

TEMPORARY RENTAL AGREEMENT

Board of Port Commissioners
of the City of Oakland
530 Water Street
Oakland, California 94607

Dear Commissioners:

In consideration of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (the "Port"), permitting the undersigned ("Permittee") to enter upon the Port premises described in this Agreement (the "Premises"), Permittee agrees as follows:

1. **Permittee:** The name, address and telephone number of the Permittee hereunder are as follows:

- Name:**
- Address:**

- Telephone:**
- Contact:**
- Email Address:**
- Website:**

2. **Commencement Date:** The date on which the term of this Agreement shall commence (the "Commencement Date") shall be: _____.

3. **Description of Premises:** The Premises shall consist of that certain real property commonly described as follows:_____.

The Premises are further depicted in the attached Exhibit A.

4. **Permitted Use; Term; Rent:** The Board of Port Commissioners ("Board") has the power to enter into this Agreement pursuant to Oakland City Charter Article VII, Section 709. If the terms and conditions of this Permit comply with any of the following categories of use, term and rent requirements, the Port's Executive Director, or his/her designee, may approve and execute this Agreement pursuant to Article IX, Section 6 of the Port's By-laws and Administrative Rules. Such categories and required terms and conditions include only the following:

CATEGORY A:

PERMITTED USES:

The Premises shall be used as follows: _____. Use of the Premises shall be consistent with the public trust restrictions on tidelands and submerged lands, and shall not require further environmental review under the California Environmental Quality Act.

TERM:

This Agreement shall terminate upon the earlier of:

- (a) Upon written notice by the Port or the Permittee to the other party no less than thirty (30) days prior to the termination that said party desires to terminate this Agreement.
- (b) _____, which shall be a date no later than one (1) year from the Commencement Date (including all hold-overs, extensions, and renewals).

RENT:

\$_____ per _____, which amount shall be no less than the tariffs, rates, charges or target rents duly established by the Board for the Premises.

CATEGORY B:

PERMITTED USES:

The Premises shall be used as follows: _____. Use of the Premises shall be consistent with the public trust restrictions on tidelands and submerged lands, and shall not require further environmental review under the California Environmental Quality Act. Such use has determined to be consistent with one or more of the following:

- Performing temporary construction by a contractor;
- Installing utility lines or equipment by a third party utility or governmental agency;
- Installing and implementing environmental testing, monitoring or data collection;
- Environmental or toxic material remediation, clean up or monitoring;
or
- Other similar temporary occupancy and use necessary for utility service or compliance with regulatory, health and safety standards

TERM:

This Agreement shall terminate on:

_____, which shall be a date no later than one (1) year from the Commencement Date (including all hold-overs, extensions, and renewals).

RENT:

\$_____ per _____, which amount shall be either; (a) no less than the tariffs, rates, charges or target rents duly established by the Board for the Premises; or (b) at a lesser amount where the Executive Director, or designee, has determined that it is in the benefit of the Port to charge a lesser amount and has determined that such lesser amount is reasonable in light of the proposed benefit to the Port.

CATEGORY C:

PERMITTED USES:

The Premises shall be used as follows: _____. Use of the Premises shall be consistent with the public trust restrictions on tidelands and submerged lands, and shall not require further environmental review under the California Environmental Quality Act.

TERM:

This Agreement for **continuous use** activities shall terminate on _____, which shall be a date no later than one hundred eighty (180) days from the Commencement Date (including all hold-overs, extensions, and renewals).

This Agreement for **recurring but non-continuous use** activities shall terminate on _____, which shall be a date no later than one (1) year from the Commencement Date (including all hold-overs, extensions, and renewals).

RENT:

\$_____ per _____, which amount shall be either; (a) no less than the tariffs, rates, charges or target rents duly established by the Board for the Premises; or (b) at a lesser amount where the Executive Director, or designee, has determined that it is in the benefit of the Port to charge a lesser amount and has determined that such lesser amount is reasonable in light of the proposed benefit to the Port.

5. **Indemnification and Hold Harmless:** Permittee shall defend, (with legal counsel approved or chosen by the Port Attorney) indemnify and hold the Port harmless against all claims, suits, liability and expense for any loss of, or damage, injury or death to, any person or any property (including the person or property of the Port or of Permittee, its officers, employees, agents or invitees) or violation of any law, regulation, order or permit, which directly or indirectly arises out of Permittee's occupancy or use of the Premises or activities related thereto. In addition, Permittee shall be responsible for the repair of any damage to existing Port facilities arising directly or indirectly out of Permittee's use of the Premises.

These obligations of Permittee shall not apply to any such loss, damage, injury or death caused solely by the negligence or other wrongful conduct of the Port but shall apply under all other circumstances. The obligations of Permittee under this Section arising by reason of any occurrence taking place during the term of this Agreement, shall survive any termination of this Agreement.

For purposes of this Section, "the Port" shall include the Board of Port Commissioners and each of its Commissioners, officers, employees and agents.

The foregoing provisions of this Section are not intended and shall not be construed to limit in any manner whatsoever the protection or benefits to which the Port otherwise would be entitled as an additional insured under any liability insurance maintained or required to be maintained by Permittee under this Agreement.

