



Antonio R. Villaraigosa Mayor, City of Los Angeles

Board of Harbor Commissioners

Cindy Miscikowski President

David Arian Vice President

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Douglas P. Krause

Sung Won Sohn, Ph.D.

Geraldine Knatz, Ph.D.

Executive Director

April 9, 2013

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

CD No. 15

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

SUBJECT: RESOLUTION NO. 13-7467 – OPERATING AGREEMENT NO. 13-3112 WITH PORTS AMERICA, INC.

Pursuant to Section 606 of the City Charter, enclosed for your approval is Resolution 13-7467, and Operating Agreement No. 13-3112, which was approved by the Board of Harbor Commissioners on April 4, 2013.

Please note that the Mayor's office is waiving Executive Directive No. 4 review; therefore, a CAO report is not attached.

RECOMMENDATION:

1. Adopt Resolution 13-7467 approving Operating Agreement 13-3112 with Ports America, Inc.; and
2. Adopt the determination by the Los Angeles Harbor Department that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines; and
3. Return to the Board of Harbor Commissioners for further processing.

Respectfully submitted,


JULIE WICHMANN HUERTA
Commission Secretary

cc: Trade, Commerce & Tourism Committee
Councilman Rosendahl, encs.
Councilman LaBonge, encs.
Councilman Buscaino, encs.
Christine Yee-Hollis, CLA, encs.

Alvin Newman, CAO, encs.
Lisa Schechter, CD4, encs.
Aaron Gross Government Affairs, encs.
Robert Henry, encs.
Mandy Morales, Mayor's off, encs.
Real Estate Division

RECOMMENDATION APPROVED
AND RESOLUTION NO. 13-7467 AND
AGREEMENT 13-3112 ADOPTED BY
THE BOARD OF HARBOR COMMISSIONERS

April 4, 2013

Jared Whitehead
SECRETARY



Executive Director's
Report to the
Board of Harbor Commissioners

4/14/13
7

DATE: MARCH 20, 2013

FROM: REAL ESTATE

SUBJECT: RESOLUTION NO. 13-7467 - PROPOSED OPERATING AGREEMENT WITH PORTS AMERICA CRUISE, INC.

SUMMARY:

Staff recommends approval of an Operating Agreement (Agreement) with Ports America Cruise, Inc. (Ports America) for the operation, management, and maintenance of the Port of Los Angeles Cruise Terminal (Cruise Terminal) at Berths 90-93, San Pedro. The proposed term of the Agreement is for five years, with two five-year options for renewal. Proposed annual compensation for the first year is \$1,830,000, which includes an annual flat management fee of \$1,500,000, additional costs for outer harbor cruise expenses not to exceed \$75,000 per ship call, and an additional one-time expense to upgrade the Harbor Department's audio visual system used by all the cruise lines.

Ports America was selected through the City of Los Angeles Harbor Department's (Harbor Department) mandated Request for Proposal (RFP) process. Approval of this Agreement will provide for uninterrupted operations of the Cruise Terminal facility for the cruise lines and its passengers. Ports America is currently operating the facility under short-term Operating Agreement No. E6666, which expires on May 31, 2013.

RECOMMENDATION:

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

1. Find that in accordance with the Los Angeles City Charter Section 1022, it is more feasible for an outside contractor to perform this work than City employees;
2. Approve the Agreement with Ports America Cruise, Inc.;
3. Direct the Board Secretary to transmit the Agreement to the City Council for approval pursuant to Charter Section 606 of the City Charter;
4. Authorize the Executive Director to execute and the Board Secretary to attest to the Agreement effective upon approval by City Council; and
5. Adopt Resolution No. 13-7467.

SUBJECT: PROPOSED OPERATING AGREEMENT WITH PORTS AMERICA CRUISE, INC.

DISCUSSION:

Background/Context – Beginning in 2003, the Cruise Terminal (Transmittal 1) was managed under an Operating Agreement with Pacific Cruise Ship Terminals (PCST), a subsidiary of Metro Port Services, the long-time stevedore services provider at the Cruise Terminal. This was intended to be a short-term situation until such time as the RFP process was conducted to secure a long-term Operating Agreement.

Prior to 2003, the Cruise Terminal was managed as a leasehold interest by an entity comprised of a consortium of cruise lines. When the consortium abruptly disbanded, PCST was formed in an effort to maintain continuity and operations. The Board approved Operating Agreement No. 2264 with PCST on December 4, 2002, for the management and operation of the Cruise Terminal for a period of 18 months (effective January 1, 2003), on the condition that staff would seek a long-term operator through the Harbor Department's mandated RFP process. For various reasons, the term was extended for an additional 12 months and expired on June 30, 2005. Agreement No. 2264 was then put on a month-to-month holdover. Although the Board report stated that the Harbor Department would issue an RFP, the issuance of an RFP did not take place until April 2012, with PCST continuing to operate the Cruise Terminal until September 30, 2012, when Agreement No. 2264 was officially terminated.

On April 26, 2012, the Harbor Department released an RFP for the operator of the Cruise Terminal. Two proposals were received by the submittal deadline of May 14, 2012. The evaluation panel consisted of representatives from the Real Estate, Financial Management, and Business Development Divisions, and a representative from the Port of San Diego. Proposer interviews were held on May 22, 2012.

The proposers were rated on the basis of the following criteria: (1) qualifications, experience and references, demonstrated success in providing services identified in the RFP; (2) financial capability; (3) general management and operating plan; (4) proposed collection plan; (5) proposed compensation plan; and (6) quality and responsiveness of the proposal. As reflected by the evaluation panel's proposal review and evaluation score, Ports America has extensive experience operating cruise terminals (both management & stevedoring), strong financial backing to assume cruise terminal operations, very aggressive account receivables collection program with less than .01 percent in bad debt written off, a management program called Lean Six Sigma which targets productivity improvements, safety, billing, fleet optimization, lean operations, and damage reduction and highly competitive appropriate management fees. Ports America manages cruise terminal operations in New York, handling 1.6 million cruise passengers in a typical year. In addition, Ports America is also stevedore at 42 ports in the nation, including Los Angeles, Boston, Miami, Houston, and Portland.

After a review of the written proposals, conducting in-house interviews, and reference checks for each of the respondents, Ports America received the highest score. The results of the evaluation, using the scoring criteria identified in the RFP, are as follows:

SUBJECT: PROPOSED OPERATING AGREEMENT WITH PORTS AMERICA CRUISE, INC.

	Proposer	Rater #1	Rater #2	Rater #3	Rater #4	AVERAGE
1	Pacific Cruise Ship Terminals	78	77	72	76	76
2	Ports America	83	84	57	87	78

Ports America was notified in August 2012 of their selection as the operator. To allow for continued Cruise Terminal operations, Interim Operating Agreement No. E6666 was entered into by the Executive Director, effective October 3, 2012 through January 31, 2013, and is consistent with the terms of Operating Agreement No. 2264 with PCST. Compensation paid under the Interim Operating Agreement is \$11,800 per ship call. Ports America is also reimbursed for the maintenance and repairs of the Harbor Department-owned audio-visual equipment used by the cruise lines. The Interim Operating Agreement was initially for an amount not to exceed \$150,000.

It was originally anticipated that the negotiations for the proposed long-term Operating Agreement for Cruise Terminal operations would be concluded in December 2012, with approval by the Board at its first meeting in January 2013. However, the devastation of the cruise terminal managed by Ports America in Manhattan, New York, caused in November 2012 by Hurricane Sandy, had a significant impact on the availability of Ports America staff to attend negotiation meetings with Harbor Department Real Estate staff and led to the delay.

Therefore, the First Amendment to the Operating Agreement No. E6666 was approved by the Board on January 24, 2013, to allow time to conclude negotiations and allow for sufficient time for the proposed long-term Operating Agreement to be considered and approved by the Board and the Los Angeles City Council. The First Amendment extended the term of the interim Operating Agreement through May 31, 2013 and increased the amount of the contract by \$762,900, for a contract total of \$912,900.

Proposed Terms – Consistent with the provisions of the RFP, it was determined that a more cost-effective approach to managing the Cruise Terminal under an Operating Agreement was to provide increased transparency and accountability of revenue and collections of all tariff charges and other associated costs and fees for the Cruise Terminal. This new methodology will potentially lead to increased efficiencies of operations and cost controls. Under the former arrangement with PCST, compensation was paid to the operator through their direct collection of fees from the cruise lines, on a per-ship call basis.

Under the proposed Agreement (Transmittal 2), Ports America will receive a monthly flat fee for its management and operational responsibilities and all fees, tariff, and other charges collected from the lines by Ports America will be immediately remitted to the Harbor Department. Parking operations for the Cruise Terminal are currently managed under Agreement No. 2388 with Parking Concepts, Inc.

SUBJECT: PROPOSED OPERATING AGREEMENT WITH PORTS AMERICA CRUISE, INC.

The following is a summary of agreement terms:

Term: Five years, with two subsequent five-year options for renewal at discretion of the Executive Director, for a total term not to exceed 15 years.

Effective Date: Upon approval by the Los Angeles City Council and execution by the Executive Director.

Services to be provided: Management, operation, security, and janitorial maintenance of the Cruise Terminal. Services do not include stevedoring services provided to the cruise ships or guest passenger services.

First Year Compensation for Terminal Management and Operations/Costs: Flat rate of \$1.5 million per year, or \$125,000 per month. An additional \$30,000 will be paid for the first month, due to repairs and upgrades needed for the Harbor Department's computer based audio visual system, used regularly by all cruise lines, as well as \$300,000 for four outer harbor ship calls, for a total amount not to exceed \$1,830,000.

Annual Operating Costs	Monthly Costs	Explanation	
Operational/Administration/SSC	\$442,000	\$36,833	Staff salaries (including benefits), Shared Services Center costs
ILWU Mechanical Sweeper - assigned to terminal	\$283,000	\$23,583	Wages, T&I, and fringe benefits
General Janitorial Services	\$225,000	\$18,750	General cleaning/housekeeping services, window cleaning, trash removal, pest control, cleaning/janitorial supplies
M&R, Consumables	\$50,000	\$4,167	lighting, mobility, operational systems, equipment maintenance and repair
Terminal Security	\$300,000	\$25,000	24 hour secure facility and surveillance as per PFSP requirements
Insurance	\$135,000	\$11,250	General coverage as per POLA requirements
Audio Visual Costs	\$65,000	\$5,417	Annual maintenance contract and upgrade to Port's AV equipment used by all the lines
Total Terminal Costs	\$1,500,000	\$125,000	

Compensation for Outer Harbor Ship Calls: not to exceed \$75,000 per occurrence. Expenditures will be mutually agreed upon 60 days prior to date of ship call upon submission by Operator of a detailed budget justifying said expenses, including but not limited to, equipment and material rentals, such as passenger gangways, scanners, fencing, tents, tables and chairs, facility rentals, and security measures required by both Customs and Border Protection and the U.S. Coast Guard, etc.

Subsequent Years Compensation: Adjusted annually by Consumer Price Index and any International Longshore and Warehouse Union (ILWU) labor rate increases for the ILWU sweeper assigned to the premises. Terms will be renegotiated after the initial five years.

SUBJECT: PROPOSED OPERATING AGREEMENT WITH PORTS AMERICA CRUISE, INC.

The following is a breakdown of total gross revenue received for the three previous years, generated by the cruise business out of the Port of Los Angeles.

Cruise Revenue	FY 2012	FY 2011	FY 2010
TOTAL	\$7,229,828	\$6,529,973	\$6,949,943

For the upcoming cruise season commencing in September 2013 and ending in May 2014, current bookings received by Ports America indicate 102 ship calls, four of which will be berthed at the outer harbor.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of an Operating Agreement with Ports America for continued operation and management of the Cruise Terminal. As an activity involving the issuance of an agreement to use an existing facility involving negligible or no expansion of use, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article III Class 1 (14) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

The proposed Agreement with Ports America will continue to generate a significant number of jobs servicing the cruise lines. Ports America has a local economic presence in the Los Angeles harbor area, with current estimated employment of 300 people.

Metro Port Services, through its subsidiaries Metro Shore Services and Cruise Services, will continue to employ approximately 250 people providing guest and passenger services and stevedoring services at the Cruise Terminal and will continue to lease office space for such purposes directly from the Harbor Department at Berth 92. These services are contracted directly by the cruise lines and are not part of the scope of the Agreement with Ports America.

FINANCIAL IMPACT:

The proposed Agreement with Ports America will allow for uninterrupted cruise service to the Cruise Terminal. Sufficient funds have been budgeted for Cruise Terminal operations. Since the execution of the Interim Operating Agreement, Ports America submitted invoices on January 14, 2013, for the months of October, November, and December 2012, totals \$205,039. In the current fiscal year, \$1.2 million has been budgeted for Cruise Terminal operations in Account 54290, Center 0424, Project 000. The contract term extends over two fiscal years; sufficient funds will be included in the Harbor Department's Fiscal Year 2013/2014 proposed budget for this purpose.

DATE: MARCH 20, 2013

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CRUISE, INC.

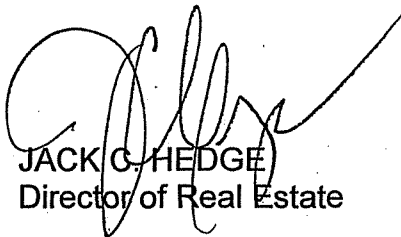
CITY ATTORNEY:

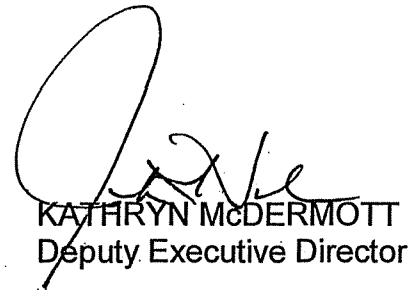
The Agreement has been approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

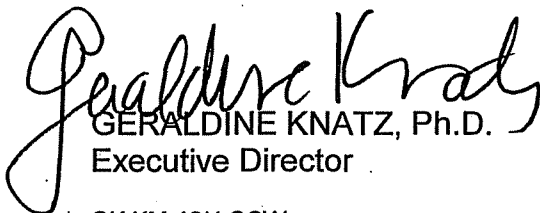
1. Site Map
2. Operating Agreement

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


JACK C. HEDGE
Director of Real Estate


KATHRYN McDERMOTT
Deputy Executive Director

APPROVED:


GERALDINE KNATZ, Ph.D.
Executive Director

GK:KM:JCH:CCW:raw
Author: Carol Wianecki
BL438raw Ports America

AGREEMENT NO 13-3112

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
PORTS AMERICA CRUISE, INC.

