default is noncurable in nature, City shall have the right to immediately reclaim the Premises and lender shall have no further interest.

(f) Any lender proposal to transfer its interest in this Agreement or interest therein or right or privilege thereunder requires Board's consent. Board may withhold its consent in its reasonable discretion if Board determines that the proposed transferee cannot meet all of the following conditions, and any other conditions which may be reasonably imposed by the Board:

(1) This Agreement shall be in full force and effect and no default shall exist or the lender shall agree in writing to cure all such defaults before the transfer.

(2) When requesting Board's consent to such a transfer, the lender shall demonstrate that: (a) the financial condition of the proposed transferee is as sound as that of Tenant at the time this Agreement was initially entered into or as at the time of the proposed transfer - whichever provides the better financial security to Board; (b) the proposed transferee has the requisite experience and reputation or has retained an operator with the requisite experience and reputation to operate the Premises; and (c) the proposed transfer will not unfavorably affect the revenues of the City, employment or the services available to the maritime community.

(3) Even if Board consents to such a proposed transfer, Board may first require that transferee and Board agree on a new compensation for the Premises transferred. If Board modifies the compensation, it shall take into account then Board policy for setting compensation and the prevailing market conditions.

(g) The form of all instruments and documents affecting the City's interests in the Premises shall be acceptable to Executive Director and City Attorney of City in their sole and absolute discretion.

(h) Board shall have the authority – but no obligation – to modify any of the foregoing conditions based on the facts of a particular case.

13.11 Tenant Name Change. Tenant shall promptly notify City in writing of any changes to its name set forth in the preamble of this Agreement.

13.12 Written Certificate. If requested in writing by Executive Director, Tenant shall, within ten (10) days of its receipt of such written request, certify under penalty of perjury under California law whether it has or has not undertaken a Transfer.

Section 14. Records and Reports.

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

Section 15. Miscellaneous.

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

15.2 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.

15.3 Entire Agreement; Amendments. This Agreement and all exhibits referred to in this Agreement constitute the final complete and exclusive statement of the terms of the agreement between City and Tenant pertaining to Tenant's use and occupancy of the Premises and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter

into this Agreement by, and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

15.4 Modification in Writing. This Agreement may be modified only by written Agreement of all parties. Any such modifications are subject to all applicable approval processes set forth in City's Charter, City's Administrative Code, or elsewhere.

15.5 Exhibits. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. References to sections are to sections of this Agreement unless stated otherwise.

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

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

15.8 Time is of the Essence. Time shall be of the essence as to all dates and times of performance, and obligations set forth herein, whether or not a specific date is contained herein. If performance is required by the terms hereof on a Saturday, Sunday or legal holiday in California, the performance shall be made on the next business day.

15.9 Notices. The parties shall send all notices or other communication necessary under this Agreement in writing by personal service, or express mail, Federal Express, DHL, UPS or any other similar form of airborne/overnight delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, addressed to the parties at their respective addresses as follows:

If to Tenant: Catalina Channel Express, Inc.
Berth 95
San Pedro, CA 90731
Attn: Greg Bombard

If to City: Port of Los Angeles
425 South Palos Verdes Street
San Pedro, California 90731
Attn: Executive Director

with copies to:

Los Angeles City Attorney's Office
425 South Palos Verdes Street
San Pedro, California 90731

Any such notice shall be deemed to have been given upon delivery or two business days after deposit in the mail as aforesaid. Either party may change the address at which it desires to receive notice upon giving written notice of such request to the other parties.

15.10 Statements of Tenant as Applicant. This Agreement may be granted pursuant to an application filed by Tenant with Board. If the application or any of the attachments thereto contain any material misstatements of fact, Board may cancel this Agreement. Upon any such cancellation of the Agreement granted hereunder, Tenant shall quit and surrender the Premises as provided in Section 9.

15.11 Governing Law and Venue. This Agreement is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced and governed under and by the laws of the State of California, without reference to choice of law rules. Any action or proceeding arising out of or related to this Agreement shall be filed and litigated in the state or federal courts located in the County of Los Angeles, State of California, in the judicial district mandated by applicable court rules. If either party files or attempts to litigate an action in violation of this Section 15.11, the other party shall be entitled to recover reasonable costs and attorneys' fees incurred to enforce this Section 15.11.

15.12 Affirmative Action. Tenant agrees not to discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition. All assignments, subleases and transfers of interest in this Agreement under or pursuant to this Agreement shall contain this provision. The provisions of Section 10.8.4 of the Los Angeles Administrative Code as set forth in the attached Exhibit "I" are incorporated herein and made a part hereof.

15.13 License Fees and Taxes. Tenant shall pay all taxes and assessments of whatever character levied upon or charged against the interest of Tenant, if any, created by this Agreement in the Premises or upon works, buildings, improvements or other property thereof, or upon Tenant's operations hereunder. Tenant shall also pay all license and permit fees required for the conduct of its operations hereunder.

15.14 Possessory Interest. Tenant is aware that the granting of this Agreement to Tenant may create a possessory property interest in Tenant and that Tenant may be subject to payment of a possessory property tax if such an interest is created.

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

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

15.17 Attorneys' Fees. In any legal action or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to "reasonable attorneys' fees" and any other costs and expenses, including but not limited to expert fees, incurred in that proceeding in addition to any other relief to which it is entitled. The "reasonable attorneys' fees" awarded under this Section 15.17 shall be determined by calculating the hours reasonably expended by each counsel for the prevailing party multiplied by the prevailing market hourly rate in Southern California for attorneys of comparable skill and experience.

15.18 Conflict of Interest. The parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of City's Harbor Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such a financial

interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

15.19 Extent of Water Frontage. In case this Agreement or any improvements made hereunder or this Agreement or any part thereof shall be assigned, transferred, leased or subleased and the control thereof be given or granted to any person, firm, or corporation so that such person, firm or corporation shall then own, hold or control more than the length of water frontage permitted or authorized under Section 654(a) of the Charter of City or if Tenant shall hold or control such water frontage, then this Agreement and all rights hereunder shall thereupon and thereby be absolutely terminated, and any such attempted or purported assignment, transfer or sublease, or giving or granting of control to any person, firm or corporation, which will then own, hold or control more than such permitted or authorized length of water frontage, shall be void and ineffectual for any purpose whatsoever.

15.20 Business Tax Registration Certification. City's Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09. This 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 Los Angeles Harbor Department. See Exhibit "J."

15.21 Service Providers, Vendors, and Concessionaires. Tenant may enter into agreements which allow service providers, vendors and concessionaires to operate on the Premises ("Third Party Users"). Tenant shall ensure that the agreements between the Tenant and the Third Party Users are consistent with the terms of this Agreement. Agreements with Third Party Users entered into after the date of this Agreement shall include provisions which reflect Third Party Users compliance with Agreement subsections 15.22 -15.24.