6. **Insurance:** Permittee shall maintain in force during the term of this Agreement:

a. Commercial General Liability insurance for Bodily Injury and Property Damage Liability, including:

Premises and Operations

- Blanket Contractual
- Product Liability including Completed Operations
- Broad Form Property Damage
- Personal Injury & Advertising Injury
- Independent Contractor's Coverage
- Cross-Liability/Severability of Interest Clause
- Underground, Explosion & Collapse Hazard (XCU)
- Railroad Protective Liability for work within 50 feet of a Railroad
- Other:

with such coverage and limits as may be reasonably requested by the Port from time to time, but in no event for less than the sum of One Million Dollars (\$1,000,000.00) combined single limit per occurrence and Two Million Dollars (\$2,000,000.00) annual aggregate. Further, City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland", its commissioners, officers, agents and employees shall be included as Additional Insureds.

b. Commercial Automobile Liability, including Bodily Injury and Property Damage Liability for:

- Owned, Non-owned and Hired Automobile Liability
- Other:

with such coverage and limits as may be reasonably requested by the Port from time to time, but in no event for less than the sum of One Million Dollars (\$1,000,000.00) combined single limit each accident. Further, City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland", its commissioners, officers, agents and employees shall be included as Additional Insureds.

c. Workers' Compensation, including:

- Statutory worker's compensation coverage under California law
- Employer's liability coverage for no less than One Million Dollars (\$1,000,000.00) per accident, One Million Dollars (\$1,000,000.00) bodily injury each employee, and One Million Dollars (\$1,000,000.00) policy limit for bodily injury by disease.
- Longshoreman and Harbor Workers' coverage and Jones Act coverage if applicable.
- Subrogation waiver in favor of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland", its commissioners, officers, agents and employees.

d. Professional Liability Insurance:

- Permittee shall obtain, at no expense to the Port, professional liability insurance covering Permittee, and its sub-consultants, for acts, errors or omissions arising out of services performed under the Agreement for no less than the sum of One Million Dollars (\$1,000,000.00) each claim and annual aggregate.
- Permittee shall obtain, at no expense to the Port, professional liability insurance covering Permittee, and its sub-consultants, for acts, errors or omissions arising out of services performed under the Agreement for no less than the sum of One Million Dollars (\$1,000,000.00) each claim and annual aggregate. Such coverage shall also include technology liability and privacy liability. Further, if services involve

outsourced internet services, network and media liability insurance coverage shall also be included.

In the event that the Permittee is able to obtain, at no expense to the Port, professional liability insurance for whatever limit is available, the Port will be provided with evidence of such coverage.

Other:

e. Maritime (for work involving use of watercraft):

Protection & Indemnity (P&I): Consultant shall obtain, at no expense to the Port, P&I coverage with such limits as may be reasonably requested by the Port from time to time, but in no event for less than the sum of One Million Dollars (\$1,000,000.00) combined single limit per occurrence and Two Million Dollars (\$2,000,000.00) annual aggregate. Further, City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland", its commissioners, officers, agents and employees shall be included as Additional Insureds.

f. Aviation (for work involving use of aircraft or aircraft products):

- Aircraft Hull & Liability
- Aircraft Products & Completed Operations
- Hangarkeepers' Legal Liability (sub-limit \$500,000.00 per occurrence)

with such coverage and limits as may be reasonably requested by the Port from time to time, but in no event for less than the sum of Five Million Dollars (\$5,000,000.00) combined single limit per occurrence and annual aggregate. Further, City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland", its commissioners, officers, agents and employees shall be included as Additional Insureds.

g. Contractor's Pollution Legal Liability including:

- Contractor's Pollution Legal Liability
- Cross-Liability/Severability of Interest Clause
- Additional Insured: City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland", its commissioners, officers, agents and employees shall be included as Additional Insureds.

with such coverage and limits as may be reasonably requested by the Port from time to time, but in no event for less than the sum of Two Million Dollars (\$2,000,000.00) combined single limit per occurrence and Two Million Dollars (\$2,000,000.00) annual aggregate.

h. Excess/Umbrella:

Excess/Umbrella: Consultant shall obtain, at no expense to the Port, Excess/Umbrella insurance coverage providing limits excess of Commercial General Liability, Commercial Automobile Liability and Employers' Liability for no less than the sum of Five Million Dollars (\$5,000,000.00) combined single limit per occurrence and Five Million Dollars (\$5,000,000.00) annual aggregate. Further, City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland", its commissioners, officers, agents and employees shall be included as Additional Insureds.

i. Other Insurance:

Other:

j. Independent Contractors Insurance:

Permittee's Independent Contractors, if any, shall comply with all of the requirements stated in the workers' compensation insurance requirement "c" above.

Prior to commencing of services under this Agreement and annually thereafter, Permittee shall furnish a certificate of insurance, satisfactory to the Port of Oakland Risk Management Department, evidencing that the above insurance is in force in compliance with the terms of this insurance section, placed with insurance carriers financially acceptable to the Port, stating name(s) of the insurance carriers, policy numbers, dates of expiration and limits of liability, and further providing that coverage is primary and non-contributory and that Permittee will endeavor to provide at least thirty (30) days prior written notice in the event the insurance is canceled or materially changed. In addition to the certificate of insurance, Permittee shall provide copies of the actual insurance policies if requested by the Port of Oakland at any time.