THIS AGREEMENT ("Agreement") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board") and PORTS AMERICA CRUISE, INC., a Delaware corporation, 525 Washington Boulevard, 16th floor, Jersey City, New Jersey, 07310 ("Operator").

WHEREAS, City requires the professional, expert and technical services of Operator to assist the City in managing, maintaining and operating the passenger cruise ship terminal located at Berths 91-93 and surrounding areas as delineated in yellow outline in Exhibit A ("Cruise Terminal") and overflow facilities (Exhibit A-1);

WHEREAS, Operator possesses extensive experience in managing, maintaining and operating facilities similar to the Cruise Terminal and, in fact, manages and operates the cruise facility for the City of New York in Manhattan;

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

WHEREAS, City does not employ personnel with the required expertise;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY OPERATOR

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

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

C. Operator acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work and that the Scope of Work for the City does not include stevedoring services. Operator and City acknowledge and agree that Operator is not obligated to perform any services outside the Scope of Work and any services performed outside the Scope of Work are performed as a volunteer and shall not be compensable by the City under this Agreement.

D. The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of the Executive Director or his or her designee ("Executive Director"), whether performance is undertaken by Operator or third-parties with whom Operator has contracted ("Subconsultants"). Use and execution of the Customer Service Agreement, Exhibit C, is required of Operator for all cruise lines calling at City premises. Obligations of this Agreement, whether undertaken by Operator or Subconsultants, are and shall be the responsibility of Operator. Operator

acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to City and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Operator alone. Operator shall supply City's Harbor Department ("Department") with all agreements, including amendments or agreements that have been superseded, between it and its Subconsultants, all of which shall remain on file with the Department.

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

II. SERVICES TO BE PERFORMED BY CITY

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

B. Executive Director or his or her designee is designated as the contract administrator for City and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Operator and the acceptable completion of this Agreement, and the amount of compensation due.

C. Operator shall provide Executive Director with reasonable advance written notice if it requires access to premises of Department other than the Cruise Terminal or overflow facilities. Subsequent access rights, if any, shall be granted to Operator at the sole reasonable discretion of Executive Director, specifying conditions Operator must satisfy in connection with such access. Operator acknowledges that such areas may be occupied or used by tenants or contractors of City and that access rights granted by Department to Operator shall be consistent with any such occupancy or use.

D. City shall have the right to make changes to and within the Cruise Terminal and overflow facilities, if any, or any portion thereof, including without limitation, changes in the location, nature, size, configuration and number of improvements and facilities. City shall provide Operator notice of any such changes 30 days prior to the changes taking effect.

E. City will be responsible for the maintenance, repair and replacement of improvements and systems as set forth in Exhibit B.

III. NO POSSESSORY INTEREST

No possessory interest in any part of the Cruise Terminal is conveyed or accrues under this Agreement and Operator acknowledges same. Ownership of the Cruise Terminal premises, including the real property, submerged property, buildings, facilities, dock improvements, fixtures, equipment and other property constituting the Cruise Terminal shall remain with the City. Accordingly, City and Operator agree that nothing in this Agreement shall entitle Operator to file any claim, lien or notice against any real property owned by City. Operator waives any right it may now or

hereafter have to record a lis pendens against the Cruise Terminal property if a dispute arises under this Agreement.

IV. EFFECTIVE DATE AND TERM OF AGREEMENT

A. This Agreement shall become effective on _____ ("Effective Date"), the date of its approval by the City Council of Los Angeles ("Council") pursuant to Section 606 of City's Charter.

B. This Agreement shall have a term of five (5) years, unless earlier terminated according to the provisions herein.

C. City shall have the option to extend the term of this Agreement for two (2) consecutive renewal periods of five (5) years each, for a total Agreement term not to exceed fifteen (15) years from the Effective Date. Exercise of the option to renew shall be by written notice from the Executive Director to Operator no later than sixty (60) days prior to the end of the current term of the Agreement.

D. The decision to exercise or not exercise any five-year option shall be within the sole and absolute discretion of Executive Director. Should the Executive Director elect to exercise the option, Operator shall be bound by the same terms and conditions contained in this Agreement unless a modification is mutually agreed to by the parties.

V. EARLY TERMINATION

The Board of Harbor Commissioners, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Consultant ten (10) days' advance, written notice of the Board's election to cancel and terminate this Agreement. Upon receipt of such written notice, Operator shall cease the performance of Cruise Terminal operations. Operator shall be entitled to compensation only for services actually performed prior to such termination. Executive Director, in his or her sole reasonable discretion, shall determine the amount of services actually performed and shall allocate a portion of the total compensation due Operator accordingly. If Board so terminates this Agreement, Operator shall deliver all records, documents, accounts, ledgers, reports, electronic files, agreements and other work product produced pursuant to this Agreement to City in an organized, usable form. No compensation shall be due Operator until it complies with the requirements of this paragraph.

VI. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

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

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

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

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

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

VII. COMPENSATION AND PAYMENT

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

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

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

(Operator's Signature)

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

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

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

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

VIII. RECORDKEEPING, ANNUAL REPORTING, AND AUDIT RIGHTS

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

B. Operator shall prepare and provide to Executive Director an annual written report on the progress and status of Cruise Terminal operations. The annual report shall include number of ship calls, any and all significant events, an annual balance sheet detailing expenses and any other information pertinent to the progress and status of Cruise Terminal operations.

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

IX. OPERATOR IS AN INDEPENDENT CONTRACTOR

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

X. BUSINESS TAX REGISTRATION CERTIFICATE

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

XI. INDEMNIFICATION AND INSURANCE

A. Indemnification

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

B. Acceptable Evidence and Approval of Insurance

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

C. General Liability Insurance

Operator shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from City, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Operator's normal limits of liability but not less than Five Million Dollars (\$5,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Operator. The retention or self-insurance provided shall provide that any other insurance maintained by the Department shall be excess of Operator's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-day notice of cancellation for nonpayment of premium, and a 30-day notice of cancellation for any other reasons.

D. Fire Legal Liability

In addition to and concurrently with the aforesaid insurance coverage, Operator shall also procure and maintain, fire legal liability insurance with a minimum limit of One Hundred Thousand

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

E. Automobile Liability Insurance

Operator shall procure and maintain at its expense and keep in force at all times during the term of this Agreement, automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Operator's normal limits of liability but not less than Five Million Dollars (\$5,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-day notice of cancellation for nonpayment of premium, and a 30-day notice of cancellation for any other reasons.

F. Workers' Compensation and Employer's Liability

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

G. Carrier Requirements

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

H. Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City

Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

I. Modification of Coverage

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

J. Renewal of Policies

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

K. Right to Self-Insure

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

1. Operator has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Operator must have a formal resolution of its board of directors authorizing self-insurance.
2. Operator agrees to protect City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.
3. Operator agrees to defend City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. Operator agrees that any insurance carried by Department is excess of Operator's self-insurance and will not contribute to it.
5. Operator provides the name and address of its claims administrator.
6. Operator submits a Financial Statement or Balance Sheet prior to Executive Director's consideration of approval of self-insurance and annually thereafter evidence of financial capacity to cover the self-insurance.
7. Operator agrees to inform the Department in writing immediately of any change in its status or policy which would materially affect the protection afforded the Department by this self-insurance.

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

L. Accident Reports

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

XII. PERSONAL SERVICE AGREEMENT

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

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

C. It is agreed that any Agreement entered into shall not limit the right of the City to hire additional consultants or perform the services described in this Agreement either during or after the term of this Agreement.

XIII. AFFIRMATIVE ACTION

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

XIV. SMALL/VERY SMALL BUSINESS ENTERPRISE

It is the policy of the Department to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises and all Other Business Enterprises (MBE/WBE/DVBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Consultant shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs to

achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, VSBES, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement. See Exhibit H.

NOTE: Prior to being awarded a contract with the City, Consultant and all Subconsultants must be registered on the City's Contracts Management and Opportunities Database, Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>.

XV. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and the Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

XVI. COMPLIANCE WITH APPLICABLE LAWS

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

XVII. GOVERNING LAW / VENUE

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

XVIII. TRADEMARKS, COPYRIGHTS, AND PATENTS

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

XIX. PROPRIETARY INFORMATION

A. Writings, as that term is defined in Section 250 of the California Evidence Code (including, without limitation, drawings, specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, submittals and other items of any type whatsoever, whether in the form of writing, figures or delineations), which are obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter

referred to as "property"), are owned by City as soon as they are developed, whether in draft or final form. City has the right to use or permit the use of property and any ideas or methods represented by such property for any purpose and at any time without compensation other than that provided in this Agreement. Consultant hereby warrants and represents that City at all times owns rights provided for in this section free and clear of all third-party claims whether presently existing or arising in the future, whether or not presently known. Consultant need not obtain for City the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is owned by Consultant or one of its employees, or its Subconsultant or the Subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not Consultant's initial proposal or proposals made during this Agreement are accepted by City, it is agreed that all information of any nature whatsoever connected with the Scope of Work, regardless of the form of communication, which has been or may be given by Consultant, its Subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to the City, its boards, officers, agents or employees, is not given in confidence. Accordingly, City or its designees may use or disclose such information without liability of any kind, except as may arise under valid patents.

B. If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Consultant, its officers, agents, employees, or Subconsultants, the City shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by City. Upon City's request, Consultant, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to the City. It is expressly understood and agreed that, as between City and Consultant, the referenced license shall arise for City's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. City may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by City.

XX. CONFIDENTIALITY

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

XXI. NOTICES

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

XXII. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Operator declares that its authorized TIN is 46-0967797. No payments will be made under this Agreement without a valid TIN.

XXIII. SERVICE CONTRACTOR WORKER RETENTION POLICY AND LIVING WAGE POLICY REQUIREMENTS

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

XXIV. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

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

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

XXV. EQUAL BENEFITS POLICY

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

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

The Consultant, Subconsultants, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the agreement is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Consultant is required to provide and update certain information to the City as specified by law. Any Consultant subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subconsultant expected to receive at least \$100,000 for performance under this Agreement:

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a subconsultant on Harbor Department Agreement No. _____. Pursuant to City Charter Section 470(c)(12), subconsultant and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the Agreement is signed. Subconsultant is required to provide to Consultant names and addresses of the subconsultant's principals and contact information and shall update that information if it changes during the 12 month time period. Subconsultant's information must be provided to Consultant within 10 business days. Failure to comply may result in termination of the Agreement or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213-978-1960.

Consultant, Subconsultants, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available.

XXVII. STATE TIDELANDS GRANTS

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

XXVIII. INTEGRATION

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

XXIX. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is

immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

XXX. 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.

XXXI. TITLES AND CAPTIONS

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

XXXII. MODIFICATION IN WRITING

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

XXXIII. WAIVER

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

XXXIV. EXHIBITS; ARTICLES

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

XXXV. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

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

Dated: 4/8/13

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

By Gladys Krutz
Executive Director

Attest: Julie Williams
Secretary

Dated: 3/27/13

PORTS AMERICA CRUISE, INC.

By [Signature]
STEVE WEISKY / VICE PRESIDENT
[Print/type name and title]

Attest [Signature]

OCTAVIO SANCHEZ, TERMINAL MANAGER
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

4-2-, 2013
CARMEN A. TRUTANICH, City Attorney
JANNA SIDLEY, General Counsel

By [Signature]
MINAH PARK, Deputy

Account #	<u>54290</u>	W.O. #	
Ctr/Div #	<u>000/0424</u>	Job Fac. #	
Proj/Prog #	<u>000</u>		
Budget FY:		Amount:	
	<u>12/13</u>		<u>480,000</u>
	<u>13/14</u>		<u>1,350,000</u>
	TOTAL		1,830,000
For Acct/Budget/Div. Use Only:			
Verified by:	<u>[Signature]</u>		
Verified Funds Available:	<u>Anna Gonzalez</u>		
Date Approved:	<u>4/2/13</u>		

Ports America Cruise, Inc.