15.22 Service Contractor Worker Retention Policy and Living Wage Policy Requirements. Board adopted Resolution No. 5771 on January 3, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention ("SCWR"), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of City's Harbor Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Tenant shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this Agreement and otherwise pursue legal remedies that may be available.

15.23 Wage and Earnings Assignment Orders/Notices of Assignments. Tenant is obligated to fully comply with all applicable state and federal employment reporting requirements for the Tenant and/or its employees. Tenant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment

Orders/Notices of Assignments applicable to them personally. Tenant shall fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Section 5230 et seq. Tenant shall maintain such compliance throughout the term of this Agreement.

15.24 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 City's Harbor Department. Tenant shall comply with the policy wherever applicable. Violation of the policy shall entitle the City to terminate any agreement with Tenant and pursue any and all other legal remedies that may be available.

15.25 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. Tenant agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

15.26 Prior Permits. This Agreement shall supersede the Agreement granted by Permit No. 768. From and after the Effective Date of this Agreement, said Agreement shall have no further force or effect.

15.27 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of City and shall be binding upon and inure to the benefit of the successors and permitted assigns and sublessees of Tenant.

15.28 Disclosure Laws. Tenant acknowledges that City is subject to laws, rules and/or regulations generally requiring it to disclose records upon request, which laws, rules and/or regulations include but are not limited to the California Public Records Act (California Government Code Sections 6250 et seq.) ("Disclosure Laws"). Tenant further acknowledges City's obligation and intent to comply with such Disclosure Laws in all respects. Notwithstanding the foregoing, in the event that City receives a request for disclosure of records in connection with this Section 15.28, City will immediately notify Tenant in writing, enclosing a copy of such request, at which point Tenant may take whatever steps deemed appropriate, including but not limited to seeking a protective or other order excusing disclosure from a court of competent jurisdiction. In the absence of such an order from a court of competent jurisdiction excusing City from its disclosure obligations, City shall undertake whatever action is necessary to comply with the requirements imposed by the applicable Disclosure Law(s). In the event that any action is filed by Tenant and/or by any requester of information where Tenant elects

to challenge any disclosure, and City is named as a party to that action, Tenant shall defend and hold City and City's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, subsidiary and affiliated entities, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing harmless from any and all defense costs and judgments or settlements in any such action as well as all other losses and expenses arising out of or related to such action.

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

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

Dated: _____ 20__

By: _____
Executive Director

Attest: _____
Board Secretary

~~CATALINA CHANNEL EXPRESS, INC.~~

Dated: December 28 2011

By: 
~~BOBO BOBARD / PRESIDENT~~
(Print/type Name and Title)

Attest: 
SARAH SANFMEISTER, ATTORNEY
(Print/type Name and Title)

APPROVED AS TO FORM AND LEGALITY

Dec 29, 2011
CARMEN A. TRUTANICH, City Attorney
THOMAS A. RUSSELL, General Counsel