If any of the insurance required herein is written on a claims-made basis, then Permittee shall maintain such insurance for two (2) years after the termination of this Agreement. Deductibles or Self-Insured Retentions over Twenty Five Thousand Dollars (\$25,000.00) **must** be Pre-Approved by Risk Manager. Written binders may be acceptable as interim evidence. Upon failure to so file such insurance certificate, the Port may without further notice and at its option either (1) exercise the Port's rights; or (2) procure such insurance coverage at the Permittee's expense and the Permittee shall promptly reimburse the Port for such expense (operations or occupancy may be interrupted without proper evidence). Send certificates to:

**Port of Oakland
Attn: Risk Management Department
530 Water Street
Oakland, CA 94607
Email: risktransfer@portoakland.com**

7. **Termination:** Permittee agrees immediately upon termination of this Agreement, and at no cost or expense to the Port, to remove itself and all persons and things from the Premises which were not on the Premises before Permittee entered upon the Premises under or in contemplation of this Agreement.

8. **Applicable Laws:** In engaging in any activities under this Agreement or regarding the Premises, and at no cost or expense to the Port, Permittee shall comply with all applicable laws, ordinances, general rules or regulations, orders, permits, the Charter of the City, or any land use restrictions or limitations at any time applicable thereto of any public or governmental authority, including the City of Oakland and the Port (collectively "Laws and Regulations"); provided that, any Laws and Regulations adopted by the Port are of general application and do not unreasonably discriminate against Permittee. Permittee agrees to coordinate its activities with the Port and to govern its activities in accordance with reasonable requests by the Port.

9. **Additional Provisions:** The following additional provisions and conditions are incorporated as a part of this Agreement:

- None
 Additional Exhibit(s):

- Exhibit A – Property Description
- Exhibit B – Environmental Provisions
- Exhibit C – Additional Provisions
- Exhibit D – Article VII, Section 728 Oakland City Charter

10. **Living Wage:** To the extent applicable, Permittee agrees to comply with the Port's Living Wage Law as set forth in the City of Oakland Charter, Article VII, Section 728; a copy of Article VII, Section 728 is attached to this Agreement as Exhibit D.

11. **Holdover:** Permittee acknowledges and agrees that no holdovers or extensions are permitted after one (1) year from the Commencement Date of this Agreement.

12. Pursuant to California Health and Safety Code Section 25359.7, the Port notifies Permittee that the Port has reasonable cause to believe that a release of hazardous substances has come to be located on, at, beneath or emanating from the Premises as reflected in the reports listed on Exhibit B.

UNDER THE BY-LAWS OF THE BOARD OF PORT COMMISSIONERS, THE PERMISSION GRANTED BY THIS AGREEMENT MAY NOT EXCEED ONE (1) YEAR FROM THE COMMENCEMENT DATE ABSENT A DULY ADOPTED ORDINANCE BY THE BOARD OF PORT COMMISSIONERS.

CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners,

By _____
Executive Director

Dated: _____

* By signing above, the Executive Director, or designee, has determined that it is in the benefit of the Port to charge the amount set forth above, where indicated, in Section 4, Categories B & C, and that such amount is reasonable in light of the proposed benefit to the Port.

PERMITTEE

By _____

Print Name and Title
(If Corporate: Chairman, President
or Vice President)

Dated: _____

Attest _____

Print Name and Title
(If Corporate: Secretary, Assistant
Secretary, Chief Financial Officer,
or Assistant Treasurer)

Dated: _____

Approved as to form and
legality this ___ day
of _____ 20____.

Port Attorney
P.A.#

**THIS AGREEMENT SHALL NOT
BE VALID OR EFFECTIVE FOR
ANY PURPOSE UNLESS AND
UNTIL IT IS SIGNED BY THE
PORT ATTORNEY.**

EXHIBIT "A"

PROPERTY DESCRIPTION

EXHIBIT B

**ENVIRONMENTAL RESPONSIBILITIES EXHIBIT
TO
PORT OF OAKLAND
TEMPORARY RENTAL AGREEMENT
OUTDOOR PREMISES,
SOIL DISTURBANCE ACTIVITIES ASSUMED**

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ENVIRONMENTAL RESPONSIBILITIES EXHIBIT

Section 1. Definitions.

For purposes of this Exhibit, each of the capitalized terms used in this Exhibit, whether in the singular or plural, past or present tense, shall have the meanings specified in this Section 1, or, if not defined in this Exhibit, the capitalized terms, used but not defined in this Section 1, shall have the meaning given to such terms in the Agreement.

(a) “Action” means (i) any claim whether by regulatory notice (which shall be deemed to include verbal or written notice by a Governmental Authority of an informational request, or requirement for Response Action), (ii) any other claim or notice of any claim by a Third Party, (iii) any demand, legal action, arbitration, mediation, proceeding or lawsuit, whether threatened or filed, and (iv) any demand, judgment, order, settlement or compromise, relating to the matters described in Section 1(a)(i) through (iv).

(b) “Administrative Record” means the written record as defined under California Public Resources Code Section 22167.6.

(c) “Affiliate” means, when used to indicate a relationship with a specified Person, a Person that, directly or indirectly, through one or more intermediaries controls, is controlled by or is under common control with such specified Person; a Person shall be deemed to be controlled by another Person if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

(d) “Agreement” means the Temporary Rental Agreement to which this Exhibit is attached.