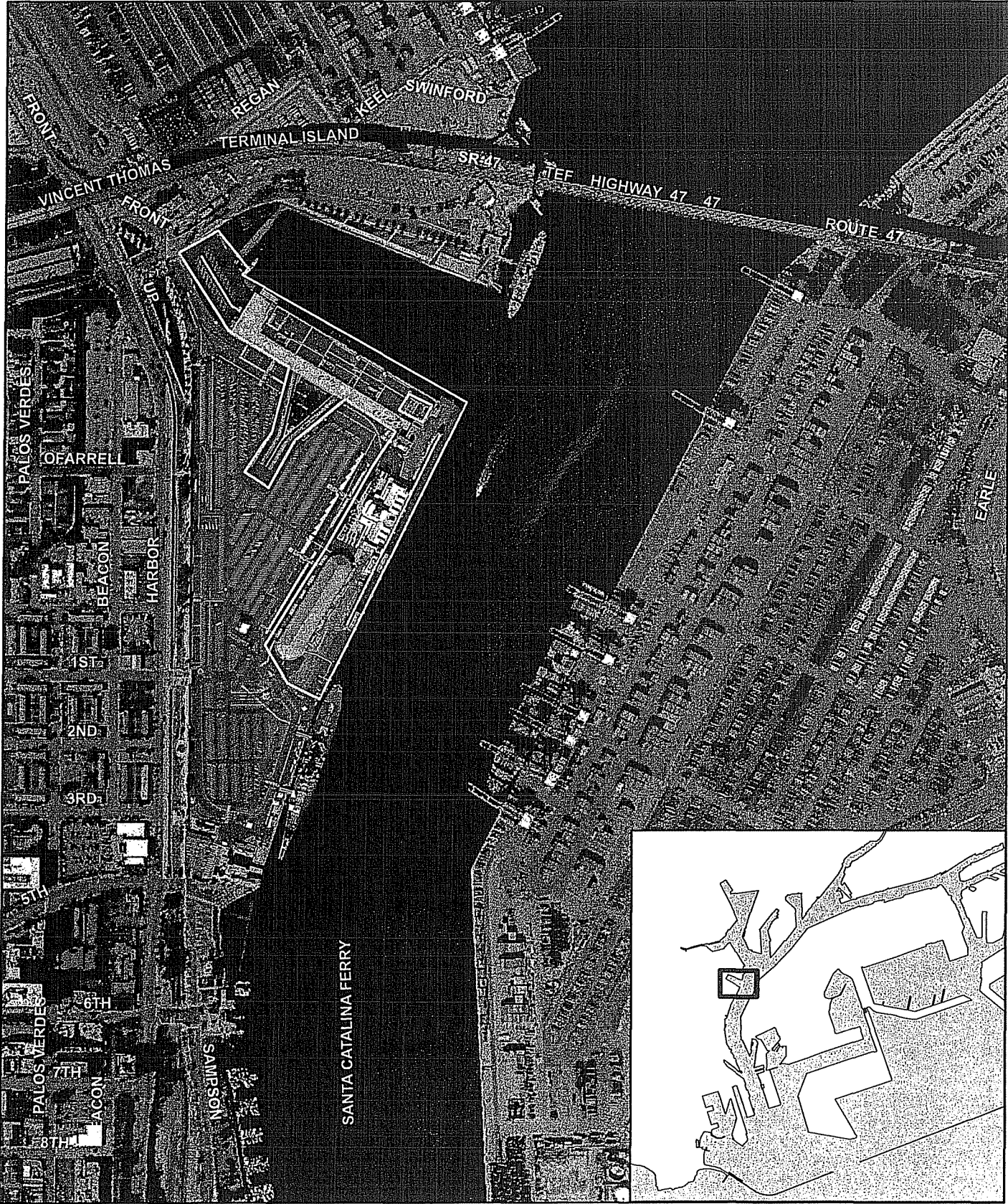
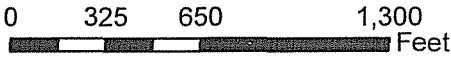


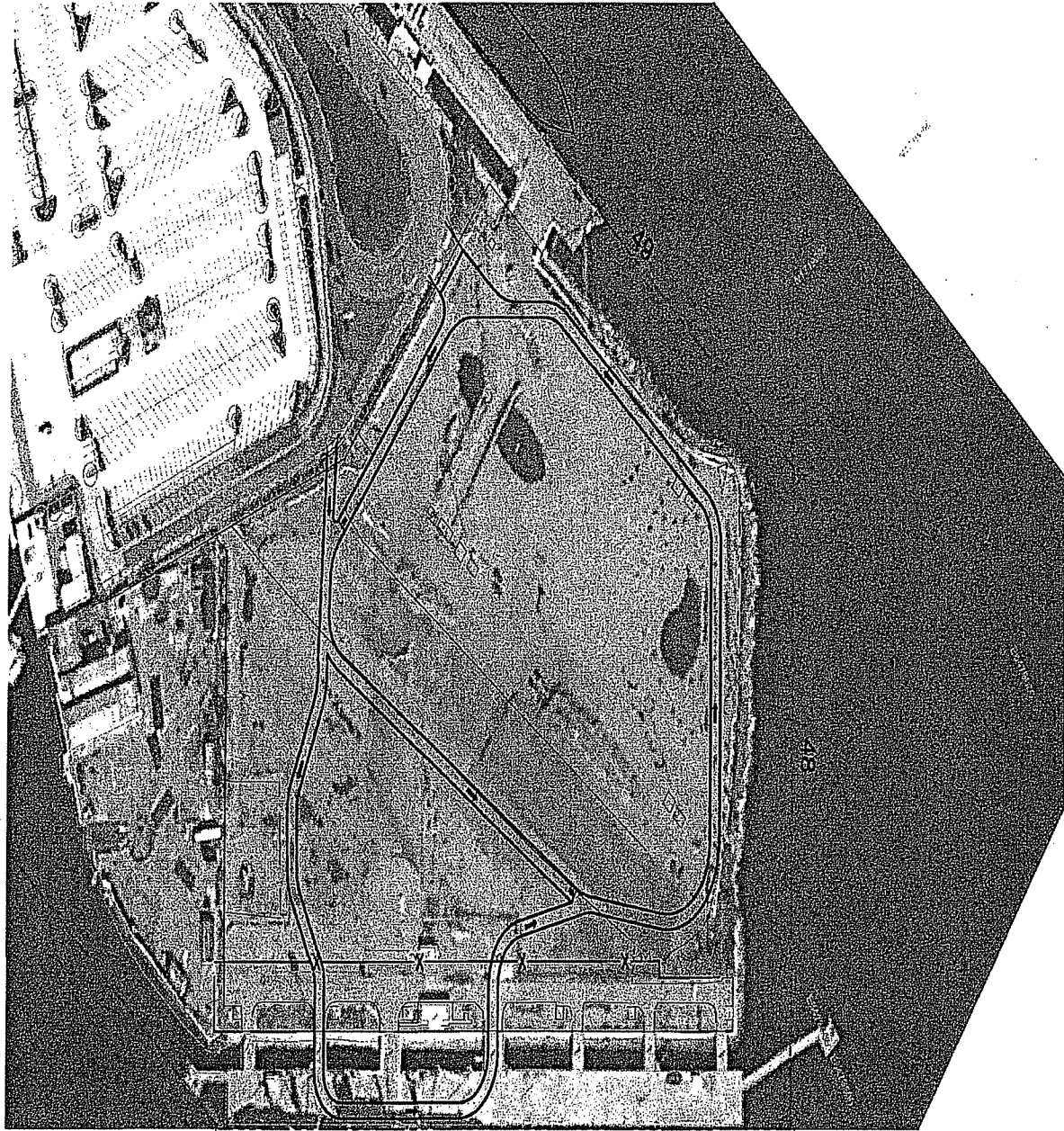
EXHIBIT A



Harbor Department
 Planning & Economic Development
 Map Produced 4/2013



Ports America Cruise, Inc.



45

46

47

1X-01 SITE PLAN
X-01 SCALE 1"=87'



OUTER HARBOR CRUISE TERMINAL PREMISES

Exhibit A-1

Harbor Department
Planning & Economic Development
Map Produced 3/2013



SCOPE OF WORK

1. Passenger Cruise Terminal Management – Facilities:

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

2. Vessel Scheduling:

- A) Operator shall develop, maintain, and update quarterly a comprehensive schedule of vessel arrivals, departures, and berthing assignments and submit it to the City upon approval and execution of this agreement and two weeks before every quarter thereafter.
- B) Operator shall coordinate arrivals and departures of passenger vessels and coordinate berthing assignments with vessel operators, in cooperation with Executive Director or her designee and in accordance with berthing priority rights set forth in permits.

- C) Operator shall ensure the appropriate positioning of City-owned passenger gangways for the operation of Cruise Terminal at all times.
- D) Operator shall coordinate and attend all vessel docking and undocking and, upon vessel departures, document and immediately notify the City's Wharfingers Division and Port Police of any observed damage to wharf, pilings, fender system and Cruise Terminal premises. Operator shall refer to guidelines set forth in the Wharf Damage Policy, attached as Exhibit D. Operator shall take all reasonable commercial action to recover the costs of any damage to wharf, pilings, fender system and Cruise Terminal premises from the cruise lines, for the Harbor Department and notify the Harbor Department immediately of any delay in the collections of these damages.
- E) Operator shall coordinate and cooperate with the Coast Guard and all City, state and federal agencies and authorities with regulatory jurisdiction over passenger Cruise Terminal operations to provide and ensure safe transit operations, working conditions and emergency services for the protection of all passengers, dockworkers, Cruise Terminal employees and visitors on the Cruise Terminal premises.
- F) Operator shall coordinate with stevedore companies and ground service operators, and shall operate in a manner that provides equal and open access to all companies hired by cruise lines directly.

3. Cruise Terminal Security:

- A) Operator shall provide United States Coast Guard approved Facility Security Plan in compliance with Title 33 of the Code of Federal Regulations ("CFR") §105.100 et seq.
- B) Operator shall designate a Facility Security Officer in compliance with 33 CFR §105.200 (b)(2) and §105.205.
- C) Operator is responsible for maintaining compliance with the approved Facility Security Plan, all applicable United States Coast Guard Maritime Security Regulations, and the International Ship and Port Facility Security Code.
- D) During non-ship days, at its sole expense, the Operator shall provide two trained, competent and efficient security guards on the Cruise Terminal on a 24-hour basis, one of whom shall be stationed at the Cruise Terminal entry gate, and the other shall patrol the Cruise Terminal premises.
- E) Operator shall not be responsible to provide vessel-assigned security staff, but may, upon request of the vessel operator, provide such additional vessel-assigned security under separate arrangement with the vessel, at the cost of such vessel.

- F) Operator shall provide and enforce the wearing of identification badges for all of Operator's employees on the Cruise Terminal.
- G) Operator shall provide sufficient functioning security screening equipment [e.g., x-rays, magnetometers, explosive detectors] to screen 100 percent of passengers, crews, visitors and baggage at the Cruise Terminal in accordance with the provisions of the Coast Guard approved Facility Security Plan.
- H) Operator shall provide sufficient and effective security communications equipment to facilitate 100 percent of the security operations required at the Cruise Terminal in accordance with the provisions of the Coast Guard approved Facility Security Plan.
- I) Operator shall provide additional safety and security procedures and equipment as may from time to time be further required by City, State, And Federal authorities with jurisdiction over passenger Cruise terminal operations.
- J) In the event that the City requires changes to the Cruise Terminal premises, the Operator must modify the Facility Security Plan as necessary and submit for approval by the United States Coast Guard.

4. Administrative Services:

- A) Operator shall provide staff to manage and operate the Cruise Terminal. Operator shall also provide office supplies and other equipment necessary to facilitate the management of all supervisory obligations, Cruise Terminal maintenance, vessel scheduling, Cruise Terminal security, financial administration, record and reporting obligations including meter reading for utilities.
- B) Operator shall collect and remit 100 percent to City all applicable charges accruing at the Cruise Terminal pursuant to the Port of Los Angeles Tariff ("Tariff") within thirty (30) calendar days after the vessel departure, including but not limited to passenger fees, wharfage, dockage, and all other charges prescribed by the Tariff. City shall provide Operator, copies of Cruise Line Permits where standard Tariff charges may vary or do not apply.
- C) Operator shall collect and remit 100 percent to City all applicable Vessel Charge Fees within thirty (30) calendar days after the vessel departure, including but not limited to, charges for water, AMP-electricity, gas and sewer. City shall provide Operator, copies of Cruise Line Permits where standard Vessel Charge Fees may vary or do not apply.
- D) Operator shall collect and remit 100 percent to City all Lay Day Fees within thirty (30) calendar days after the vessel departure, where applicable. City

- shall provide Operator, copies of Cruise Line Permits where standard Lay Day Fees may vary or do not apply.
- E) On a monthly basis, within thirty (30) calendar days after vessel departure, Operator shall submit the form attached as Exhibit J-1, detailing the applicable charges being remitted to City.
 - F) On a monthly basis, within fifteen (15) calendar days after vessel departure, Operator shall submit forms attached as Exhibits J-2 and J-3, detailing the applicable charges being remitted to City.
 - G) Operator shall participate in an annual review of Lay Day Fees (charge to vessels per calendar day).
 - H) Operator shall comply and facilitate City's use of the Cruise Terminal for special events, motion pictures etc., upon receipt of written notice from the City. The City will invoice and retain 100 percent of receipts associated with such activity and Operator may obtain for its own benefit hold-harmless or indemnity agreements from the third-parties conducting such special events or motion pictures.
 - I) Operator is to provide the City 90 days' prior written notice of any anticipated shortfalls with respect to Cruise Terminal capacity in the event that the size and passenger volume of a scheduled vessel or vessels is anticipated to exceed the Cruise Terminal capacity or require additional Cruise Terminal service area. The Operator will be responsible for procuring and utilizing tents for these purposes, and the Operator will be required to remove and relocate equipment as needed to accommodate tents at their sole cost. All costs associated with providing tents, including, but not limited to, erecting, maintaining, permitting, removing, providing temporary utilities, lavatories, seating, carpeting, and cleaning of tents area shall be at Operator's expense. If the Operator elects not to provide tents, but transport of passengers is required, costs associated with providing passengers transport shall be at Operator's expense.
 - J) Operator shall promote use of the Cruise Terminal, solicit new business for the City at the Cruise Terminal and work with City's Business Development Division to solicit new business including, but not limited to joint sale calls, joint hosting of cruise executives, and representation at industry events.
 - K) Operator shall pay all license fees, taxes, and assessments with the exception of possessory property tax.
 - L) Operator shall remit to the City 100 percent of gross revenues collected by the Operator from every business activity conducted on the Cruise Terminal, including but not limited to concession agreements, special events, and

filming engagements, within 30 days after the end of month. Operator shall have the right to enter into concession agreements for the sale of goods and food services at the Cruise Terminal with prior written consent and approval of the Executive Director. In addition, the Operator shall coordinate and work with concessionary operators.