By: 
CHRISTOPHER B. BOBO, Assistant

CBB:CCW:aeb
Attachments
Rev. 12-23-2011

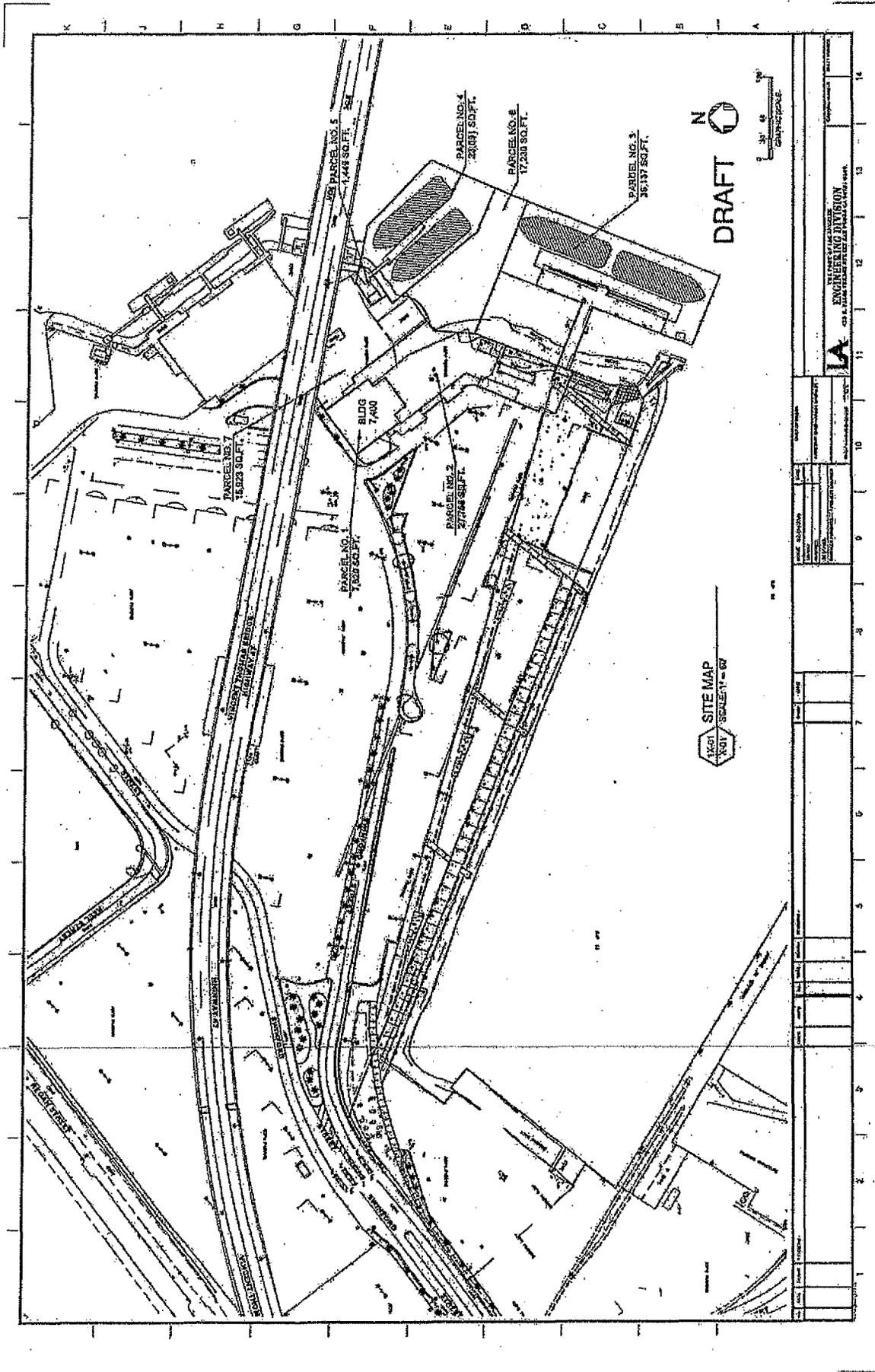


Exhibit A

Exhibit B

City Improvements

- A. Upon the Effective Date of the Agreement, the City Improvements present on the Premises are as follows:
1. 7,400 square foot building to be developed into a passenger terminal; and surrounding paved areas, as designated on Parcel 2 of the Site Plan "Exhibit A."
 2. Timber and concrete wharf improvements, as designated on Parcel No. 3 of the Site Plan "Exhibit A."
 3. Boat launch ramp within area as designated within Parcel No. 7 of the Site Plan, "Exhibit A."
- B. City shall be responsible for providing the following improvements pursuant to Section 7.1.1:
1. The reconfiguration, paving, asphalt slurry seal and re-striping of parking area described in Section 4.13 with special attention to the appropriate resolution of traffic flow for passenger drop-off and bus areas.
 2. Wharf improvements (Parcel 3) to be inspected by City personnel; with pilings to be replaced, as deemed appropriate by the Chief Harbor Engineer, for the safe berthing and mooring of Tenant passenger vessels.
 3. No stubbing of electrical, water, gas, sewer, or any other utility lines shall be provided by the City.

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

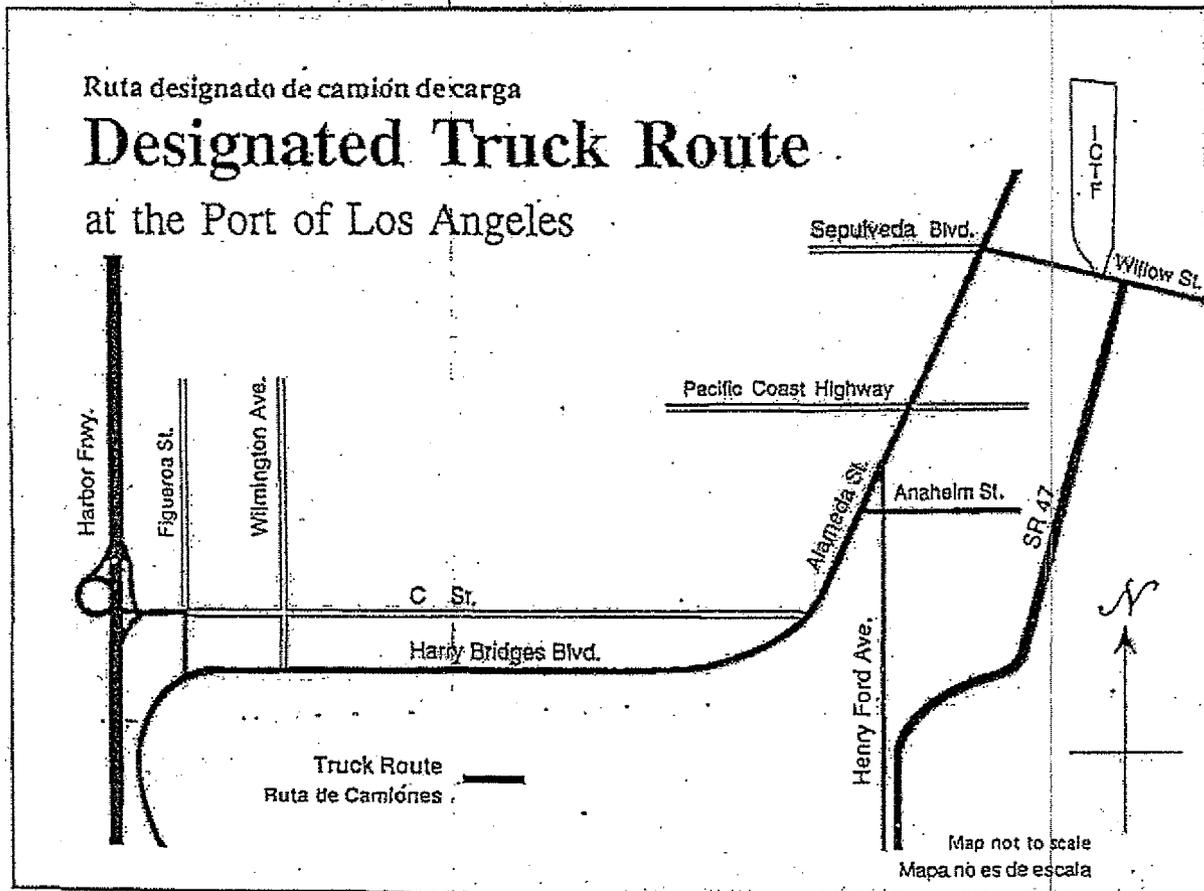


Exhibit C

Exhibit "D"
Appraisal Scope of Work

Appraisers performing work under Section 5 of the Agreement shall prepare appraisal reports in strict conformity with the scope of work set forth herein ("Appraisal Reports"). This scope of work incorporates by reference as if fully set forth herein all terms defined in the Agreement to which it is attached.

Format Requirements for Appraisal Reports:

Appraisal Reports shall be presented in a letter size bound report. Appraisal Reports shall include a confidentiality agreement in a form prepared by the Office of the City Attorney of City. Appraisal Reports shall include a letter of transmittal that clearly states all of the real property conclusions and all extraordinary assumptions of the report and the bases underlying each. Such letter of transmittal shall also contain a brief description of the interests appraised, dates of value, date of report, client, intended use, intended user, signature, type of appraisal and report type. Appraisal Reports shall be self-contained and shall fully comply with Uniform Standards of Professional Appraisal Practice ("USPAP") (latest edition) and Appraisal Scope of Work. Appraisal Reports shall contain an executive summary or summary of salient facts.

Content Requirements for Appraisal Reports:

Subject Property

The premises identified and defined in Section 3 of the Agreement, which include land and improvements, excluding Tenant improvements ("Premises").

Interest Appraised

Market value and market rent of the as is, fee simple interest of the Premises including total property, land and/or improvements (excluding Tenant improvements) based upon and analyzed for both the highest and best use and/ or existing use.

Date of Appraisal

Current, prospective or retrospective relative to the Date of Value.

Date of Value

The date of value shall be the date of commencement of the relevant Adjusted 5-Year Period, as defined in Section 5 of the Agreement.

Scope of Appraisal

Determine the market value and rental value of the (total property, land and/or improvements, excluding Tenant improvements) considered as fee simple interest. The opinions of value will be set forth on a value per-square-foot unit of comparison.