(e) “Air Regulations” means all Laws issued by any Governmental Authority regulating air quality or emissions, including those so defined in or regulated under any of the following: 42 U.S. Code Section 7401, *et seq.* (the Clean Air Act); Division 26 of the H&S Code (including H&S Code Sections 39000, *et seq.* and 40200, *et seq.* among others, authorizing regulation by CARB and the BAAQMD); Division 25.5 of the H&S Code (H&S Code Section 38500, *et seq.* - the Global Warming Solutions Act); the regulations adopted and promulgated pursuant to such statutes, including any regulations adopted pursuant to such statutes after the Commencement Date, as well as any subsequently enacted federal, California, local and Port law, statute, ordinance, rule, regulation, program, plan, resolution, policy, program, permit, order, or other directive issued by any Governmental Authority as may be modified, amended or reissued, in any way relating to or regulating Permittee Operations; and regulations promulgated by CARB and BAAQMD to reduce diesel particulate matter and related emissions from Construction Activities, including those so defined in or regulated under any of the following: 13 California Code of Regulations (CCR) Section 2027 (In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks); 13 CCR Section 2025 (On-Road Heavy-Duty Vehicles (Truck and Bus Regulation)); 13 CCR Section 2449 (Emission Standards for In-Use Off-Road Diesel-Fueled Fleets); 13 CCR Section 2452 (Portable Engines and Equipment Registration (Definitions)); 40 Code of Federal Regulations (CFR) Parts 89 and 1039 (Emissions Requirements); 17 CCR Section 93116 (Portable Diesel-Fueled Engines Air Toxic Control Measure (ATCM)); 13 CCR Section 2775 (Off-Road Large-Spark Ignition (LSI) Engine Fleet Requirements Regulation); and all additional rules and regulations promulgated by BAAQMD applicable to Permittee’s Operations, including with respect to specific stationary equipment.

(f) “APSA” means the Aboveground Petroleum Storage Act, H&S Code Section 25270, *et. seq.*

(g) “Authorization” means any determination, approval, certificate of approval, authorization, consent, waiver, variance, exemption, declaratory order, exception, license, filing, registration, permit, notarization, or other requirement of any Person that applies to all or any part of the Premises or Permittee Operations.

(h) “BAAQMD” means the Bay Area Air Quality Management District, and any successor Governmental Authority of the BAAQMD.

(i) “BCDC” means the San Francisco Bay Conservation and Development Commission, and any successor authority of BCDC.

(j) “BMPs” means “Best Management Practices” as defined by Environmental Laws, as such may be revised from time to time and interpreted by Governmental Authorities. BMPs generally include treatment, structures, techniques, vegetation, activities, schedules of activities, practices, prohibition of practices, maintenance procedures, operating procedures and other management practices to reduce, and, where possible, prevent, the discharge of pollutants in Storm Water.

(k) “Board” means the Board of Port Commissioners of the City.

(l) “Business Day” means any day that is neither a Saturday, a Sunday, nor a day observed as a holiday, non-operating day, or non-working day by either the Port or the State of California or the United States government.

(m) “CARB” means the California Air Resources Board, and any successor Governmental Authority of CARB.

(n) “CEQA” means the California Environmental Quality Act as enacted under California Public Resources Code Section 21000, *et seq.*

(o) “City” means the City of Oakland, a charter city organized and existing under the Constitution of the State of California.

(p) “Clean Up Standard” means the level of Response Action required by either (i) the Governmental Authority having jurisdiction over certain Toxic Materials or Response Action including any remediation or clean up standard set forth in Environmental Laws establishing standards for clean up where Toxic Materials are left in place; or (ii) the Port in its sole discretion, subject to and consistent with the terms of the Agreement and this Exhibit, whichever results in a more stringent clean up standard and which is more protective of human health and the Environment.

(q) “Commencement Date” means the date the Agreement commenced.

(r) “Construction Activities” means and includes all activities during the Term (or following the expiration of the Term if such activities are done pursuant to the Agreement) in the Premises or other Port property involving disturbance of soil.

(s) “Construction General Permit” means the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2012-006-DWQ, NPDES No.

CAS000002, as such permit has been or may be amended, modified or superseded from time to time.

(t) “Construction Storm Water Requirements” means requirements of Environmental Laws regulating Storm Water associated with Construction Activities, including Authorization issued by the Port or other Governmental Authority, such as the Construction General Permit.

(u) “Contamination” means Toxic Materials contamination of the Environment, the Premises or Improvements in, on or under the Premises, excluding outdoor air, but including indoor air.

(v) “Corps of Engineers” means the United States Army Corps of Engineers.

(w) “Costs” or “fees and costs” means all legal and attorneys’ fees (including fees attributable to in-house attorneys), legal overhead costs, court costs, fees and costs of experts retained as consultants or expert witnesses, in-house environmental staff costs, charges by Governmental Authorities for such items as oversight or review fees, damages, injuries, causes of action, judgments, taxes, and expenses of any kind, including disposal fees, transportation fees and hazardous waste fees, all as actually incurred by the party in question, without discount or deductions.

(x) “CRUP” means Covenant to Restrict Use of Property, Environmental Restriction or any similar deed restriction.

(y) “CUPA” means the Certified Unified Program Agency.

(z) “Designated Person” means the officer, employee, partner, member, owner, or agent of each Person who is designated as such for the purposes of Section 22.

(aa) “Document” means any correspondence, plan, budget, proposal, drawing, specification, contract, agreement, schedule, list, record, report, certification, notice, and other written, photographic or electronic material.

(bb) “DTSC” means the State of California, Environmental Protection Agency, Department of Toxic Substances Control, and any successor Governmental Authority of DTSC.

(cc) “EBMUD” means the East Bay Municipal Utility District, a municipal utility district organized under the laws of the State of California, and any successor Governmental Authority of EBMUD.