- M) Adhering to the terms and conditions of the Cruise Terminal Security Plan, Operator shall allow access to Cruise Terminal visitors and City employees for business purposes.
- N) Operator shall cooperate and proactively work with the City's Building Engineer staff, located on-site, to identify deficiencies and ensure that all systems and equipment provided by the City are in excellent operational order including, but not limited to, HVAC, electrical, plumbing, carpentry, piling, painting, roofs, and all City-owned interior fixtures, equipment and furniture.
- O) Operator shall maintain coordination and liaison with the Real Estate Division reporting promptly all information affecting the functioning of the passenger Cruise Terminal.
- P) Under the terms and conditions set forth with Section L, Operator shall report to the City in writing any Cruise Terminal accidents within 15 days upon occurrence.
- Q) Operator shall submit monthly financial statements prepared according to Generally Accepted Accounting Principles (GAAP) that provide for the accounting of all revenue and expenditures for Non-Permit Cruise Vessel Operators and Permit Cruise Vessel Operators.
- R) Operator shall utilize a standard form "Customer Service Agreement" in the form attached hereto as Exhibit B-2, in connection with the provision of passenger Cruise Terminal service facilities to passenger vessels. Operator agrees that there shall be no change in the form of the agreement as set forth unless approved in advance in writing by the Executive Director or her designee. A copy of each, of Operator's Customer Service Agreements with its customers and invitees at the Cruise Terminal, together with any amendments thereto, shall be filed with the Executive Director or her designee.

5. City Responsibilities:

- A) City at its sole cost shall be responsible for maintenance and repair, utility cost, labor and operational cost for all Alternative Maritime Power ("AMP") activities, as well as all associated items listed under "Maintenance and Repair Responsibilities." City shall establish a regular service protocol, to be performed no later than 12 hours prior to vessel arrival, to ensure that

operational and mechanical items/systems under control of the City are in working order prior to each vessel arrival. This includes, but is not limited to: passenger gangways, elevators, escalators, HVAC systems, plumbing and electrical.

B) City at its sole cost shall be responsible for maintaining and repairing the pier, wharves, bulkheads, and fender system(s) at the premises, including all repairs occasioned by reasonable wear and tear and action of elements.

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MAINTENANCE AND REPAIR RESPONSIBILITIES

OPERATOR RESPONSIBILITIES

Ports America shall perform the following:

<p>Operator is responsible for the operation, and fueling (if/when needed), of all Port-owned equipment provided on the premises, including, but not limited to:</p> <ul style="list-style-type: none"> • Green machine vacuum 286-21 model #636HS • Tennant vacuum 286-13 model #R14 ready space • Tennant 7400 scrubber machine* • Tennant 6100.7496 sweeper /vacuum • 4 FMT brand passenger gangways • 300 Stanchions • 1500 chairs • Audiovisual Infocaster system with 29 TV monitors • Access control computer system • Security monitor computer & camera system • 2 overhead passenger gangway systems • Wooden office furniture set in Terminal Manager's Office <p>* Operator is responsible for all maintenance, repair and future replacement of the Tennant 7400 scrubber machine.</p>
<p>Regular janitorial cleaning of restroom floors, walls, mirrors, fixtures and refilling or replacement of towel and soap dispensers, non-operational light bulbs prior to each vessel arrival.</p>
<p>Area vacuuming of carpets after each vessel arrival.</p>
<p>As-needed spot stain treatment of carpets. Minimum quarterly cleaning of carpets.</p>
<p>At least quarterly wash windows. Additional washing as needed.</p>
<p>High dusting on a quarterly basis, at minimum.</p>
<p>Cleaning of interior casework and other surfaces prior to each vessel arrival.</p>
<p>As-needed sweeping of exterior pedestrian ways accessible by vehicles and passengers.</p>
<p>Cleaning exterior pedestrian ways on a monthly basis.</p>
<p>Removal and proper disposal of bird droppings on daily basis.</p>
<p>Regular interior cleaning of FMT passenger gangways.</p>
<p>As-needed cleaning of interior walls, doors and sliding doors, but no less than on a quarterly basis.</p>
<p>Trash pick-up and disposal, including areas at the Office Block premises.</p>
<p>Operation and maintenance of all audio visual and sound equipment used by the cruise lines, including the newly installed "Electrosonic System."</p>
<p>Provide custodial/janitorial services, repair all fixtures, provide all cleaning supplies and paper products, trash pickup. Ensure facilities are maintained in a sanitary and high standard condition at all times.</p>

Implement and maintain an ongoing pest control program to prevent infestation of pests, animals and/or nuisances that shall include but are not limited to:

- dogs
- pigeons
- seagulls
- raccoons
- cats
- insects and vermin

The program shall comply with all local, federal, state or county statutes, ordinances and regulations.

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HARBOR DEPARTMENT RESPONSIBILITIES

The Harbor Department shall maintain, repair or replace the following as needed, but shall exclude operator negligence and/or damages by third parties:

Roofs and solar systems.
Exteriors of structures, including exterior painting.
Interior painting and repairs.
Wharf Structure.
Fender system damage repair.
Wharf bulkheads.
Rock slopes.
Maintenance dredging.
Replacement of deteriorated electrical conduit and pipeline system on exterior of facilities.
Fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems.
Vehicular ramps and parking deck at berth 93, second level as to repairs.
HVAC servicing, repair, and maintenance.
Backflow devices and potable water systems and leakage from such devices.
Replacement of all light bulbs and ballasts, as needed.
Re-lamping of terminal wharf and backland light standards.
Clearing drains, including toilet/urinal stoppages and repairing associated damage.
Storm-drain inlet maintenance and cleaning.
Emergency generator maintenance & testing, with adherence to AQMD requirements.
Passenger gantries and gangways repairs, and their electrical supply systems and back-up power supply.
Wheel stop maintenance, traffic lines and traffic flow systems.
Fence and gate maintenance within the premises.
Interior door maintenance, including rolling and sliding door maintenance in warehouse.
Window, door glass replacement.
Carpet, tile and vinyl floor replacements and furniture replacements.
All mechanical, electrical, hydraulic, air equipment, and devices used by Operator to maintain Harbor Department-owned machinery and equipment.
Replacement and modernization of elevators and escalators.
All mechanical equipment located on the premises owned by the Harbor Department, with the exception of the Tennant 7400 scrubber machine.
Recharging and servicing of fire extinguishers.
Surface paving, wharf and backland damage repair.
Landscaping, and as-needed maintenance of landscape irrigation systems.
Maintenance and repair of surveillance systems and terminal access control systems (ITD responsibility).
Alternative Maritime Power (AMP) System.
Elevator, escalator and passenger gangway maintenance and repair.

EXHIBIT C

CUSTOMER SERVICE AGREEMENT

WHEREAS, Ports America Cruise, Inc. (hereinafter called "PAC"), a Delaware limited liability company, has obtained certain operating rights from the Harbor Department of the City of Los Angeles (hereinafter called "City" or "Port"), in certain premises and facilities located in Los Angeles Harbor including, but not limited to, those described in Operating Agreement No. _____ granted by the Port to PAC (hereinafter called "Agreement") and operates a vessel passenger terminal thereon; and

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

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

1. TERMINAL SERVICES

- 1.1. PAC will furnish Customer with the following facilities and services for and with respect to passenger vessels owned and operated by Customer, and their passengers, in accordance with Operating Agreement No. _____ Granted by the City to PAC.
 - 1.1.1. Installation and operation of City-owned gangways only, used for the embarkation or debarkation of passengers;
 - 1.1.2. Collection from Customer and remittance to Port applicable charges accruing at the premises pursuant to Port of Los Angeles Tariff No.4 (hereinafter "Tariff"), and other associated charges including passenger fees, wharfage, dockage, lay day fees, security fees, sweeper fees, and water fees, as they now exist or may hereafter be amended;
 - 1.1.3. Customs and baggage inspection areas;
 - 1.1.4. Maintenance of terminal facility in a reasonable condition;
 - 1.1.5. Making and coordinating berth assignments for Customer's vessels. (NOTE: It is specifically agreed that the Port shall have the absolute right to make all berth assignments.);
 - 1.1.6. The posting of signs necessary for the direction and movement of passengers and visitors;
 - 1.1.7. Providing necessary coordination and liaison among Customer and its vessels and Port.

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

2. COMPENSATION AND OBLIGATIONS OF CUSTOMER

- 2.1. Unless, as may otherwise be agreed to in writing by PAC or by a direct permit issued by the Port, not later than thirty (30) days in advance of arrival of each of Customer's vessels at the terminal facility, Customer shall deposit with PAC in U.S. dollars an amount to compensate Operator for, but not limited to, anticipated Terminal fees, wharfage fees, passenger fees, utility fees, and extraordinary service fees. Absent such deposit Customer's vessel(s) will not be allowed to dock at the terminal facility. Said deposit shall apply against charges incurred by Customer and its vessel(s).
- 2.2. Within fifteen (15) days after receipt of an invoice Customer will:
 - 2.2.1. Pay to PAC the amount in U.S. dollars necessary to reimburse PAC for all expenses and disbursements incurred or paid by PAC on Customer's behalf at Customer's request;
 - 2.2.2. Pay to PAC the sum in U.S. dollars for facilities and services provided by PAC at the rates as indicated in Exhibit I;
 - 2.2.3. As instructed within the invoice, pay to PAC the amount in U.S. dollars necessary to compensate PAC for all charges pursuant to the Tariff as the same now exists or may hereafter be amended.
- 2.3. In the event that the proceeds from Customer's advance deposit exceed the amount necessary to cover actual charges, as provided for within this Agreement, excess proceeds shall be reimbursed to Customer within thirty (30) days after vessel's sailing. No interest is payable to Customer by PAC or Port on deposits if the deposits are subsequently refunded.

- 2.4. In the event that Customer fails to pay the billing entity any invoice or other amounts when due or within the time specified in Section 2.1 or 2.2, Customer agrees to pay to the billing entity a late payment charge at the rate provided in the Tariff, as the same exists or may hereafter be amended, modified, or superseded. Failure to timely pay Tariff and ancillary charges may cause Customer to be required to pay, in cash or cash equivalent, delinquent and future charges in advance of vessel arrival.
- 2.5. Not later than the time of each vessel arrival, Customer shall in writing, notify PAC or its designated agent of the estimated total number of embarking and disembarking passengers.
- 2.6. Not later than seventy-two (72) hours following each vessel departure, Customer shall provide PAC or its designated agent a vessel wharfage statement or a manifest stating the total number of passengers who embarked and disembarked, vessel stores, and cargoes loaded or discharged at Port.
- 2.7. Not less than thirty (30) days prior to each arrival of Customer's vessels, Customer will provide PAC with all information and instructions, including berthing diagrams, necessary to enable PAC to perform its services and obligations hereunder.
- 2.8. As they occur, Customer shall advise PAC of any changes in scheduled arrival and departure times.
- 2.9. For the purpose of this Operating Agreement, "Terminal Fees" shall be defined as revenues collected from Customers that defray direct costs incurred by the Operator or Port associated with maintaining and operating the passenger cruise terminal facilities provided at the premises. Such direct terminal facilities costs include, but are not limited to, terminal related expenses such as utilities (gas and electricity), terminal related security, maintenance and repair, janitorial services, administrative expenses, office supplies and terminal equipment, audit costs, insurance, and other miscellaneous expenses.

3. LIABILITY AND INDEMNITY

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

- 3.1.1. Any dangerous, hazardous, unsafe or defective condition of, in, or on the terminal facility or Customer's vessel(s), of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the premises by Customer, its officers, agents, employees, sub-lessees, licensees, invitees, or vessel(s);
 - 3.1.2. Any operation conducted upon or any use or occupation of the terminal facility by Customer, its officers, agents, employees, sub-lessees, licensees, invitees, or vessel(s), under or pursuant to the provisions of this Agreement or otherwise;
 - 3.1.3. Any act, omission, or negligence of Customer or its officers, agents, employees, sub-lessees, licensees, invitees, or vessel(s) on or with respect to the terminal facility regardless of whether any act, omission, or negligence of City or PAC, their officers, agents, employees, or contractors contributed thereto;
 - 3.1.4. Any failure of Customer, or its officers, agents, employees, or invitees, to comply with any of the terms or conditions of this Agreement, or any applicable federal, state, regional, or municipal law, ordinance, rule, or regulation relating thereto; or
 - 3.1.5. The conditions, operations, uses, occupations, acts, omissions, or negligence referred to in this Section 3.1, existing or conducted upon or arising from use or occupation by Customers or its invitees on any other premises within the Port, as defined in the Charter of the City.
- 3.2. Customer shall have sole responsibility for strict compliance with:
- 3.2.1. Instructing and ensuring oil sludge removal service providers will add a layer of extended spill prevention as follows:
 - a) Provide a heavy duty liner below the tanker which extends under the truck, under the tanker/hose connection and extends approximately 10 feet beyond the truck;
 - b) Provide secondary spill containment below the tanker hose connection with either a large bucket or some other means of containment;
 - c) Form a containment barrier around the perimeter of the liner using absorbent socks;
 - d) The emergency spill kit must contain additional absorbent socks in the event a spill occurs.
 - 3.2.2 All applicable safety and health regulations; and
 - 3.2.3. All other state and federal regulations which may be applicable to Customer and/or PAC and/or City separately or jointly.
- 3.3. Customer agrees to indemnify and pay for all damages or loss suffered or sustained by PAC or by City relating to or arising from damage to the terminal facility, including piers, pilings, and fenders upon which it is located, including but not limited to, damage to or loss of PAC and City property, and loss of PAC and Port revenue from any source caused by or arising out of the conditions, operations, uses, occupants, acts, omissions, or negligence referred to in this Section 3.

The term "persons" as used in this section shall include but not be limited to, officers and employees of Customer while acting within the course and scope of employment provided, however, the burden of proof shall be on Customer to establish that any employee-caused damage was not within the scope of his employment.

3.4. Customer will provide City and PAC with a certificate of insurance evidencing comprehensive general liability insurance coverage of not less than ten million dollars (\$10,000,000) per person and per occurrence. City and PAC shall be named as additional insured on the policy and evidenced on the certificate of insurance.

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

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

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

4. SECURITY

4.1. Customer agrees to comply with Customer's responsibilities under the PAC Facility Security Plan (FSP). Customer further agrees to require that owners of such vessel(s) and their masters understand and shall comply with their responsibilities under the FSP. Specifically, customer agrees to coordinate security needs and procedures, with the PAC Facility Security Officer (FSO) or his designated representative, and agree upon the contents of the Declaration of Security (DOS). Prior to the commencement of operations, customer and the FSO or their designated representatives, agree to sign and implement this DOS in accordance with Title 33 CFR Section 105.245.