Externalities

Information, including but not limited to:

- analysis of national, regional and local economic trends and other relevant forces that influence or impact property values;
- descriptions of the immediate and surrounding economic areas;
- description of the Premises' access features;
- availability and market characteristics of competing properties;
- impact of port activities and a conclusion as to the social, economic, governmental, and environmental characteristics of the Premises.

Highest and Best Use

The Appraisal Report shall include a highest and best use analysis of the Premises as improved, exclusive of Tenant improvements, and as if vacant. Rent and value methodology shall disclose the existing use, similar types of agreements and the highest and best use as if vacant.

Zoning

The Appraisal Report shall include a discussion of current zoning including designation, height restrictions, permitted uses, setbacks, coverage ratios, FARs, landscaping and parking requirements.

Comparable Information

Each comparable land sale, improved sale, rental comparable and rate of return comparable shall be described in detail on a separate data sheet that shall include the verification date and source, as well as, other important features. All Appraisal Reports must include an adjustment grid that delineates each item of adjustment as well as the direction and amount of each adjustment made. All adjustments are to be discussed in the pertinent analysis section of the Appraisal Report.

Method of Appraisals

Describe all information analyzed, the appraisal procedures followed, and the reasoning that supports the analysis, opinions and conclusions. All appraisal methods shall be considered and all appropriate appraisal methods shall be applied, however as a minimum, the sales comparison and income approaches to value must be included. If standard approaches to value are not included, the report must contain a discussion of the reason for the exclusions.

The Income Capitalization Approach

This approach, if relevant, will include an estimate of market rent and market value of the Premises, land and/or improvements, exclusive of Tenant improvements. Values will be estimated base on the direct capitalization approach or a discounted cash flow methodology. Direct land, building and or total property capitalization rates will be derived from verified comparable sale properties with similar risk characteristics. Discounted cash flow analyses will contain internal rates of return derived from investor

surveys and interviews with buyers of verified comparable sales. Comparables will consist of similar use San Pedro Bay properties or industrial zoned properties within a 15 mile radius of the Port of Los Angeles ("POLA-Adjacent Properties").

The Cost Approach

This analysis, if applied, will value the improvements (exclusive of Tenant improvements) as a whole and will set forth the reproduction cost new including direct costs, indirect costs and entrepreneurial profit. Indirect costs shall include, but not be limited to, construction interest and costs, long-term financing costs, insurance, taxes, fees, permits, architectural and engineering fees, site costs, land holding costs, utility connection fees and an estimate of construction time. A depreciation analysis will estimate total life, remaining economic life, effective age, and total accrued depreciation from all forms. This approach to market and rental value will reconcile total value for the land, improvements (excluding Tenant improvements) and or total property considered as a whole and the individual estimates for each area of appraised classification. When applied to estimate land value and rent the method will abstract the value the land from the value of the total property by deducting the depreciated value of the improvements, other than Tenant improvements.

The Sales Comparison Approach

This required valuation method will include, where relevant, a direct comparison of sales or leases of similar use San Pedro Bay or POLA-Adjacent Properties. These property types may include: office, Retail, R & D and industrial properties as well as arms-length lease comparables from within the Port of Los Angeles.

In identifying similar properties as comparables, the appraiser shall consider factors including, but not necessarily limited to, the following: use (commercial versus noncommercial); size; location, water and non-water access; other occupancy cost and fees, unique taxes, tariffs and levies, operating rules and regulations; and type, quality, condition, and functional utility or limitations of land and/or improvements. The appraiser shall also consider general real estate market conditions and trends in the surrounding area.

Only those properties that are considered similar by the appraiser shall be used to determine market value for the Premises. Any disparities with respect to the factors listed above shall be considered and addressed by the appraiser.

Reconciliation

The Appraisal Report shall reconcile the results of all approaches employed and provide an analysis that results in a final conclusion of the market value and market rent for the each interest or property classification. The reconciliation will state the effective dates of value, the interests appraised and the properties appraised.

Exhibit "E"
Appraiser Qualifications

Any appraisals that provide opinions of market value shall be performed by an appraiser whose business is located in Los Angeles or Orange Counties and holds a Certified General Appraiser classification within the State of California obtained through the qualification procedures set forth by the California Office of Real Estate Appraisers (OREA) and be a member in good standing with the Appraisal Institute and hold the designation of MAI. A copy of all licenses and certifications shall be submitted prior to commencement of work.

Any appraiser selected to perform an appraisal of port related properties (total property, land and/or improvements) shall have working knowledge of port related properties that is appropriate for the work being performed.

Baseline Environmental Assessment Report

**THERE HAS BEEN NO BASELINE REPORT PREPARED
OF THE SUBJECT PREMISES**

EXHIBIT F



TETRA TECH

Heather Benfield, P.E.
Project Manager

Ms. Heloise Froelich
Environmental Management Division
Port of Los Angeles
425 South Palos Verdes Street
San Pedro, California 90733-0151

December 5, 2011

Subject: Revised Cost Proposal for Implementation of Revised Workplan for Deep Groundwater Zone Sampling and Assessment of the Phase III Area (Parcel 7), Catalina Cruise Terminal (Berths 95/96), Port of Los Angeles, California; ADP# 910913-191

Dear Ms. Froelich:

Tetra Tech, Inc. (Tetra Tech) is pleased to submit this revised cost proposal to the Environmental Management Division (EMD) of the Port of Los Angeles (the Port) to implement Tetra Tech's *Revised Workplan for Deep Groundwater Zone Sampling and Assessment of the Phase III Area (Parcel 7)*, dated October 25, 2011 (Workplan), for the Catalina Cruise Terminal (Berths 95/96), Port of Los Angeles, California, hereinafter referred to as the "Site". The costs to implement the Workplan include additional sample locations and sample analyses verbally directed by the Los Angeles Regional Water Quality Control Board (LARWQCB) on November 10 and 16, 2011 and formalized in a letter, dated December 1, 2011. All work is expected to be conducted concurrently with the Catalina Cruise Terminal relocation, China Shipping expansion, and Front Street beautification projects.

The proposal includes the costs to conduct:

- Multiple-depth, deep groundwater sampling at three locations; site activities will include drilling pilot-holes, continuous soil sampling, and analyses of soil and groundwater based on the directive from the LARWQCB;
- Additional assessment including soil sampling and analysis in the Phase III Area (Parcel 7) based on the directive from the LARWQCB;
- Shallow soil sampling at six locations adjacent to the 12-inch diameter pipeline and at two locations north of the historical underground storage tank (UST) locations based on the directive from the LARWQCB; and
- Confirmation soil sampling beneath the concrete pad at the historical aboveground storage tank (AST) location.