(dd) “EIR” means Environmental Impact Report.

(ee) “Environment” means soil, soil vapor, surface waters, groundwaters, land, wetlands, surface water drainages, stream, ocean and bay sediments, surface or subsurface strata, habitat, and outdoor and indoor air.

(a) “Environmental Documents” means any and all Documents required to be provided, filed, lodged, or maintained by Permittee or obtained by or issued by Permittee pursuant to any Environmental Laws or this Exhibit and include: Documents related to CEQA and NEPA and to the handling, storage, disposal, and emission of Toxic Materials; permits; Authorizations; spill reports; reports; correspondence; applications for permits; notices of intent and related permit registration documents; Storm Water pollution prevention plans and associated documents; annual compliance evaluations, annual reports, monitoring results;

notices of violation; Storm Water Facility Operation and Maintenance Logs, storage, emission and management plans; SPCC Plans; other spill contingency and emergency response plans; Documents relating to taxes for Toxic Materials; manifests for disposal or treatment of Toxic Materials; plans relating to the installation of any Storage Tanks; and all closure plans or any other Documents required by any Governmental Authority for any Storage Tanks or other Toxic Materials storage or disposal facilities.

(ff) “Environmental Indemnification Obligation” means the obligation of Permittee to indemnify, protect, defend, and hold harmless the Indemnitees as said obligation is more fully described in Section 8, below.

(gg) “Environmental Laws” means all Air Regulations and all Laws issued by any Governmental Authority, including those so defined in or regulated under any of the following: 15 U.S. Code Section 2601, *et seq.* (the Toxic Substances Control Act); 16 U.S. Code Section 1531, *et seq.* (the Federal Endangered Species Act); 33 U.S. Code Section 1251, *et seq.* (the Federal Water Pollution Control Act); 42 U.S. Code Section 6901, *et seq.* (the Resource Conservation and Recovery Act); 42 U.S. Code Section 9601, *et seq.* (the Comprehensive Environmental Response, Compensation and Liability Act); 49 U.S. Code Section 5101, *et seq.* (the Hazardous Materials Transportation Act); 42 U.S. Code Section 4321, *et seq.* (NEPA); H&S Code Section 116270, *et seq.* (California State Drinking Water Act); H&S Code Section 25100, *et seq.* (Hazardous Waste Control Act); H&S Code Section 25300, *et seq.* (the Hazardous Substance Account Act); H&S Code Section 25404, *et seq.* (Unified Hazardous Waste and Hazardous Materials Management Regulatory Program); H&S Code Section 25270, *et seq.* (APSA); Government Code Sections 66600, *et seq.* (McAteer Petris Act); H&S Code Section 25531, *et seq.* (Hazardous Materials Management); H&S Code Section 18901, *et seq.* (California Building Standards); California Water Code Section 13000, *et seq.* (the Porter-Cologne Water Quality Control Act); H&S Code Section 25249.5, *et seq.* (the Safe Drinking Water and Toxic Enforcement Act of 1986); California Fish and Game Code Section 2050, *et seq.* (the California Endangered Species Act); California Fish and Game Code Section 1600, *et seq.* (the Lake and Streambed Alteration Program); California Public Resources Code Section 21000, *et seq.* (CEQA); local fire codes; and the regulations adopted and promulgated pursuant to such statutes, including any regulations adopted pursuant to such statutes after the Commencement Date, as well as any subsequently enacted federal, California, local and Port law, statute, ordinance, rule, regulation, program, plan, resolution, policy, program, permit, order, or other directive issued by any Governmental Authority as may be modified, amended or reissued, in any way relating to or regulating Lessee Operations with regard to:

(i) Human health, safety, and industrial hygiene related to Toxic Materials;

(ii) The Environment and pollution or contamination of the Environment, structures, or subsurface structures including utility vaults, corridors or conduits;

(iii) Toxic Materials, including the handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, Release, treatment, or disposal of any Toxic Materials, or Response Actions associated with same;

(iv) Global warming or generation of green house gases, including the management of high GWP substances; or

(v) Noise or light pollution.

(hh) “ESA” means environmental sensitive areas and includes wetlands, as determined by evaluation of the hydrology, soil, and the type, location and extent of vegetation,

and include the areas immediately surrounding or draining into such wetlands. ESA includes areas that are regulated pursuant to, covered by, or subject to the jurisdiction of Environmental Laws, including the federal Clean Water Act, the California Porter-Cologne Water Quality Control Act, the federal Endangered Species Act, or the California Endangered Species Act.

(ii) “Governmental Authority” means any court, federal, State or local government, department, commission, board, bureau, CUPA, agency or other regulatory, administrative, governmental or quasi-governmental authority, including the Port, the City, the State of California and the United States, including any successor agency.

(jj) “Group Monitoring Program” means a Port-wide voluntary Storm Water sampling and analysis program conducted by the Port in which Port tenants may elect to participate in lieu of conducting their own Storm Water sampling and analysis to satisfy each tenant’s obligations under Industrial Storm Water Requirements.

(kk) “GWP” means global warming potential, as defined in 17 California Code of Regulations Section 95382(a)(25).

(ll) “H&S Code” means The California Health and Safety Code.

(mm) “Improvements” means all existing and new, interior and exterior, structural and non-structural, ordinary and extraordinary, fixtures, buildings, structures, alterations, improvements, or change in the grade in the Premises, and all substitutions, upgrades or replacements thereof or to existing improvements in the Premises, in each case whether made by Permittee, the Port or any Third Party.