4.2. Customer acknowledges and agrees to required levels of security associated, directly or indirectly, with terminal and vessel operations at the Los Angeles Passenger Ship Terminal. Customer also acknowledges and agrees to compensate Operator for said services.

5. PORT OF LOS ANGELES PILOTAGE SERVICE

5.1. Vessel owners and operators understand and agree that vessels using pilots offered by the City are contractually bound to the terms and conditions of Tariff or its successor. Vessel owners' and operators' attention is particularly directed to Item 305 of Tariff, which provides that any pilot provided by the City to assist the vessel is the borrowed servant of the vessel, and that neither the City nor the pilot is liable for any accident except as provided in Tariff Item 305. Vessel owners and operators agree that the vessel master at all times remains in control of the vessel and that pilot assistance is advisory only. Such owners and operators are aware that

pilotage trip insurance may be purchased from the City if they wish to cover pilotage associated risks.

6. RESPONSIBILITY FOR WHARF DAMAGE

- 6.1. Notwithstanding the foregoing, if damage to the wharf structure is caused by the acts or failure to act of Customer, its officers, agents, employees or invitees, Customer shall be responsible for all costs, direct or indirect, associated with repairing the damage. Customer is also obligated to pay PAC compensation during such repairs as determined by the fair rental value of the affected portion of the wharf in question.
- 6.2. Damage occurring at a vessel's assigned berth during its use of such berth is to be the responsibility of such vessel. Otherwise, all damage to the premises shall be presumed to be the responsibility of all Customers calling at the wharf structure within the period from the previous inspection until the time at which damage is discovered. As such, all Customers calling the premise during the period in which damage has occurred and later noted will equitably share the financial burden / associated with such damage and agree to be responsible for all such damage, as indicated in Section 6.1.

7. GENERAL PROVISIONS

- 7.1. All rates and compensation for facilities and services specified herein are based in whole or in part on existing costs of labor, services, and materials. In the event of a change in same, PAC shall promptly advise Customer thereof. Customer shall pay PAC in accordance with those rates and costs in effect at the time the facilities are provided or the services performed.
- 7.2. In the event that strikes, walk-outs, union disputes, or other labor disturbances, fire, flood, war, civil unrest, earthquake, Acts of God, or circumstances beyond its control prevent PAC from performing its obligations hereunder, then, and to such extent, it shall be relieved from the performance of same.
- 7.3. The Agreement may be amended, modified, or supplemented at any time by mutual written consent of the parties.
- 7.4. If the Customer violates any terms of this Agreement, including timely payment of fees and invoices as described in Section 2.1 and 2.2, PAC has the right at its discretion to suspend or revoke Customer's berthing assignment(s).
- 7.5. In the event of a material breach of the terms of this Agreement, the injured party may terminate this Agreement by delivering written notice of termination to the breaching party. In no event will PAC or Port be liable for loss of profits, or any indirect, special, or consequential damages arising out of any breach of this Agreement.

- 7.6. Either party may terminate this Agreement upon thirty (30) days written notice to the other. In such event each party hereto shall be relieved of further obligations hereunder after the expiration of said thirty (30) day period except such obligations arising prior to termination and as indicated in Section 3.
- 7.7. It is agreed that any legal action arising out of this Agreement or its performance shall be brought in the County of Los Angeles, State of California, and that the laws of California shall govern any claim or dispute hereunder.
- 7.8. Provisions of this Agreement may be superseded by direct written agreement with or permit issued by the Port to the Customer. Any provision that is not specifically superseded by the Port agreement or issued permit shall remain in full force and effect.
- 7.9. It is agreed that no assignment, sublease, transfer, gift, hypothecation or grant of control, or other encumbrance of this Agreement, any interest therein, or any right or privilege hereunder shall be permitted, whether voluntary or by operation of law.

DATED this _____ of _____, 20_____

Cruise Line: _____

Ports America Cruise, Inc.

By: _____
Signature

By: _____
Signature

Print Name

Print Name

Its: _____
Title

Its: _____
Title

Wharf Damage

Who is notified of wharf damage? Wharf damage may occur during a hard vessel landing or be observed during wharf damage inspections. The following table lists the persons who will be notified of damage to a wharf; notification should be made in writing:

- Director of Construction and Maintenance
 - Engineering Division
 - Risk Management
 - Director of Engineering Development.
-

What if the vessel is also damaged? If wharf damage occurs during a hard vessel landing, the vessel may have also sustained damage. Besides the four persons notified in the case of wharf damage, the Executive Director and City Attorney should be notified. The City Attorney may recommend that a certified marine surveyor be contracted. If the vessel is surveyed, it should be in the presence of the following or their representative:

- Director of Construction and Maintenance
 - Chief Harbor Engineering
 - Chief Pilot
 - Vessel agent
 - Terminal/customer employee
 - City Attorney.
-

What if the damage is substantial? If substantial damage (damage which could endanger persons or property, or which could restrict operation of a facility) is sustained, the Director of Construction and Maintenance shall be notified by telephone immediately, and shall be notified in writing at the earliest opportunity. The written notification should contain the following elements:

- Name of vessel (if known)
 - Exact location of damage –berth, ft. marker, bent, or fender pile number
 - Nature and extent of the damage
 - Date and time of occurrence (if known)
 - Port Police report file number – use this number on all correspondence.
-

Continued on next page

Wharf Damage, Continued

Who is copied on any correspondence?

The Wharfing Division is responsible for maintaining a complete file on all correspondence and reports regarding each incident of wharf damage.

Therefore, the Wharfing Division should be copied on all correspondence.

Others who need to be notified are:

- Director of Engineering Development
 - Director of Property Management
 - Chief Harbor Engineer
 - City Attorney
 - Port Police
 - Chief Pilot
 - Chief Wharfing
 - Risk Management Division
 - Director of Construction and Maintenance.
-

Inspection of damage

The Director of Construction and Maintenance will arrange for an inspection of the damage at the earliest appropriate time. After the inspection is completed, the person responsible for conducting the inspection will complete the documentation as stated in the "Documentation for Damage" portions of this section on pages 3, 4, 5, and 6. If the Director of Construction and Maintenance finds that, after the inspection is completed, structural damage has occurred, the Director will notify the Chief Harbor Engineer.

Fender system damage under \$135,000 or wharf structural damage under \$50,000

For damage to the timber fender system under \$135,000 the following should attend (or send a representative) the inspection and survey which will be conducted by the Director of Construction and Maintenance or representative:

- Terminal Operator
- Vessel Operator
- City Attorney
- Wharfing Division.

If structural damage has occurred the Chief Harbor Engineer will be present as well as a certified marine surveyor or construction estimator (both should be knowledgeable in design and construction of wharfs) for vessel damage.

Continued on next page

Wharf Damage, Continued

Fender system damage over \$135,000 or fender system damage over \$50,000

For damage to the timber fender system over \$135,000 the following should attend (or send a representative) the inspection and survey which will be conducted by the Chief Harbor Engineer or representative:

- City Attorney
- Director of Construction and Maintenance
- Wharfinger Division
- Risk Management
- Director of Engineering Development
- Director of Property Management
- Vessel agent

The Chief Harbor Engineer will notify the customer of the damage and monitor the use of heavy equipment in the area. The area should be barricaded. The Harbor Department “Damage Committee” should be notified. The member of this committee are as follows:

- Director of Engineering Development
- Chief Harbor Engineer
- Director of Property Management – Chairperson
- Director of Construction and Maintenance
- Chief Accountant
- City Attorney
- Risk Management Division
- Chief Wharfinger.

Documentation for damage less than \$14,000

If, after the inspection and survey meeting the determination is made about the responsibility for the cost of repairs and the estimated cost of repairs is under \$14,000 follow these guidelines:

Step	Action
1	Complete the “Request for Damage Repair and for Issuance of Accommodation and/or Maintenance Work Orders” Form M.D. 59. This form is available from the Construction and Maintenance. See page 20 of this section for a sample of this form.

Continued on next page

Wharf Damage, Continued**Documentation for damage less than \$14,000 (continued)**

Step	Action
2	<p>Obtain signature and title of terminal operator or approved representative and/or vessel agent in the appropriate space on the "Request for Damage Repair and for Issuance of Accommodation and/or Maintenance Work Orders" form. The Harbor Department's representative should also sign their name and date on the form.</p> <p>A copy of this form should be provided to whoever signed plus a copy for the Construction and Maintenance Division.</p>
3	<p>The Construction and Maintenance Division issues the Accommodation Work Order (AWO) and sends copies of the AWO along with the original "Request for Damage Repair and for Issuance of Accommodation and/or Maintenance Work Orders" form to Accounting. Copies are made for the Work Order Desk and the Director of Construction and Maintenance Division. This process "fast tracks" the repairs to the damaged structure.</p>

Documentation for damage more than \$14,000

If, after the inspection and survey meeting the determination is made about the responsibility for the cost of repairs and the estimated cost of repairs is more than \$14,000, or all parties are not in agreement about responsibility, or all cost are to be paid by the Harbor Department, follow these guidelines:

Step	Action
1	<p>Complete the "Damage Survey Report" Form M.D. 164 or the "Repair Estimate Worksheet" Form M.D. 166. These forms are available from the Construction and Maintenance Division and are generated by this Division.</p>

Continued on next page

Wharf Damage, Continued

Documentation for damage more than \$14,000 (continued)

Step	Action
2	<p>Prepare a damage memorandum to the Chief Wharfinger with the following information:</p> <ul style="list-style-type: none"> • Age of the timber fender pile • Condition of the damaged system components • Percentages of the total cost to repair the damage charged to the AWO or the Maintenance Work Order (MWO). See page # of this section for determining the percentage. • The responsible party or if this is not known, the company that holds the preferential berth assignment • Port Police report file number, if available (##-25-###) • Department's estimated (prorated or full) cost to repair damage including design, administration, and construction • AWO number or MWO number or Engineering Work Order number <p>See pages 9, 11, and 13 of this section for samples of damage letters.</p>
3	<p>Prepare a letter to the lessee and shipping agent containing the following:</p> <ul style="list-style-type: none"> • Date and time of damage • Date and time of survey • Names of participants to the survey • Department's estimated (prorated or full) cost of repairs • Port Police report file number, AWO number, MWO number, and Engineering Worker Order Number • Statement authorizing the repair work to begin and advising that the responsible party will be billed the actual repair costs <p>See pages 8, 10, 12, and 14 of this section for samples of damage letters. The Chief Wharfinger signs for fender damage under \$135,000 or structural damage under \$50,000. Otherwise, the Chairperson of the Wharf Damage Committee signs.</p>

Wharf Damage, Continued

Documentation for damage more than \$14,000 (continued)

Step	Action
3	<ul style="list-style-type: none"> • Sufficient blind copies should be prepared for the following: <ol style="list-style-type: none"> 1. Chief Harbor Engineer 2. City Attorney 3. Director of Engineering Development 4. Director of Construction and Maintenance 5. Risk Management Division 6. Chief Wharfinger 7. Director of Property Management 8. Chief Financial Officer
4	Each lessee's responsibility to repair damage will be enforced according to their lease agreement.
5	Submit all documents, including the blind copies to the Chief Wharfinger or Chairperson of the Wharf Damage Committee as appropriate. All blind copies are signature stamped by the Work Order Desk before routing to the Chairperson or Chief Wharfinger as appropriate.

General maintenance repairs

For damage to the timber fender system under \$135,000 or wharf structure damage under \$50,000 found during routine damage surveys, the Chief Wharfinger will take into account the findings and recommendations of the damage survey participants, sign, and forward the memorandum (authority to issue the a work order and begin repairs) addressed to the following:

- Chief Financial Officer
- Director of Construction and Maintenance
- Risk Management Division
- Chief Harbor Engineer
- Director of Property Management
- Director of Marketing.

For damage over the amounts listed above, the Chairperson of the Damage Committee will sign and forward the memorandum addressed to the above.

Wharf Damage, Continued**Accounting reports**

When the repair work is completed and all charges are compiled, the Accounting Division will prepare a standard invoice for the full amount to be charged to the responsible party.

If the payment becomes delinquent, the Account Division will recommend to the Executive Director that the invoice be referred to the City Attorney. The Port Police report file number, if available, will be included on all correspondence.

Sample letters

The following sample letters have been provided as guides to be used. Individual circumstances will dictate the content of each document. However, the general purpose of these letters is to provide as much information as possible for the Chairperson of the Damage Committee or the Chief Wharfinger as well as to maintain good customer relations while informing them of their responsibility. The following letter are provided:

Page Number	Type of Letter
8	Reimbursement Letter – Final letter for fender pile damage
9	Reimbursement Memo – Final memo with no charges prorated
10	General Maintenance Memo
11	Damage Memo – With no reimbursement
12	Structure Damage Letter – Less than \$50,000
13	Structure Damage Memo – Less than \$50,000
14	Structural Damage Letter – Over \$50,000 structural and \$135,000 fender system damage
15	Structural Damage Memo - Over \$50,000 structural and \$135,000 fender system damage
16	Damage Memo – Under \$135,000 – other than structural
17	Damage Memo – Over \$135,000 or \$50,000 structural – Damage Committee Transmittal
18	Letter – Vehicle Damage
19	Memo – Vehicle Damage
20	Form No. M.D. 59 – Request for Damage Repair and for Issuance of Accommodation and/or Maintenance Work Orders

Continued on next page

Wharf Damage, Continued

425 S. Palms Verdes Street

Post Office Box 151

San Pedro, CA 90733-0151

PA/WD 310 SEA-PORT

www.portoflosangeles.org



COMPANY NAME
COMPANY ADDRESS
CITY, STATE, ZIP

Gentlemen:

P.W. Ref #: XX-25-000

SUBJECT: BERTH XX DAMAGE SURVEY - "SHIP'S NAME" - JUNE 13, 19XX

At approximately TIME hours on June 13, 19XX the Vessel "SHIP'S NAME" under the operation of your firm, damaged on the wharf while docking at Berth XX. Two damage surveys were conducted; the first at TIME hours on June 23, 19XX and the second at TIME hours on June 29, 19XX. "SURVEYOR'S NAME" Marine Surveyor, represented your firm's insurance company at both of these surveys.