Task 1 – Project Management

Tetra Tech has included the costs for project management, including meetings, preparation of technical memorandums, and conference calls with the Port, tenants, and the Los Angeles Regional Water Quality Control Board (LARWQCB) on an as-needed basis. The estimated costs for Task 1 is \$5,604.

Tetra Tech, Inc.
3475 E. Foothill Boulevard, Suite 200, Pasadena, CA 91107-6024
Tel 626.470.2415 Fax 626.470.2615 www.tetrattech.com



TETRA TECH

Task 2 - Deep Groundwater Zone Drilling and Sampling

A total of three sampling points will be drilled in the Parcel 7 area where impacted groundwater is present and the vertical extent of the impacted groundwater has not yet been delineated. Each boring will be drilled to approximately 50 feet bgs. Tetra Tech will first notify and coordinate with all appropriate parties (including tenants, SAIC [tenant consultant], LARWOCB, and the Port) prior to conducting field activities for the Site. Tetra Tech will then mark the proposed boring locations and contact Underground Service Alert (USA) to clear subsurface utilities within the immediate vicinity of the boring locations. Because of the proximity to numerous utility and transportation rights-of-way, Tetra Tech will request a Site meeting with the utilities and agencies notified by USA for the field activities. A geophysical survey consisting of ground penetrating radar and electromagnetometry screening methods will be conducted in the areas of the proposed soil boring locations to confirm the absence of any subsurface obstructions at each location. If necessary, the borings will be relocated to avoid potential damages to any subsurface features. The appropriate well permit will also be obtained from the County of Los Angeles Department of Public Health (LADPH) and advanced notification of field sampling activities will be provided to the LADPH in accordance with the approved well permit.

All soil borings will be drilled and sampled using a truck- or track-mounted Geoprobe[®] direct-push drill rig at the proposed locations. In order to identify the potential vertical groundwater zones for groundwater collection, as well as changes in lithology and observed contamination, continuous soil sampling and logging of the soil profile will be conducted. Soil samples will be collected in acetate liners housed in the inner sampling core barrel by hydraulically advancing the steel probe casing into the soil using a dual-tube sampling system. Soil will be screened using an organic vapor analyzer (OVA) equipped with a photo-ionization detector (PID) and calibrated against 100 parts per million by volume isobutylene. Each boring will be logged according to the Unified Soil Classification System (USCS) by or under the supervision of a California-Registered Professional Geologist (PG). The soil sample descriptions, exact sampling depths, and the maximum PID readings will be presented on boring logs in the summary report described below.

Soil samples for analysis will be collected from the acetate liners at 1, 5, and 10 feet below ground surface (bgs). One 6-inch long sample will be capped with Teflon[™] sheets and plastic end caps. Subsamples of soil will also be collected using the EPA Method 5035 (EnCore[®] samplers or equivalent) from a second 6-inch long section to be analyzed for volatile total petroleum hydrocarbon (TPH) range compounds (gasoline carbon chain range C₆ to C₁₂) and volatile organic compounds (VOCs) with fuel oxygenates (including methyl tertiary butyl ether [MTBE], tertiary butyl alcohol [TBA], ethyl tertiary butyl ether [ETBE], tertiary amyl methyl ether [TAME], and diisopropyl ether [DIPE]).

Following soil sampling, the vertical soil profile will be reviewed by the Tetra Tech field geologist to determine the appropriate zones to collect deeper groundwater samples. A second boring will be drilled immediately adjacent to the primary boring in order to collect discrete groundwater zone samples using a Screen Point sampling system (or similar Hydropunch[®] groundwater sampling method). If multiple zones will be sampled, a discrete vertical groundwater profiler will be used. Following soil and groundwater sampling, each borehole will be grouted and patched to match the surrounding surface. All reusable drilling and sampling equipment will be decontaminated between each use.

Soil samples collected from 1, 5, and 10 feet bgs will be analyzed for volatile (carbon chain range C₆-C₁₂) and extractable (carbon chain range C₉-C₂₅ and C₂₄-C₄₀) TPH by USEPA Method 8015M, VOCs with fuel oxygenates by EPA Method 8260B, Title 22 Metals by EPA Method 6010/7471A, and polycyclic aromatic hydrocarbons (PAHs) by EPA Method 8310. Reported TPH carbon change ranges may be



TETRA TECH

modified at the direction of the LARWQCB. Soil samples collected from 1 and 5 feet bgs will be analyzed for polychlorinated biphenyls (PCBs) by EPA Method 8082. Each sample will be recorded on a chain-of-custody (COC) form identifying the sampler, sample container, couriers, responsible laboratory personnel, and requested analyses. The samples will be labeled, stored in recloseable/resealable bags, and placed in a cooler on ice at 4°C for transport to Advanced Technology Laboratories, Inc. (ATL), a State-certified laboratory, for analysis.

All groundwater samples will be analyzed for volatile and extractable TPH by EPA Method 8015M with carbon chain reporting (C₆ to C₁₂, and C₉-C₂₅ and C₂₄-C₄₀, respectively), and VOCs with oxygenates by EPA Method 8260B. As described above, reported TPH carbon change ranges may be modified at the direction of the LARWQCB. Quality control (QC) samples will also be collected and will include duplicates, and equipment and trip blanks (EBs and TBs, respectively). Field duplicates will be collected for soil and groundwater at a frequency of one field duplicate sample for every 10 samples collected. One set of EBs will be collected at the end of each field sampling day. Field duplicates and EBs will be analyzed for the same analytes as the original samples. One sealed TB set will accompany each cooler containing samples collected for VOCs. The TB set will be analyzed for VOCs using EPA Method 8260B.

Any IDW generated during the drilling and sampling activities will be stored in United Nations/Department of Transportation (UN/DOT)-approved drums and analyzed for waste classification. Tetra Tech will characterize the IDW and subsequently arrange for transport and disposal of the IDW under the appropriate waste manifest document(s). Following completion of boring activities, the locations of all boring locations will be surveyed by the Port. The estimated cost for Task 2 is \$30,652.

Task 3 - Additional Assessment of the Phase III Area

Tetra Tech will conduct additional assessment of the Phase III Area (Parcel 7), which will include drilling and sampling of nine borings in the western portion of the Phase III Area, six borings along the 12-inch diameter pipeline, two borings north of the historical UST locations, and two borings in the historical AST location. Each boring will be drilled to approximately 10 feet bgs. Field preparation activities, including notification and coordination with the appropriate parties, marking of boring locations, USA notification, and geophysical survey will be similar to those described in Task 2 above.