(nn) “Indemnitees” means in reference to any Environmental Indemnification Obligations, the Port and the Port’s commissioners, agents, employees, Representatives, contractors, Port-designated secondary users of the Premises, directors, and officers.

(oo) “Industrial General Permit” means Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS00001, Waste Discharge Requirements (WDRs) for Discharges of Storm Water Associated with Industrial Activities, Excluding Construction Activities, as such permit may be amended, modified, or superseded from time to time.

(pp) “Industrial Storm Water Requirements” means requirements of Environmental Laws regulating Storm Water associated with industrial activity or otherwise from the Premises, including permits issued by a Governmental Authority, such as the Industrial General Permit.

(qq) “JAMS” has the meaning ascribed thereto in Section 22(c).

(rr) “Law” means any resolution, order, writ, injunction, decree, judgment, law, ordinance, decision, opinion, ruling, policy, plan, program, permit, statute, code, rule or regulation of, or conditions applicable to, the Project, the Premises, Construction Activities or Permittee under any permit, license, concession, authorization or other approval by, or other directives issued by, any Governmental Authority, including any adopted, promulgated or enacted subsequent to the Commencement Date, as the same may be modified, amended, or reissued, and including the Charter of the City, including laws that seek to reduce the risk from, and to mitigate the results of, an act that threatens the safety and security of personnel, the Port’s facilities, private property and the public, such as the Federal Maritime Transportation Security Act of 2002, any applicable project labor agreements that the Port is a party to, land use restrictions, CRUPs, or limitations relating to human or public health, the Environment,

water, sanitation, safety, security, welfare, the filling of or discharges to the air or water or navigation and use of the Port Area (as defined in the Charter of the City).

(ss) “Loss” or “Losses” means, with respect to any Person, any loss, liability, damage, penalty, charge, or out-of-pocket and documented Cost or expense actually suffered or incurred by such Person (including reasonable attorneys’ fees), but excluding any special, indirect, punitive, and consequential damages.

(tt) “Materials Management Program” means the Port program to recycle soil, concrete and asphalt generated from construction projects on Port property, as said program may be amended from time to time.

(uu) “Mitigated Negative Declaration” means the Negative Declaration prepared for a CEQA Project as defined in California Public Resources Code Section 21064.5.

(vv) “MMRP” means the Mitigation, Monitoring and Reporting Programs approved by the Port for the implementation, monitoring, and reporting of mitigation measures required to reduce or avoid significant environmental impacts.

(ww) “Municipal Storm Water Requirements” means requirements of Environmental Laws regulating Storm Water from municipal separate storm sewer systems including: (i) permits issued by a Governmental Authority to the Port (or, if not to the Port, to the Governmental Authority with jurisdiction over the separate storm sewer systems serving the Premises), currently Water Quality Order No. 2013-0001-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004, Waste Discharge Requirements (WDRs) for Storm Water Discharges From Small Municipal Separate Storm Sewer Systems (MS4s) (General Permit), or such other individual or general permits that encompass the Premises; (ii) any Port Storm Water management plan or equivalent programmatic Document implementing Municipal Storm Water Requirements, as in effect from time to time; and (iii) any Port ordinance concerning Storm Water enacted from time to time.

(xx) “Negative Declaration” means a written statement as defined in California Public Resources Code Section 21064.

(yy) “NEPA” means the National Environmental Policy Act, as set forth at 42 U.S. Code Section 4321, *et seq.*

(zz) “NPDES” means any individual or general National Pollutant Discharge Elimination System Authorization, or equivalent Authorization.

(aaa) “Operation and Maintenance” means operation, cleaning, repair, testing, monitoring, and periodic inspection and maintenance.

(bbb) “Party” means a party to the Agreement and “Parties” means all of them.

(ccc) “Permittee” has the meaning ascribed thereto in the preamble of the Agreement, including any sub-permittee(s).

(ddd) “Permittee Improvements” means all Improvements, in each case made by Permittee or Permittee Representatives.

(eee) “Permittee Operations” means all activities, including the installation, construction, operation, management, maintenance, improvement, redevelopment, repair, and removal of Improvements, Construction Activities, and Response Actions, in the Premises that

are performed by or on behalf of Permittee pursuant to the Agreement, or any sub-permit that Permittee may enter into.

(fff) “Person” means any individual (including the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association, or other entity or Governmental Authority.

(ggg) “Port” has the meaning ascribed thereto in the preamble of the Agreement.

(hhh) “Premises” means that certain Port-owned real property, including any and all Permittee Improvements, Improvements, and equipment located in, on or under the land in the City at the Port, more particularly described and depicted respectively in the Agreement.

(iii) “Project” means any activity as defined under CEQA or NEPA.

(jjj) “Release” means any release, emission, spill, discharge, disposal, leak, leaching, migration, or dispersal of Toxic Materials into the Environment.

(kkk) “Representative” means, with respect to any Person, any Board of Port Commissioner, director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, contractor, sub-contractor (of any tier), sub-permittees, customers, or other Person for whom such Person is at law responsible or other representative of such Person and any professional advisor, consultant, or engineer designated by such Person as its “Representative.”