(IF FULL REPAYMENT IS REQUESTED, USE THE FOLLOWING PARAGRAPH)

The total estimated cost of repairs to Harbor Department facilities is \$2,250. Therefore, I am authorizing our Construction and Maintenance Division to issue Accommodation Work Order 280-6646 in the amount of \$2,250 to cover the repairs and incidental costs. According to your agreement with the Harbor Department, your corporation is responsible for the damage and will be billed for the actual cost of the repairs when these repairs are completed.

(IF PARTIAL REPAYMENT IS REQUESTED, USE THE FOLLOWING PARAGRAPH)

The total estimated cost of repairs to Harbor Department facilities is \$2,250. The cost and age of fender piles are described on the attached Form MD 164.

(See attached Form MD 164.)

I am authorizing our Construction and Maintenance Division to issue Accommodation Work Order 280-6646 in the estimated amount of \$2,047.50 to cover the repair and incidental costs. According to your agreement with the Harbor Department, your corporation is responsible for the damage and will be billed for the actual cost of the repairs at the time the repairs are completed. I am also authorizing our Construction and Maintenance Division to issue Maintenance Work Order 78556 - Job No. 82-33 in the estimated amount of \$202.50 for the repairs to be absorbed by the Harbor Department.

Very truly yours,

DIRECTOR'S NAME
Chief Wharfinger

bcc: Chief Harbor Engineer
Director of Marketing
Sr. Assistant City Attorney
Dep. Exec. Dir. -Development
Risk Manager
Director of Property Management
(bcc will not appear on original)

Director of Port
Construction and
Maintenance
Chief Accountant
Director of Marketing

Wharf Damage, Continued

To	From		To	From
BOARD OF HARBOR COMMISSIONERS		CITY OF LOS ANGELES	EXECUTIVE ASSISTANT	
COMMISSION SECRETARY		HARBOR DEPARTMENT	FINANCIAL MANAGEMENT	
EXECUTIVE DIRECTOR		OFFICE MEMORANDUM	HUMAN RESOURCES	X
CHIEF OPERATING OFFICER			INFORMATION SYSTEMS	
DIR. OF ENGINEERING DEVELOPMENT			MARKETING	
DIRECTOR OF ADMINISTRATION			PLANNING & RESEARCH	
DIRECTOR OF MARITIME AFFAIRS			PORT PILOTS	
DIRECTOR OF BUSINESS DEVELOPMENT			PORT POLICE	
CHIEF FINANCIAL OFFICER		Date	PORTS O'CALL OFFICE	
DIRECTOR OF OPERATIONS			PROPERTY MANAGEMENT	
ACCOUNTING			PUBLIC AFFAIRS	
CITY ATTORNEY/H.D.			RISK MANAGEMENT	
COMMUNICATIONS SERVICES			TEST LAB	
CONSTRUCTION & MAINTENANCE			TREASURY MANAGEMENT	
CONTRACTS & PURCHASING			WHARFINGER	
EMERGENCY PREPAREDNESS COORD.				
ENGINEERING				
ENVIRONMENTAL MANAGEMENT				

P.W. Ref. #: XX-25-000

SUBJECT: BERTH XX DAMAGE SURVEY - "SHIP'S NAME" - JUNE 13, 19XX

Recommendation:

1. Sign and transmit the attached letter to responsible party.
2. Transmit the copies of the letter and the memo to the affected department sections.

Discussion:

Acting upon information received from the Port Police Office, a survey was held at Berth XX to determine the extent of damage caused to the wharf by the vessel "SHIP'S NAME" while docking. The incident occurred at approximately TIME hrs., June 13, 19XX. The vessel was under the operation of COMPANY NAME.

The survey was held for this damage incident at TIME hrs., June 23, 19XX at which time the tide was +2.0 MLLW. Those present were:

(LIST PEOPLE PRESENT)

The damage to Harbor Department facilities consisted of the following:

(ITEMIZED LIST OF DAMAGE - INCLUDING AGE OF EACH PILE AND EXTEND OF DAMAGE THERETO)

The estimated cost of repairs to Harbor Department facilities is \$2,250. The Construction and Maintenance Division is requesting authorization to issue Accommodation Work Order 280-6646 in the amount of \$2,250, chargeable to COMPANY NAME to cover the repairs and incidental costs.

DIRECTOR'S NAME
Director of Port Construction and Maintenance

Wharf Damage, Continued

To	From		To	From
	BOARD OF HARBOR COMMISSIONERS			EXECUTIVE ASSISTANT
	COMMISSION SECRETARY	CITY OF LOS ANGELES		FINANCIAL MANAGEMENT
	EXECUTIVE DIRECTOR	HARBOR DEPARTMENT		HUMAN RESOURCES
	CHIEF OPERATING OFFICER	OFFICE MEMORANDUM		INFORMATION SYSTEMS
	DIR. OF ENGINEERING DEVELOPMENT			MARKETING
	DIRECTOR OF ADMINISTRATION			PLANNING & RESEARCH
	DIRECTOR OF MARITIME AFFAIRS			PORT PILOTS
	DIRECTOR OF BUSINESS DEVELOPMENT			PORT POLICE
	CHIEF FINANCIAL OFFICER			PORTS O'CALL OFFICE
	DIRECTOR OF OPERATIONS	Date		PROPERTY MANAGEMENT
	ACCOUNTING			PUBLIC AFFAIRS
	CITY ATTORNEY/H.D.			RISK MANAGEMENT
	COMMUNICATIONS SERVICES			TEST LAB
	CONSTRUCTION & MAINTENANCE			TREASURY MANAGEMENT
	CONTRACTS & PURCHASING			WHARFINGER
	EMERGENCY PREPAREDNESS COORD.			
	ENGINEERING			
	ENVIRONMENTAL MANAGEMENT			

P.W. Ref. #: XX-25-000

SUBJECT: BERTH XX - SURVEY OF WHARF DAMAGE - VESSEL UNKNOWN - TIME UNKNOWN

As a result of wharf damage to Berth XX, caused by vessel unknown at time unknown, a damage survey was conducted at TIME hours, July 5, 19XX.

The total estimated cost of repairs to Harbor Department facilities is \$22,550. However, due to the age and condition of the fender piles, the work should be assigned to General Maintenance and I am authorizing the Construction and Maintenance Division to issue Maintenance Work Order 39357 - Job No. 63-34 in the amount of \$22,550. My signature constitutes authorization to issue appropriate work order number and to proceed with the work.

DIRECTOR'S NAME
Chief Wharfinger

Wharf Damage, Continued

To		From		To	From
	BOARD OF HARBOR COMMISSIONERS		CITY OF LOS ANGELES		EXECUTIVE ASSISTANT
	COMMISSION SECRETARY		HARBOR DEPARTMENT		FINANCIAL MANAGEMENT
	EXECUTIVE DIRECTOR		OFFICE MEMORANDUM		HUMAN RESOURCES
	CHIEF OPERATING OFFICER				INFORMATION SYSTEMS
	DIR. OF ENGINEERING DEVELOPMENT				MARKETING
	DIRECTOR OF ADMINISTRATION				PLANNING & RESEARCH
	DIRECTOR OF MARITIME AFFAIRS				PORT PILOTS
	DIRECTOR OF BUSINESS DEVELOPMENT				PORT POLICE
	CHIEF FINANCIAL OFFICER				PORTS O'CALL OFFICE
	DIRECTOR OF OPERATIONS		Date		PROPERTY MANAGEMENT
	ACCOUNTING				PUBLIC AFFAIRS
	CITY ATTORNEY/H.O.				RISK MANAGEMENT
	COMMUNICATIONS SERVICES				TEST LAB
	CONSTRUCTION & MAINTENANCE				TREASURY MANAGEMENT
	CONTRACTS & PURCHASING				WHARFINGER
	EMERGENCY PREPAREDNESS COORD.				
	ENGINEERING				
	ENVIRONMENTAL MANAGEMENT				

P.W. Ref. #: XX-25-000

SUBJECT: BERTH XX - SURVEY OF WHARF DAMAGE - VESSEL UNKNOWN - TIME UNKNOWN
Recommendation:

Sign and transmit the attached memo to the affected Department sections.

Discussion:

A survey was held at Berth XX to determine the extent of damage caused to the wharf by vessel unknown at time unknown. The survey was held at TIME hrs., July 5, 19XX at which time the tide was +2.0 MLLW. Those present were:

(LIST PEOPLE PRESENT)

The damage to Harbor Department facilities was limited to the fender system, consisting of:

(ITEMIZED LIST OF DAMAGE - INCLUDING THE AGE OF EACH PILE AND THE EXTENT OF DAMAGE THERETO)

The total estimated cost of repairs to Harbor Department facilities is \$22,550. However, due to the age and condition of the fender piles, the responsible party should not be billed. Therefore, we are requesting authorization to issue Job No. 63-40, Maintenance Work Order 39357 in the amount of \$22,550 for the repairs to be absorbed by the Harbor Department.

DIRECTOR'S NAME
Director of Port Construction and Maintenance

Attachment

January 2005

Wharf Damage, Continued

425 S. Palms Verdes Street

Post Office Box 151

San Pedro, CA 90733-0151

Tel/DOD 310 SEA-PORT

www.portoflosangeles.org



COMPANY NAME
COMPANY ADDRESS
CITY, STATE, ZIP
Attention:

Gentlemen:

SUBJECT: BERTH XXX DAMAGES TO SHED P.W. Ref. #: XX-25-000

On August 21, 19XX, representatives of this Department met with you and your staff to survey the damage conditions at the shed facilities, Berth XXX. Those present at the survey are listed below:

NAME	COMPANY NAME	Term. Gen. Mgr.
NAME	COMPANY NAME	Security Guard
NAME	Port of Los Angeles	
NAME	Port of Los Angeles	

The total estimated cost of repairs to Harbor Department facilities is \$2100. Therefore, I am authorizing our Construction & Maintenance Division to issue Accommodation Work Order 280-6641 in the estimated amount of \$2100 to cover the repairs and incidental costs. According to your agreement with the Harbor Department, your corporation is responsible for the cost of the damage and will be billed for the actual amount when the repairs are completed.

Very truly yours,

DIRECTOR'S NAME
Chief Wharfinger

bcc: Chief Harbor Engineer
Sr. Assistant City Attorney
Director of Port Construction and Maintenance
Deputy Executive Director - Development
Risk Manager
Chief Accountant
Director of Property Management
Engineering

(bcc will not appear on original)

Wharf Damage, Continued

To	From		To	From
	BOARD OF HARBOR COMMISSIONERS	CITY OF LOS ANGELES		EXECUTIVE ASSISTANT
	COMMISSION SECRETARY	HARBOR DEPARTMENT		FINANCIAL MANAGEMENT
	EXECUTIVE DIRECTOR	OFFICE MEMORANDUM		HUMAN RESOURCES
	CHIEF OPERATING OFFICER			INFORMATION SYSTEMS
	DIR. OF ENGINEERING DEVELOPMENT			MARKETING
	DIRECTOR OF ADMINISTRATION			PLANNING & RESEARCH
	DIRECTOR OF MARITIME AFFAIRS			PORT PILOTS
	DIRECTOR OF BUSINESS DEVELOPMENT			PORT POLICE
	CHIEF FINANCIAL OFFICER			PORTS O'CALL OFFICE
	DIRECTOR OF OPERATIONS			PROPERTY MANAGEMENT
	ACCOUNTING			PUBLIC AFFAIRS
	CITY ATTORNEY/H.D.			RISK MANAGEMENT
	COMMUNICATIONS SERVICES			TEST LAB
	CONSTRUCTION & MAINTENANCE			TREASURY MANAGEMENT
	CONTRACTS & PURCHASING			WHARFINGER
	EMERGENCY PREPAREDNESS COORD.			
	ENGINEERING			
	ENVIRONMENTAL MANAGEMENT			

Date

SUBJECT: BERTH XXX DAMAGES TO SHED P.W. Ref. #: XX-25-000

Recommendation:

1. Sign and transmit the attached letter to the responsible party.
2. Transmit the copies of the letter and the memo to the affected Department sections.

Discussion:

On August 21, 19XX, representatives of this office met with representatives of Metropolitan Stevedore to survey the damage conditions at the shed facilities, Berth XXX. Those present at the survey are listed below:

(LIST PEOPLE PRESENT)

It was evident to the survey group that the damages to the cargo doors, concrete exterior walls and door guard rails was the result of heavy equipment engaged in moving large coils of steel through the shed.

Set forth below are the details of damages that were noted at the time of survey:

(ITEMIZED LIST OF DAMAGES - INCLUDING AGE OF EACH PILE AND EXTENT OF DAMAGE THERETO)

The estimate of labor, materials and equipment to repair the damages outlined under items 1 through 6 is \$2100.

The Engineering Division is requesting authorization to issue Accommodation Work Order 280-6641 chargeable to Metropolitan Stevedore in the estimated amount of \$2100.

DIRECTOR'S NAME
Port Construction and
Maintenance

Wharf Damage, Continued

425 S. Paine Verde Street

Post Office Box 151

San Pedro, CA 90733-0151

Tel/TDD 310 SEA-PORT

www.portoflosangeles.org



COMPANY NAME
COMPANY ADDRESS
CITY, STATE, ZIP

Dear Sir:

SUBJECT: BERTH XXX - DAMAGED BY S.S. "SHIP'S NAME"

Our Ref. #: XX-25-000

On August 17, 19XX, representatives of this Department met with representatives of Mobil Oil Corporation and Murray Fenton-Culler to survey the extent of damage to Berth XXX caused by the S.S. "SHIP'S NAME" while departing that location at approximately TIME hrs., August 14, 19XX. These representatives were as follows:

- | | |
|------|-----------------------------------|
| NAME | COMPANY NAME |
| NAME | COMPANY NAME |
| NAME | Port of Los Angeles |
| NAME | Port of Los Angeles, Pr. Claims |
| NAME | Investigator |
| NAME | Port of Los Angeles, Chief Harbor |
| NAME | Engineer |
| NAME | Certified Marine Surveyor |

(Short paragraph summarizing damage and location)
The estimate of the damage is \$ 51,943.33. This finding was confirmed at a special meeting of the Harbor Department Damage Committee called because of the extent of the damage.