With the exception of the two borings in the historical AST location, the sampling points will be drilled using a truck- or track-mounted Geoprobe® direct-push drill rig at the proposed locations. The soil sampling methodology will be conducted similar to the method described in Task 2 above. The two boring locations in the historical AST location will require concrete coring and will subsequently be hand-augered to the total proposed sampling depths. Soil samples will be collected from the hand-augered borings at the appropriate sampling depths using a discrete depth slide-sampler (or similar) fitted with a stainless-steel sleeve. Each boring will be logged according to the USCS by or under the supervision of a California-Registered PG. Soil will be collected in the stainless steel sleeve(s) and subsamples collected using the appropriate sampling containers for analysis. The samples will be labeled, stored, and submitted using proper COC procedures described above to ATL for analysis.

Soil samples will be collected from each boring at 1, 5, and 10 feet bgs from each boring. Soil samples collected from 1, 5, and 10 feet bgs will be analyzed for volatile and extractable TPH by EPA Method 8015M with carbon chain reporting (C₆ to C₁₂, and C₉-C₂₅ and C₂₄-C₄₀, respectively), and VOCs with oxygenates by EPA Method 8260B, Title 22 Metals by EPA Method 6010/7471A, and PAHs by EPA Method 8310. As described above, reported TPH carbon change ranges may be modified at the



TETRA TECH

direction of the LARWQCB. Soil samples collected from 1 and 5 feet bgs will be analyzed for PCBs by EPA Method 8082. QC samples will be collected for analysis using the same methodology as described in Task 2. IDW will be stored in UN/DOT-approved drums and analyzed for waste classification, characterized, and disposed of under proper waste manifest documents. Boring locations will also be surveyed by the Port. The estimated cost for Task 3 is \$50,007.

Task 4 – Summary Report for Deep Groundwater Zone Sampling and Assessment of the Phase III Area

Tetra Tech will prepare a report that will include a summary of activities conducted during the deep groundwater zone sampling and the assessment of the Phase III area. The report will include the following:

- Site vicinity map, sample location figures, and contour maps with contaminant concentrations;
- Description of field observations, field and laboratory methods, and procedures;
- Tabulated summary of soil and groundwater analytical results;
- Boring logs and field photos;
- Laboratory analytical reports and COC documentation;
- Waste disposal documentation;
- Analytical data interpretation; and
- Conclusions and recommendations.

An electronic version (.pdf) of the draft report will be submitted to the POLA Project Manager for review and approval. Upon receipt of comments from the Port, Tetra Tech will prepare a final report that will be submitted to the LARWQCB. We have included one meeting to review the draft and final report with the Port. The electronic version of the report will be uploaded to the California State Water Resources Control Board's (SWRCB's) GeoTracker database in accordance with the electronic submittal requirements. The estimated cost for Task 4 is \$14,539.

Total Project Budget

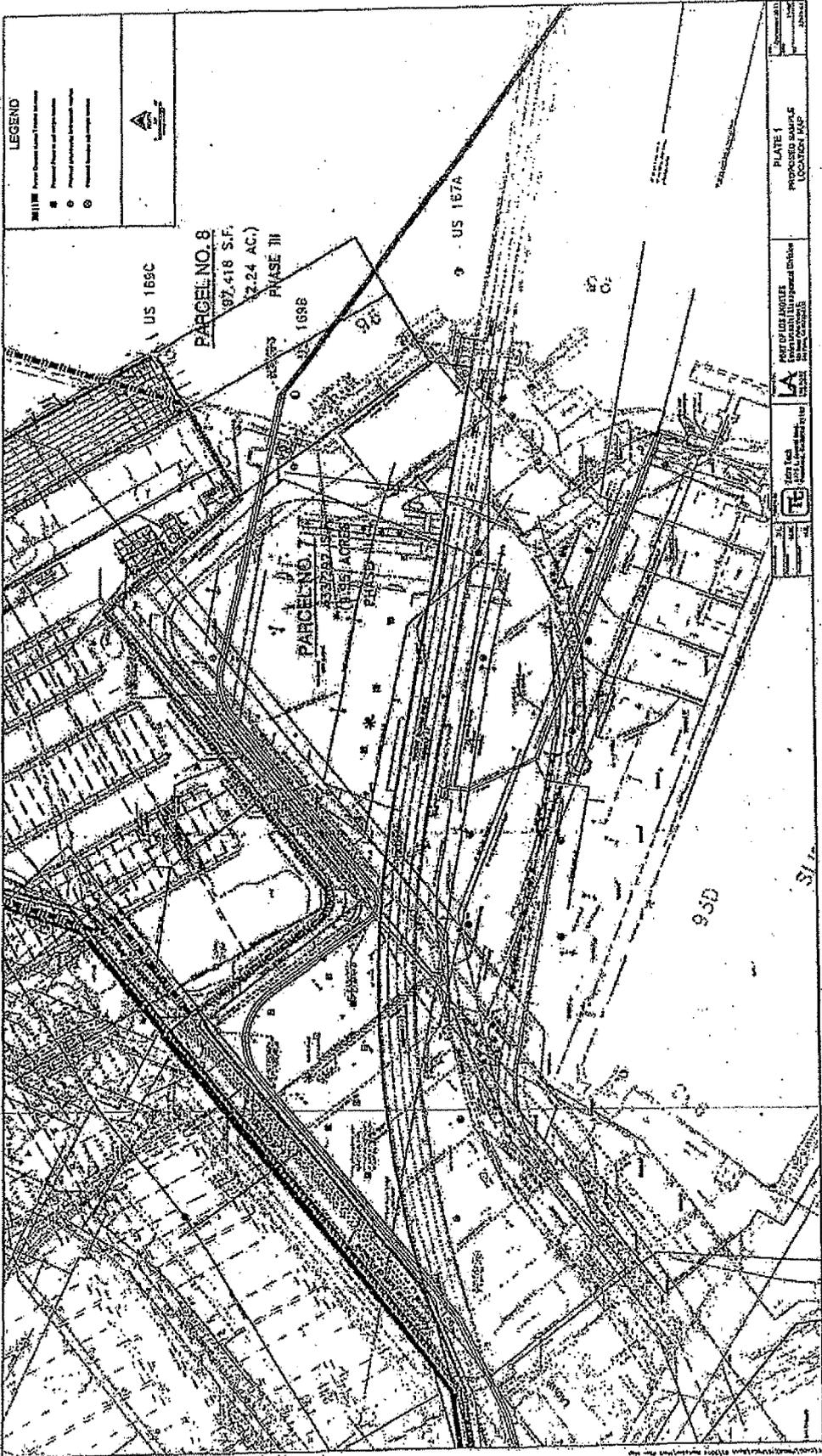
The total cost to conduct the deep groundwater zone sampling, and additional assessment of the Phase III area and summary report is estimated to be \$100,802. The goal for small business enterprises is 53.9% and consists of Advanced Technology Laboratories (\$39,766 or 39.4%) Subsurface Surveys (\$2,100 or 2.1%), Core Probe (\$11,960 or 11.9%), and Ocean Blue (\$515 or 0.5%). A detailed cost estimate breakdown is attached.