(lll) “Response Action” means the inspection, investigation, testing, feasibility study, risk assessment, treatment, removal, disposal, reuse, handling, transport, clean up, remediation, containment, capping, encapsulating, mitigation, or monitoring of Toxic Materials; the preparation and implementation of any health and safety plans, operations and maintenance plans, or any other plans related to Contamination or a Release; the demolition, reconstruction or construction of any subsurface or surface structures to implement the Response Action; the restoration of the Premises after the completion of the Response Action whether required by Environmental Laws or the Agreement; and the Costs associated with any such Response Action.

(mmm) “RWQCB” means the California Regional Water Quality Control Board, San Francisco Bay Region, and any successor Governmental Authority of the RWQCB.

(nnn) “Safety Data Sheet” means written or printed material concerning a Toxic Material that is prepared in accordance with Title 8, Section 5194(g) of the California Code of Regulations or other Environmental Laws.

(ooo) “SPCC Plans” means the Spill Prevention Control and Countermeasure Plans required by 33 U.S. Code Section 1251, *et seq.*, Title 40 of the Code of Federal Regulations, Part 112, (“40 CFR 112”), or similar Law.

(ppp) “Storage Tanks” means underground storage tanks (“USTs”), above-ground storage tanks (“ASTs”), mobile tanks, basins, sumps, fuel pumps, fuel piping, ancillary equipment or containment systems, or any other equipment used to store, deliver, or process Toxic Materials.

(qqq) "Storm Water" means storm water runoff, surface runoff and drainage.

(rrr) "Storm Water Facilities" means structures, devices, facilities or design features, including ditches, vegetated swales, channels, pipes, drains, inlets, outfalls, pervious pavements, retention basins, detention basins, and other above-ground and below-ground features sometimes known as "post-construction Storm Water controls," "green infrastructure," or "low impact development," that are designed, constructed or installed primarily to reduce or control Storm Water discharge volumes, flows or rates, or to prevent or minimize Storm Water contact with, transport of, or discharge of, sediment, Toxic Materials or other material from the Premises. Functions of Storm Water Facilities include any one or combination of the following: the collection, conveyance, transport, treatment, or discharge of Storm Water.

(sss) "SWRCB" means the California State Water Resources Control Board, and any successor Governmental Authority of the SWRCB.

(ttt) "Term" has the meaning ascribed thereto in the Agreement.

(uuu) "Termination Date" means the expiration or sooner termination of the Agreement, and includes all holdover periods.

(vvv) "Third Party" means anyone (including a Governmental Authority, except in cases where the Port is acting as the Governmental Authority) other than Permittee, the Port, Permittee Representatives, the Port Representatives, or any of their Affiliates.

(www) "Toxic Materials" means: (i) substances that are toxic, corrosive, flammable or reactive; (ii) petroleum products, crude oil (or any fraction thereof) and their derivatives; (iii) explosives, asbestos, radioactive materials, hazardous wastes, sewage, infectious substances, toxic substances or related hazardous materials; (iv) air pollutants, noxious fumes, vapors, soot, smoke or other airborne contaminants; and (v) substances that now or in the future are defined by Environmental Laws as "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants," "contaminants," "reproductive toxins," "carcinogens," or "toxic substances," or regulated under applicable Environmental Laws.

(xxx) "United States EPA" means the United States Environmental Protection Agency, and any successor Governmental Authority of the United States EPA.

(yyy) "WDP" means any wastewater discharge permit issued by EBMUD.

Section 2. General Prohibitions.

(a) No Toxic Materials Except in Accordance with Environmental Laws. Permittee shall not cause or permit, or allow any Permittee Representative or any Person under the control of Permittee to cause or permit, any Toxic Materials to be generated, Released, emitted, spilled, discharged, leaked, leached, disposed of, brought upon, and once brought upon during the Term, to remain, be stored or used, in, on or about the Premises or other Port property during the Term except in accordance with all applicable Environmental Laws.

(b) Storage Tanks. Permittee shall not cause or permit the installation, operation, or removal of any Storage Tank on the Premises or other Port property without the prior written consent of the Port, which approval may be given, conditioned, or withheld in the Port's sole discretion. Any such installation, operation, or removal shall be subject to all of the other applicable provisions of the Charter of the City, the Agreement and this Exhibit. Periodically during the Term, at the request of the Port, Permittee shall provide the Port with documentary evidence that any Storage Tanks used by Permittee or caused to be on the

Premises by or on behalf of Permittee are in compliance with all applicable Environmental Laws, including the requirements of H&S Code Chapter 6.7 and H&S Code Chapter 6.67, and that to the full extent required by Environmental Laws: (i) such Storage Tanks are permitted; (ii) such Storage Tanks have appropriate leak containment and monitoring components; (iii) best management practices have been implemented for the maintenance and operation of such Storage Tanks; (iv) such Storage Tanks have been subject to daily visual inspections, when such inspections are required under Environmental Laws; (v) any other periodic inspections required by the Governmental Authority asserting jurisdiction have occurred including those periodic inspections to ensure compliance with 40 CFR 112; (vi) a groundwater monitoring program has been implemented, if required by a Governmental Authority, and such program complies with all Governmental Authority directives and orders; (vii) an effective secondary containment system is in place; (viii) such Storage Tanks have passed tank tightness integrity tests as may be required by H&S Code Chapter 6.7; (ix) a Hazardous Materials Business Plan has been prepared and implemented as required by the APSA and H&S Code, Chapter 6.95, Section 25500, *et seq.*; (x) an SPCC Plan has been prepared, implemented and maintained onsite as required by APSA and the local CUPA; (xi) Permittee has obtained its own United States EPA I.D. number for each of the Storage Tanks; (xii) Permittee has paid for all fuel throughput taxes for any Storage Tank; and (xiii) Permittee has complied with the requirements for financial responsibility required by H&S Code Chapter 6.7. Further, upon request by the Port, Permittee shall provide to the Port all monitoring records, equipment testing, or maintenance records required by California Code of Regulations Title 23, Chapter 16, Section 2610, *et seq.*, or other similar Environmental Laws. Permittee shall have the sole responsibility to comply with all Environmental Laws pertaining to the use, operation, repair, maintenance and subsequent removal and closure of such Storage Tanks, as set forth herein, whether such Storage Tanks were installed, owned, or permitted by the Port or other Third Party.