I am authorizing our Engineering Division to issue Accommodation Work Order 280-6463 in the estimated amount of \$51,943.33 to cover the repairs and incidental costs. According to your agreement with the Harbor Department, your corporation is responsible for the cost of the damage and will be billed for the actual costs of the repairs at the time the repairs are completed.

Very truly yours,

DIRECTOR'S NAME
Chairman, Damage Committee

- | | |
|---------------------------------|---------------------------|
| bcc: Chief Harbor Engineer | Chief Accountant |
| Sr. Assistant City Attorney | Deputy Executive Director |
| Director of Port Construction | Development |
| and Maintenance | Risk Manager |
| Director of Property Management | Chief Wharfinger |

(bcc will not appear on original)

Wharf Damage, Continued

To	From		To	From
BOARD OF HARBOR COMMISSIONERS		CITY OF LOS ANGELES	EXECUTIVE ASSISTANT	
COMMISSION SECRETARY		HARBOR DEPARTMENT	FINANCIAL MANAGEMENT	
EXECUTIVE DIRECTOR		OFFICE MEMORANDUM	HUMAN RESOURCES	
CHIEF OPERATING OFFICER			INFORMATION SYSTEMS	
DIR. OF ENGINEERING DEVELOPMENT			MARKETING	
DIRECTOR OF ADMINISTRATION			PLANNING & RESEARCH	
DIRECTOR OF MARITIME AFFAIRS			PORT PILOTS	
DIRECTOR OF BUSINESS DEVELOPMENT			PORT POLICE	
CHIEF FINANCIAL OFFICER		Date	PORTS O'CALL OFFICE	
DIRECTOR OF OPERATIONS			PROPERTY MANAGEMENT	
ACCOUNTING			PUBLIC AFFAIRS	
CITY ATTORNEY/H.D.			RISK MANAGEMENT	
COMMUNICATIONS SERVICES			TEST LAB	
CONSTRUCTION & MAINTENANCE			TREASURY MANAGEMENT	
CONTRACTS & PURCHASING			WHARFINGER	
EMERGENCY PREPAREDNESS COORD.				
ENGINEERING				
ENVIRONMENTAL MANAGEMENT				

SUBJECT: BERTH XXX - DAMAGED BY S.S. "SHIP'S NAME"

P.W. Ref. #: XX-25-000

Recommendation:

1. Sign and transmit the attached letter to the responsible party.
2. Transmit the copies of the letter and the memo to the affected Department sections.

Discussion:

Acting upon information received from the Terminal Operator, Mobil Oil Corporation, a survey was held at B. XXX to determine the extent of damage caused to the wharf by the S.S. "SHIP'S NAME" while departing that location. The incident occurred at approximately TIME hrs., August 14, 19XX. The vessel was under the operation of COMPANY NAME.

The damage to Harbor Department facilities was extensive, consisting of the following:

(ITEMIZED LIST OF DAMAGE - INCLUDING AGE OF EACH PILE AND EXTENT OF DAMAGE THERETO)

The damage survey was held at TIME hours August 15, 19XX at which time the tide was at +0.00 MLLW. In accordance with the wharf damage procedure, those present were:

(LIST PEOPLE PRESENT)

The estimated cost of repairs of Harbor Department facilities is \$51,493.33. I am requesting authorization to issue Accommodation Work Order 280-6463 in the amount of \$51,493.33, chargeable to COMPANY NAME.

DIRECTOR'S NAME
Chairman, Damage Committee

Wharf Damage, Continued

To	From		To	From
BOARD OF HARBOR COMMISSIONERS		CITY OF LOS ANGELES	EXECUTIVE ASSISTANT	
COMMISSION SECRETARY		HARBOR DEPARTMENT	FINANCIAL MANAGEMENT	
EXECUTIVE DIRECTOR		OFFICE MEMORANDUM	HUMAN RESOURCES	
CHIEF OPERATING OFFICER			INFORMATION SYSTEMS	
DIR. OF ENGINEERING DEVELOPMENT			MARKETING	
DIRECTOR OF ADMINISTRATION			PLANNING & RESEARCH	
DIRECTOR OF MARITIME AFFAIRS			PORT PILOTS	
DIRECTOR OF BUSINESS DEVELOPMENT			PORT POLICE	
CHIEF FINANCIAL OFFICER		Date	PORTS O'CALL OFFICE	
DIRECTOR OF OPERATIONS			PROPERTY MANAGEMENT	
ACCOUNTING			PUBLIC AFFAIRS	
CITY ATTORNEY/H.D.			RISK MANAGEMENT	
COMMUNICATIONS SERVICES			TEST LAB	
CONSTRUCTION & MAINTENANCE			TREASURY MANAGEMENT	
CONTRACTS & PURCHASING			WHARFINGER	
EMERGENCY PREPAREDNESS COORD.				
ENGINEERING				
ENVIRONMENTAL MANAGEMENT				

SUBJECT: BERTH XXX - DAMAGED BY S.S. "SHIP'S NAME"

P.W. Ref. #: XX-25-000

Recommendation:

1. Sign and transmit the attached letter to the responsible party.
2. Transmit the copies of the letter and the memo to the affected Department sections.

Discussion:

Acting upon information received from the Terminal Operator, Mobil Oil Corporation, a survey was held at B. XXX to determine the extent of damage caused to the wharf by the S.S. "SHIP'S NAME" while departing that location. The incident occurred at approximately TIME hrs., August 14, 19XX. The vessel was under the operation of COMPANY NAME.

The damage to Harbor Department facilities was extensive, consisting of the following:

(ITEMIZED LIST OF DAMAGE -- INCLUDING AGE OF EACH PILE AND EXTENT OF DAMAGE THERETO)

The damage survey was held at TIME hours August 15, 19XX at which time the tide was at +0.00 MLLW. In accordance with the wharf damage procedure, those present were:

(LIST PEOPLE PRESENT)

The estimated cost of repairs of Harbor Department facilities is \$71,493.33. I am requesting authorization to issue Accommodation Work Order 280-6463 in the amount of \$71,493.33, chargeable to COMPANY NAME and Maintenance Work Order Number in the amount of () will absorbed by the Port if prorated.

DIRECTOR'S NAME
Chief Wharfinger

Wharf Damage, Continued

To	From		To	From
BOARD OF HARBOR COMMISSIONERS		CITY OF LOS ANGELES	EXECUTIVE ASSISTANT	
COMMISSION SECRETARY		HARBOR DEPARTMENT	FINANCIAL MANAGEMENT	
EXECUTIVE DIRECTOR		OFFICE MEMORANDUM	HUMAN RESOURCES	
CHIEF OPERATING OFFICER			INFORMATION SYSTEMS	
DIR. OF ENGINEERING DEVELOPMENT			MARKETING	
DIRECTOR OF ADMINISTRATION			PLANNING & RESEARCH	
DIRECTOR OF MARITIME AFFAIRS			PORT PILOTS	
DIRECTOR OF BUSINESS DEVELOPMENT			PORT POLICE	
CHIEF FINANCIAL OFFICER			PORTS O'CALL OFFICE	
DIRECTOR OF OPERATIONS		Date	PROPERTY MANAGEMENT	
ACCOUNTING			PUBLIC AFFAIRS	
CITY ATTORNEY/H.O.			RISK MANAGEMENT	
COMMUNICATIONS SERVICES			TEST LAB	
CONSTRUCTION & MAINTENANCE			TREASURY MANAGEMENT	
CONTRACTS & PURCHASING			WHARFINGER	
EMERGENCY PREPAREDNESS COORD.				
ENGINEERING				
ENVIRONMENTAL MANAGEMENT				

SUBJECT: XXX-DAMAGED BY S.S. "SHIP'S NAME"

P.W. Ref. #: XX-25-000

On August 15, 19XX a damage inspection team surveyed the damage to Berth XXX caused by the S.S. "SHIP'S NAME" while departing on August 14, 19XX. The total cost to repair Harbor Department facilities is estimated to be \$150,000. Therefore, in accordance with the procedure for fender damage over \$135,000, (or structural damage over \$50,000), I have prepared the attached memo for your review and have reserved the 5th Floor Conference Room for August 21, 19XX at 1000 hrs.

CHAIRMAN'S NAME
 Chairman, Damage Committee

Attachment

January 2005

Wharf Damage, Continued

425 S. Palms Verde Street

Post Office Box 151

San Pedro, CA 90733-0151

TEL: 310 SEA-PORT

www.portoflosangeles.org

NAME
ADDRESS
CITY, STATE, ZIP

P.W. Ref. #: XX-25-000

SUBJECT: HENRY FORD BRIDGE - DAMAGE TO CHAIN LINK FENCE AND
BOARDWALK



I have been informed by my staff that a vehicle registered to you struck and damaged the Henry Ford Bridge chain link fence and boardwalk on or about TIME hours, August 23, 19XX.

Harbor Department maintenance forces have surveyed the damage and have informed me that the estimated total cost to repair the damaged Harbor Department facilities is \$200.

You are hereby notified that I am authorizing our Construction and Maintenance Division to issue Accommodation Work Order 180-6704 in the amount of \$200. You or your designated representative will be billed for the actual cost of the repairs at the time the repairs are completed.

Very truly yours,

DIRECTOR'S NAME
Chief Wharfinger

bcc: Chief Harbor Engineer
Sr. Assistant City Attorney
Director of Port Construction and Maintenance
Deputy Executive Director
Chief Accountant (bcc will not appear on original)
Director of Property Management

Wharf Damage, Continued

To	From		To	From
	BOARD OF HARBOR COMMISSIONERS	CITY OF LOS ANGELES HARBOR DEPARTMENT OFFICE MEMORANDUM		EXECUTIVE ASSISTANT
	COMMISSION SECRETARY			FINANCIAL MANAGEMENT
	EXECUTIVE DIRECTOR			HUMAN RESOURCES
	CHIEF OPERATING OFFICER			INFORMATION SYSTEMS
	DIR. OF ENGINEERING DEVELOPMENT			MARKETING
	DIRECTOR OF ADMINISTRATION			PLANNING & RESEARCH
	DIRECTOR OF MARITIME AFFAIRS			PORT PILOTS
	DIRECTOR OF BUSINESS DEVELOPMENT			PORT POLICE
	CHIEF FINANCIAL OFFICER		Date	PORTS O'CALL OFFICE
	DIRECTOR OF OPERATIONS			PROPERTY MANAGEMENT
	ACCOUNTING			PUBLIC AFFAIRS
	CITY ATTORNEY/H.D.			RISK MANAGEMENT
	COMMUNICATIONS SERVICES			TEST LAB
	CONSTRUCTION & MAINTENANCE			TREASURY MANAGEMENT
	CONTRACTS & PURCHASING		WHARFINGER	
	EMERGENCY PREPAREDNESS COORD.			
	ENGINEERING			
	ENVIRONMENTAL MANAGEMENT			

SUBJECT: HENRY FORD BRIDGE - DAMAGE TO CHAIN LINK FENCE AND BOARDWALK P.W. REF. #: XX-25-000

Recommendation:

1. Sign and transmit the attached letter to the responsible party.
2. Transmit the copies of the letter and the memo to the affected Department sections.

Discussion:

As a result of damage to the Henry Ford Bridge chain link fence and boardwalk that occurred on or about TIME hours August 23, 19XX, a damage survey was conducted. It was determined that S.P. engine #1126 struck car as car was exiting South Wind Marina.

The damage to Harbor Department facilities consisted of the following:

1. Five feet of chain link fence was torn and one fence post was removed.
2. Two feet of 2" x 6" boardwalk was fractured.

The total estimated cost of repairs to Harbor Department facilities is \$200. The Construction and Maintenance Division is requesting authorization to issue Accommodation Work Order No. 280-6704 in the amount of \$200 chargeable to:

NAME
ADDRESS
CITY, STATE, ZIP

to cover the labor and material cost for repairing the chain link fence and boardwalk at the bridge location.

DIRECTOR'S NAME
Director of Port Construction and
Maintenance

January 2005

Wharf Damage, Continued

M.D. 59

REQUEST FOR DAMAGE REPAIR
AND FOR ISSUANCE OF ACCOMMODATION
AND/OR MAINTENANCE WORK ORDERS

CHIEF WHARFINGER
PORT OF LOS ANGELES
P.O. BOX 151
SAN PEDRO, CA 90733

SUBJECT: BERTH _____ DAMAGE SURVEY - VESSEL "
VESSEL UNKNOWN - TIME UNKNOWN

PORT POLICE FILE NO.
DATE AND TIME OF INCIDENT:
DATE OF UNDERWATER SURVEY:

DESCRIPTION AND LOCATION OF DAMAGE:

THIS FORM NOTICE IS TO ACKNOWLEDGE THE DAMAGE DESCRIBED ABOVE
AND AUTHORIZE THE REQUIRED REPAIRS.

THE TOTAL TENTATIVE ESTIMATED COST OF REPAIR IS \$ _____. DUE TO THE AGE
AND/OR CONDITION OF THE WHARF COMPONENTS YOUR FIRM WILL BE BILLED _____ % OF
THE TOTAL ACTUAL REPAIR COSTS.

THE CONSTRUCTION AND MAINTENANCE DIVISION WILL ISSUE ACCOMMODATION WORK
ORDER NO. 280- _____ IN THE AMOUNT OF \$ _____ TO COVER THE COSTS AND
INCIDENTAL COSTS TO BE BILLED YOUR FIRM.