If you have any questions or need additional information, do not hesitate to contact me at (626) 470-2415.

Sincerely,

Heather Benfield

Attachments: Cost Breakdown



LEGEND

- ▬ Proposed Road (Center Line)
- ▬ Proposed Road (Right-of-Way)
- ▬ Proposed Road (Left-of-Way)
- Proposed Road (Center Line)
- Proposed Road (Right-of-Way)
- Proposed Road (Left-of-Way)



US 166C

PARCELS NO. 8
 97,418 S.F.
 (2.24 AC.)
 PHASE III

PARCELS NO. 7 & 8
 132,237 S.F.
 (3.03 AC.)
 PHASE II

US 167A

PART OF THE MAPS FOR THE STATE OF CALIFORNIA PREPARED BY THE CALIFORNIA DEPARTMENT OF TRANSPORTATION SAN FRANCISCO, CALIFORNIA	
	PLATE 1 PROPOSED SAMPLE LOCATION MAP

93D

93E

EXHIBIT G-1

**APPLICABLE ENVIRONMENTAL POLICIES, RULES AND
DIRECTIVES OF
CITY'S HARBOR DEPARTMENT
(PORT ENVIRONMENTAL POLICIES)**

1. Port of Los Angeles Environmental Management Policy and any amendments can be found at:
http://www.portoflosangeles.org/idx_environmental.asp
2. Resolution No. 5317 – Policy for Operation of Hazardous Waste Transfer, Storage and Disposal (TSD) Facilities on Harbor Department Property and any amendments or successor resolution.

Tenant acknowledges that City has provided copies of the above policies to the Tenant.

EXHIBIT G-2

OPERATIONAL MITIGATION MEASURES

None IDENTIFIED at this time.

The City of Los Angeles reserves the right to require operational mitigation Measures, as may be required for Catalina Express Operations by local, State and federal regulations.

EXHIBIT H

Maintenance

Tenant shall be responsible for the repair and maintenance of all structures and improvements within the Premises (which does not include the parking area) except for the following:

STRUCTURAL MAINTENANCE AND REPAIR PERFORMED BY CITY AT CITY'S EXPENSE:

- a. Wharf structure, meaning the beams, girders, subsurface support slabs, cones, decks, bulkheads and pre-stressed concrete piling, pile caps, mooring bollards, and any and all mooring dolphins, but not including paving or the fendering system.
- b. Boat launch ramp within Parcel 7, and adjacent paved slope in Parcel 4, of Site Plan, on Exhibit A.
- c. Rock slopes
- d. Underground sewer and storm drain lines, excluding damage, if any, caused by Tenant's operations.

MAINTENANCE & REPAIR PERFORMED BY CITY AT TENANT'S EXPENSE

- a. Wharf fender system including framing, bracing, buckling column, and face plate(s).

EXHIBIT I – 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 I – AFFIRMATIVE ACTION PROGRAM PROVISIONS

- 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 for 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 and 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 supplier 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

EXHIBIT I – AFFIRMATIVE ACTION PROGRAM PROVISIONS

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 of 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.

EXHIBIT I – AFFIRMATIVE ACTION PROGRAM PROVISIONS

- 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-resignation, 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 contract 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.

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 nearest office listed below, or log on to www.lacity.org/finance to download the business tax registration application.

	MAIN OFFICE	
LA City Hall	201 N. Main Street, Rm. 101	(213) 626-9271
	BRANCH OFFICES	
Van Nuys Civic Center	14401 Erwin Mall	(818) 756-8531
W. LA City Hall	1828 Sawtelle Blvd.	(310) 575-8888
Hollywood Office	6501 Fountain Ave.	(213) 485-3935
San Pedro City Hall	638 S. Beacon St., Rm. 303	(310) 732-4537
Westchester Municipal Bldg.	7166 Manchester, Rm. 9	(213) 473-6750
Watts City Hall	10221 Compton Ave., Rm. 202	(213) 473-5109

0150-09708-0000

TRANSMITTAL

TO Geraldine Knatz, Ph.D., Executive Director Executive Director	DATE FEB 27 2012	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 15	

**PROPOSED PERMIT NO. 897 WITH CATALINA CHANNEL EXPRESS, INC.
FOR PREMISES IN SAN PEDRO, AT BERTHS 94 AND 95**

Transmitted for further processing and Council consideration.
See the City Administrative Officer report attached.



MAYOR

MAS:ABN:10120082t

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: February 17, 2012

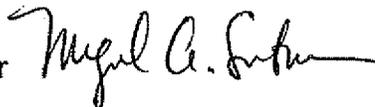
CAO File No. 0150-09708-0000

Council File No.

Council District: 15

To: The Mayor

From: Miguel A. Santana, City Administrative Officer



Reference: Transmittal from the Harbor Department dated January 9, 2012; referred for report by the Mayor January 12, 2012

Subject: **PROPOSED PERMIT NO. 897 WITH CATALINA CHANNEL EXPRESS, INC. FOR PREMISES IN SAN PEDRO, AT BERTHS 94 AND 95**

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of a long-term 25-year agreement (Permit No. 897) with Catalina Channel Express, Inc. (Catalina Express) at Berths 94 and 95 in the Port of Los Angeles (POLA). The Port has leased the Berths to Catalina to operate passenger vessel ferry services to transport tourists and commuters between San Pedro and Catalina Island. Currently, Catalina Express operates the public passenger facility and maintenance operations on POLA property at Berths 95 and 96 (under expiring Permit 768) in San Pedro. The proposed Permit No. 897 will allow Catalina Express to remain as a Port tenant, under a new long-term successor agreement, but will require that it relocates its operations from Berths 95/96 to Berths 94 and 95. The Port is requesting the relocation so that the property can be made available to accommodate the planned expansion of the container terminal operations for China Shipping Holdings Company (China Shipping).

In accordance with Charter Section 606, Council approval is required because the term of the proposed agreement exceeds five years. The term of the Agreement will be for 25 years and will begin upon the date of contract execution. Any tenant improvements that Catalina Express makes on the leased property, during the contract term, at the option of the Port, will become the property of the Department. The Permit provisions regarding length of contract term, basis for compensation, uses, and conditions are consistent with permits for other terminal operations.