IN ADDITION, THE CONSTRUCTION AND MAINTENANCE DIVISION WILL ISSUE JOB NO.
_____, M.W.O. NO. _____ IN THE ESTIMATED AMOUNT OF \$ _____ FOR REPAIRS TO
BE ABSORBED BY THE HARBOR DEPARTMENT.

ACCORDING TO YOUR AGREEMENT WITH THE HARBOR DEPARTMENT, YOUR FIRM IS
RESPONSIBLE FOR THE DAMAGE AND WILL BE BILLED FOR THE ACTUAL COST OF REPAIRS,
LESS THAT PORTION OF THE COST TO BE ABSORBED BY THE HARBOR DEPARTMENT WHEN THE
REPAIRS ARE COMPLETED.

TERMINAL OPERATOR AND/OR VESSEL'S AGENT

DATE

SIGNED BY:

NAME

TITLE

SIGNED BY:

L.A.H.D., C. & M. REPRESENTATIVE

DATE

ISSUANCE OF WORK ORDERS APPROVED BY:

CHIEF WHARFINGER

DATE

cc: Work Order Desk

Accounting

Director of Port Construction and Maintenance, Chief Wharfinger

Director of Marketing, Director of Property Management s:wrfdama

COMPENSATION AND PAYMENT

The Operator shall receive the following compensation for its services:

1. **Fixed Monthly Fee**

\$125,000 per month* (regardless of number of days the vessel may be at berth at the Cruise Terminal during such call) ("Fixed Monthly Fee") payable, upon monthly submission of an invoice stipulating the name, date, services provided and duration of vessel calls that have occurred for that monthly period.

For the first month after the Effective Date only, Operator shall receive a one-time additional fee of \$30,000 for the upgrade of the audio/visual equipment, as needed for the Operator to enter into an annual maintenance contract with a service provider, due to the age and obsolescence of certain computer components integral to the system.

The compensation paid in the amount of \$125,000 per month, includes all maintenance and repair costs associated with the audio/visual equipment installed on the premises.

Fixed Monthly Fee is inclusive of all charges, and no additional reimbursement for any other service or operating item shall be paid by the City. Payment of the Fixed Monthly Fee will not be made by the City to Operator in advance of any month or vessel call.

2. **Options Period Compensation Renegotiation**

At the conclusion of the initial five-year term of this Agreement, Operator and City shall renegotiate compensation amounts. At least six (6) months prior to the conclusion of the initial five-year term of this Agreement, Consultant and City shall begin negotiations.

3. **Overflow Facilities**

Compensation paid for any overflow cruise facilities, as needed for when there are three or more cruise vessels calling at the Port of Los Angeles in one day, shall not exceed a total of \$75,000 per occurrence. Compensation shall include, but not be limited to the following expenses: rental of materials equipment and supplies needed for the embarkation/debarkation of cruise passengers and vessel supplies; facility rentals; scanning equipment; tents; shuttle transportation services; and any other expenditures that may be deemed necessary by the United States Coast Guard and/or the United State Customs and Border Protection Agency.

All expenditures for such overflow facility use shall be mutually agreed upon sixty (60) days prior to date of ship call upon submission by Operator of a detailed budget justifying all expenditures.

Compensation for such expenses will only be made by the City upon submission of receipts and/or invoices for the mutually agreed upon expenditures.

* Each year after the Effective Date of this Agreement, the Fixed Monthly Fee will adjust, in no event downward, in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-W) for Urban Wage Earners and Clerical Workers, All Items, Los Angeles-Riverside-Orange County, CA. The price adjustment rate will be determined by comparing the percentage difference between the monthly CPI of the Effective Date of the Agreement and each year thereafter. The percentage difference between those two CPI figures will be the adjustment rate of the Fixed Fee and the Daily Fee. Should the percentage difference be negative, there shall be no adjustment to the Monthly Fixed Fee. In addition to any increase as a result of increases in CPI, the Fixed Monthly Fee shall also be increased by the additional amount, if any, that labor rates for ILWU sweepers assigned to the Cruise Terminal are increased pursuant to any applicable collective bargaining agreement or amendment thereto.

EXHIBIT F

BUSINESS TAX REGISTRATION CERTIFICATE (BTRC) NUMBER

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

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

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

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

MAIN OFFICE

LA City Hall

201 N. Main Street, Rm. 101

(213) 473-5901

EXHIBIT G - 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

EXHIBIT G - AFFIRMATIVE ACTION PROGRAM PROVISIONS

own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.

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

EXHIBIT G - AFFIRMATIVE ACTION PROGRAM PROVISIONS

Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve

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

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;
 5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the

EXHIBIT G - AFFIRMATIVE ACTION PROGRAM PROVISIONS

prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;

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

EXHIBIT H – SMALL BUSINESS ENTERPRISE PROGRAM

The City of Los Angeles Harbor Department is committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at the Harbor Department in a manner that reflects the diversity of the City of Los Angeles. The Harbor Department's Small Business Enterprise (SBE) Program was created to provide additional opportunities for small businesses to participate in professional service and construction contracts. An overall Department goal of 25% SBE participation, including 5% Very Small Business Enterprise (VSBE) participation, has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work.

It is the policy of the Harbor Department to solicit participation in the performance of all service contracts by all individuals and businesses, including, but not limited to, SBEs, VSBEs, women-owned business enterprises (WBEs), minority-owned business enterprises (MBEs), and disabled veteran business enterprises (DVBES). The SBE Program allows the Harbor Department to target small business participation, including MBEs, WBEs, and DVBES, more effectively. It is the intent of the Harbor Department to make it easier for small businesses to participate in contracts by providing education and assistance on how to do business with the City, and ensuring that payments to small businesses are processed in a timely manner. **In order to ensure the highest participation of SBE/VSBE/MBE/WBE/DVBES, all proposers shall utilize the City's contracts management and opportunities database, the Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>, to outreach to potential subcontractors.**

The Harbor Department defines a SBE as an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121. Go to www.sba.gov for more information. The Harbor Department defines a VSBE based on the State of California's Micro-business definition which is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.

The SBE Program is a results-oriented program, requiring consultants who receive contracts from the Harbor Department to perform outreach and utilize certified small businesses. **Based on the work to be performed, it has been determined that the percentage of small business participation will be __%, including __% VSBE participation.** The North American Industry Classification System (NAICS) Code for the scope of services is _____. This NAICS Code is the industry code that corresponds to at least 51% of the scope of services and will be used to determine the size standard for SBE participation of the Prime Consultant. The maximum SBE size standard for this NAICS Code is \$_ million.

Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement. Subconsultants must qualify as an SBE based on the type of services that they will be performing under the Agreement. All business participation will be determined by the percentage of the total amount of compensation under the agreement paid to SBEs. The Consultant shall not substitute an SBE firm without obtaining prior approval of the City. A request for substitution must be based upon demonstrated good cause. If substitution is permitted, Consultant shall endeavor to make an in-kind substitution for the substituted SBE.

In the event of Consultant's noncompliance during the performance of the Agreement, Consultant shall be considered in material breach of contract. In addition to any other remedy available to City under this Agreement or by operation of law, the City may withhold invoice payments to Consultant until noncompliance is corrected, and assess the costs of City's audit of books and records of Consultant and its subconsultants. In the event the Consultant falsifies or misrepresents information contained in any form or other willful noncompliance as determined by City, City may disqualify the Consultant from participation in City contracts for a period of up to five (5) years.

Consultant shall complete, sign, notarize (where applicable) and submit as part of the executed agreement the attached Affidavit and Contractor Description Form. The Contractor Description Form, when signed, will signify the Consultant's intent to comply with the SBE requirement. Prior to contract award, the Harbor Department will verify the status of all SBEs. In addition, prior to being awarded a contract with the Harbor Department, all contractors and subcontractors must be registered on LABAVN.

AFFIDAVIT OF COMPANY STATUS

"The undersigned declares under penalty of perjury pursuant to the laws of the State of California that the following information and information contained on the attached Contractor Description Form is true and correct and include all material information necessary to identify and explain the operations of

Name of Firm

as well as the ownership thereof. Further, the undersigned agrees to provide either through the prime consultant or, directly to the Harbor Department, complete and accurate information regarding ownership in the named firm, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents in association with this agreement."

Please indicate the ownership of your company: SBE VSBE MBE WBE DVBE OBE

- A Small Business Enterprise (SBE) is an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121.
- A Very Small Business Enterprise (VSBE) is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.
- A Minority Business Enterprise (MBE) is defined as a business in which a minority owns and controls at least 51% of the business. A Woman Business (WBE) is defined as a business in which a woman owns and controls at least 51% of the business. For the purpose of this project, a minority includes:
 - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- A Disabled Veteran Business Enterprise (DVBE) is defined as a business in which a disabled veteran owns at least 51% of the business, and the daily business operations are managed and controlled by one or more disabled veterans.
- An OBE (Other Business Enterprise) is any enterprise that is neither an SBE, VSBE, MBE, WBE, or DVBE.

Signature _____
Printed Name _____

Title _____
Date Signed _____

NOTARY

On this _____ day of _____, 20____, before me appeared _____ to me personally known, who being duly sworn, did execute the

Name

foregoing affidavit, and did state that he/she was properly authorized by _____

Name of Firm

to execute the affidavit and did so as his or her free act and deed.

SEAL

Notary Public _____
Commission Expires _____

Contractor Description Form

PRIME CONTRACTOR

Contract #: _____ Award Date: _____ Contract Term: _____
Contract Title: _____
Business Name: _____ Award Total: \$ _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE (Check all that apply)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email Address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Check all that apply)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email Address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Check all that apply)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email address: _____

Contractor Description Form

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Check all that apply)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email Address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Check all that apply)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Check all that apply)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email address: _____

EXHIBIT I

Sec. 10.8.2.1. Equal Benefits Ordinance.

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

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

(c) Equal Benefits Requirements.

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

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

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

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

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

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

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

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

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

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

(e) Applicability.

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT J-1

REMITTANCE REPORT

sample



Ports America Cruise Inc.
2001 John S. Gibson Blvd.
San Pedro, CA 90731

Please remit payment by mail within 30 days of vessel departure to:

PORT OF LOS ANGELES
P.O. Box 514300
Los Angeles, CA 90051-4300

Customer No.: _____

In accordance with the provisions of Agreement No. _____ Exhibit B (Scope of Work), Section 4 Administration Ports America Cruise, hereby remits the following fees collected from the cruise line.
(Remittance due to the City of Los Angeles within 30 calendar days of vessel departure)

PLEASE MAKE CHECK PAYABLE TO: CITY OF LOS ANGELES HARBOR DEPARTMENT

Vessel Name:

Cruise Line:

Berth:

Arrival:

Departure:

of Days Docked:

Lay Day Fees (\$7,500 per vessel per day, as applicable)	\$0.00	
Sweeper	\$0.00	
Water	\$0.00	
Trash	\$0.00	
Event Rentals	\$0.00	
Filming	\$0.00	
Others	\$0.00	
	<u>\$0.00</u>	<u>\$0.00</u>

Total Amount due from Vessel

Gross Revenue collected from every business activity conducted on the Cruise Terminal \$0.00

Total Amount Due \$0.00

I hereby certify under penalty of perjury that the foregoing is a true and correct **statement of fees** collected from the cruise line under the terms of Agreement No. _____

PORTS AMERICA

DATE: _____

Octavio Sanchez
Terminal Manager
424-558-1829

EXHIBIT J-2

Please sign and remit to the Wharfingers Division within 15 days of vessel departure to:

PORT OF LOS ANGELES
P.O. Box 151, San Pedro, CA 90733

PASSENGER FEE STATEMENT

(sample)

VFN: _____ - _____ - _____ - _____

Wharfinger: _____

Customer No. _____

VESSEL _____

Voyage # _____

ARRIVED _____

DEPARTED _____

BERTH _____

BILL TO:	
-----------------	--

TR: _____

	<u>No. of Passengers</u>	@	<u>Rate</u>	\$	<u>Passenger Fee</u>
INBOUND PASSENGERS			\$10.31		0.00
AMP fee -INBOUND	0		\$0.30		0.00
IN-TRANSIT PASSENGERS			\$0.00		0.00
OUTBOUND PASSENGERS			\$10.31		0.00
AMP fee -OUTBOUND	0		\$0.30		0.00
TOTAL PASSENGERS	0		TOTAL	\$	0.00

I CERTIFY THAT THE ABOVE TO BE A TRUE AND COMPLETE STATEMENT OF ALL PASSENGERS DISEMBARKING FROM AND / OR EMBARKING ON THE ABOVE NAMED VESSEL AT THIS BERTH, UNDER THE TERMS OF AGREEMENT NO _____.

Date _____
 Terminal Operator :

Agent/Co _____
 POLA / Ports America Cruise Inc.

By _____
 Leticia Alvarado

WHARFINGER

CHIEF WHARFINGER

AUDITOR

EXHIBIT J-3

Please sign and remit to the Wharfingers Division within 15 days of vessel departure to:
PORT OF LOS ANGELES
P.O. BOX 151
San Pedro, CA 90733-0151

**OUTBOUND
 WHARFAGE STATEMENT**

(sample)

CUSTOMER NO. _____

VESSEL _____

VOYAGE NO. _____

ARRIVED _____

DEPARTED _____

BERTH _____

FILE NO. _____

TERMINAL	Port of Los Angeles / Ports America Cruise Inc.
BILL TO:	
LINE ADDRESS	
AGENT ADDRESS	

PORT TO T.R.	CARGO	WEIGHT OR CUBE / Pallet (s)	TONS	RATE	Wharfage TxR
	DKL-100 Vessel Stores	0	0	\$6.25	\$0.00
TOTAL			0		\$0.00

I CERTIFY THE ABOVE TO BE A TRUE AN COMPLETE STATEMENT OF ALL CARGO LOADED UPON THE ABOVE NAMED VESSEL AT THIS BERTH, PER THE TERMS OF AGREEMENT NO. _____.

Date _____ **AGENT** _____ **BY** _____

Terminal Operator : POLA / Ports America Cruise Inc. Leticia Alvarado

WHARFINGER _____ **WHARFINGER II** _____