BACKGROUND

China Shipping is one of the largest shipping lines and container terminals at the POLA. In 2001, a lawsuit was filed against the Port and City of Los Angeles (City) over a permit with China Shipping to operate a container terminal and an environmental impact report (EIR) generated in 1997 to support that permit. China Shipping has planned to expand its container terminal operations through the development of three construction phases to meet future business capacity. The Port subsequently

agreed to settle a damage claim from the lawsuit, which was filed by China Shipping, through an amendment to the permit with them. The Port included the provisions to pay for cost reimbursements to China Shipping for financial losses related to the lawsuit and delays in scheduled construction and operations at the terminal sites. According to the Port, if it fails to make Berth 96 available to China Shipping, it could subject the Port to additional legal penalties as a result of the settlement to operate a container terminal and an environmental impact report (EIR) to support their permit.

RELOCATION OF CATALINA CHANNEL EXPRESS

Catalina Express occupies approximately 171,000 square feet of land and water spaces at Berths 95 and 96 in San Pedro to operate a cruise terminal facility for passenger operations, under the expiring Permit No. 768. This location also includes a maintenance building and an adjacent water area. Catalina Express operates several boats and catamarans that have a capacity to carry approximately 150 to 350 passengers, which can reach Catalina Island in approximately one hour of travel. According to the Port, the year-round operations by Catalina Express have increased in popularity and significantly increased its passenger count since 1982. In 1998, Catalina Express subsequently leased an additional available Port Berth (No. 95) to use the land parcel and building as an adjunct to its ferry services for maintenance, handling, storage and forwarding of various items of merchandise and goods that are shipped to and from Catalina Island.

The Port requested Catalina Express to relocate its public passenger facility to the contiguous Berth 94 to accommodate the future expansion of the China Shipping. Catalina Express will continue to occupy Berth 95, the existing location for its maintenance building and operations. As a result of the relocation, the Port is proposing a new agreement with Catalina Express, under Permit No. 897, because of the relocation to the new terminal site and the revised contractual provisions. The Port states that some of the administrative functions of Catalina Express will be relocated to their Long Beach site, consistent with the provisions of the State Tidelands Trust. However, no employees currently working with Catalina Express will lose their jobs due to the relocation. The Port states that the relocation of Catalina Express is estimated to support approximately 35 jobs during the construction and renovation period.

Catalina Express is planning to invest approximately \$2.8 million to relocate its facilities to its new site at Berth 94 and will be responsible for most of the tenant improvements. The cost of the relocation will include the following expenses: moving to the new Berth, including passenger operations and facilities and berthing/mooring of charter vessels; the construction, operation and maintenance of the new public passenger facility site, including business offices, ticket/tours/food and beverage sales areas, and other support activities; and renovation and improvements to the existing maintenance building and common terminal areas. In addition, the renovated Catalina Express site will include support for special events, private parties and commercial filming purposes. Catalina Express is trying to expedite the completion of the relocation activities to prevent any delays and maintain the continuity of the company's operations. According to the Port, Catalina Express will be responsible for the repairs, improvements, and maintenance of all structures on the leased property except for those designated in the contract agreement. This will include the approval of all plans, permits, and documents, as required by selective State and local regulatory agencies, including the Port and City departments.

The Port will be responsible for expending funds to improve and reconfigure some of the property in which Catalina Express will relocate, including the following: upgrading of parking areas; traffic flow for passenger and bus drop-off areas; and selective wharf improvements, to ensure the safe berthing and mooring of Catalina Express passenger vessels. The Port estimates that it will spend up to \$800,000 in Fiscal Year 2011-12 for the construction costs of these services.

Catalina Express will compensate the Port in one of two ways to lease the property: 1) a fixed compensation amount or 2) a percentage compensation, in which payment is waived in the first five years of the 25-year term and adjusted in the second five-year term. Under the fixed compensation, Catalina Express will pay a lease amount of approximately \$60,000 annually in Year One increasing to approximately \$100,000 in Year Five. From Year Six to 25, Catalina Express's lease amount will be adjusted based upon every five-year period on the estimated rental value of the market and the consumer price index. The "percentage compensation" will defer some of the cost, based on a contractual formula, of the approximately \$2.8 million that Catalina Express plans to invest to relocate and improve its operations. The lease amount in each of the last two five-year periods (Years 16-25) may be adjusted based on the market rental value of the property.

The Port states that Catalina Express also has applied for grant funds to assist in the costs of paying for its relocation and renovation expenses. In the event Catalina Express receives all or a portion of its requested grant funds, the Port and Catalina Express have agreed to eliminate or reduce the waiver of the percentage compensation in proportion to the amount of the received grant funds for the first ten years of the contract.

The City Attorney has reviewed and approved the proposed lease agreement as to form and legality. Since the proposed agreement is a property lease, the request is not subject to the provisions of Charter Section 1022. The Port Director of Environmental Management has determined that the proposed action is exempt from the California Environmental Quality Act (CEQA) in accordance with Articles II Section 2(i) of the City of Los Angeles CEQA Guidelines. The Port states that the relocation of Catalina Express was included and certified in the respective EIRs for China Shipping and the San Pedro Waterfront Projects.

RECOMMENDATION

That the Mayor:

1. Approve Harbor Department (Port) Resolution No. 12-7242 for a new, long-term 25 year agreement (Permit No. 897) with Catalina Channel Express, Inc. (Catalina Express) at Berths 94 and 95 in the Port of Los Angeles. Under the new long-term successor agreement, Catalina Express will move its operations from its currently occupied space of Berths 95/96 to Berths 94/95 so that the property is available to accommodate the planned expansion of the container terminal operations for China Shipping Holdings Company, based on a court order; and,
2. Return the documents to the Port for further processing, including Council consideration.

FISCAL IMPACT STATEMENT

Approval of the 25-year lease agreement with Catalina Channel Express, Inc. (Catalina Express) to lease Berths 94 and 95 will allow them to continue to operate a passenger vessel ferry service to transport tourists and commuters between San Pedro and Catalina Island. Catalina Express will be responsible for most of the tenant improvements and is planning to invest approximately \$2.8 million to relocate its facilities to its new site at Berth 94. The Port estimates that it will spend up to \$800,000 in Fiscal Year 2011-12 for the construction costs of its property to support the relocation of Catalina Express. Catalina Express will pay a lease amount of approximately \$60,000 annually in Year One increasing to approximately \$100,000 in Year Five. From Year Six to 25, Catalina Express's lease amount will be adjusted based upon every five-year period on the estimated rental value of the market and the consumer price index. All additional funds will be deposited into the Harbor Revenue Fund. Funding for Harbor's construction costs has been allocated in its FY 2011-12 budget. There is no impact to the City General Fund.

TIME LIMIT FOR COUNCIL ACTION

Pursuant to Charter Section 606, "Process for Granting Franchises, Permits, Licenses and Entering Into Leases," and the Los Administrative Code Section 10.5, "Limitation and Power to Make Contracts," unless the Council takes actions disapproving a contract that is longer than five years within 30 days after submission to Council, the contract will be deemed approved.

MAS:ABN:10120082