Please see Exhibit-1 (Storage Tanks) attached hereto for a listing of operational Storage Tanks currently on the Premises. Concurrent with Permittee's execution of the Agreement, Permittee shall notify the Port, in writing, which, if any, of the Storage Tanks listed in Exhibit-1 Permittee would like to use as part of Permittee Operations. Permittee shall be responsible for all requirements imposed by Environmental Laws or Authorizations and for all Contamination, Releases or Response Action related to any such Storage Tanks that it uses; if at any time Permittee decides to no longer use such Storage Tanks, or decides not to use any subsequently installed Storage Tanks, it shall promptly remove and obtain proper Storage Tank closure documentation from Governmental Authorities for any such Storage Tanks. No later than six (6) months after the Commencement Date, Permittee, at no Cost or expense to the Port, shall remove those Storage Tanks listed in Exhibit-1 that Permittee has not indicated an intent to use in accordance with this Section 2(b). Permittee shall not be responsible for Contamination associated with such Storage Tank(s) it has not used; provided, however, that Permittee shall be responsible for Contamination Released during removal of such Storage Tank(s).

(c) Response Action. Permittee shall not conduct or permit any Response Action including the implementation of any investigative work plan including installation, removal, sampling, or monitoring of any soil boring, temporary or permanent monitoring points, such as groundwater wells, soil vapor probes, and piezometers located on the Premises or on other Port property without the Port's prior written approval. Permittee shall not implement any Response Action on the Premises or on other Port property without prior written Port approval.

If Permittee is allowed by the Port to conduct any site investigation where soil borings are drilled or temporary or permanent monitoring points are installed on the Premises, Permittee shall survey such soil borings and monitoring wells relative to the Port's horizontal and vertical datum, and provide survey coordinates to the Port. Permittee shall be responsible for any repair or damage arising from Permittee conducting any Response Action including responsibility for: (i) proper compaction of backfilled soils; (ii) repair of damage to pavement and subsurface utilities; (iii) proper abandonment of monitoring points, sealing any soil borings, removing any

pipings or other structures, whether underground or aboveground; and (iv) proper disposal of excess soil and purged groundwater associated with the Response Action, once such monitoring wells, soil borings, pipings or other structures are no longer necessary for the Response Action. Further, Permittee shall not use any groundwater on Port property for any purpose without the Port's prior written approval, which approval may be withheld for any reason in the Port's sole discretion. For purposes of this Exhibit, the prohibition on groundwater "use" excludes investigation, testing, remediation, cleanup, and monitoring; any such matters shall be subject to all of the other applicable provisions of this Exhibit.

Notwithstanding the preceding sentences in this Section 2(c), subject to Permittee's obligations under Section 9 below, Permittee may take any action described in the first sentence of this Section 2(c) without Port approval in the event of an emergency and only if so directed by a Governmental Authority with jurisdiction under any Environmental Law.

Section 3. Compliance With Environmental Laws.

Permittee shall comply with all Environmental Laws relating to Permittee Operations, or its occupancy, use, or redevelopment of the Premises. Such compliance shall include Permittee obtaining, maintaining, and complying with the terms and conditions of all applicable Authorizations necessary for Permittee Operations. Permittee shall comply with all Environmental Laws at its sole Cost and expense.

If Permittee Operations require the Port to apply for, obtain, maintain, and comply with an Authorization or make any Environmental Laws directly applicable to the Port, Permittee shall cooperate with the Port in the Port's efforts to apply for, obtain, maintain, and comply with the terms and conditions of any such Authorizations and Environmental Laws directly applicable to the Port. All Costs incurred by the Port in applying for, obtaining, maintaining, and complying with the terms and conditions of all such applicable Authorizations and Environmental Laws shall be reimbursed by Permittee within thirty (30) calendar days of receiving an invoice from the Port for such Costs.

Section 4. Disposal of Toxic Materials.

In the course of conducting Permittee Operations, Permittee shall not dispose of, or permit the disposal by any Permittee Representative or any Person under the control of Permittee of, any Toxic Materials except in accordance with all applicable Environmental Laws, including such Environmental Laws as are applicable to discharges to the Environment, to storm drains, sanitary sewer drains and plumbing facilities within the Premises, or other property of the Port. Without limiting the foregoing, all discharges to the sanitary sewer must comply with the Port's Sanitary Sewer Ordinance, once adopted, and any applicable WDP. Permittee shall submit copies of both its application for a WDP, and the WDP within five (5) Business Days of application and receipt, respectively, to the Port for its records. Permittee shall also obtain all appropriate EBMUD permits, approvals, or other Authorizations, as may be required under a WDP or other Environmental Laws prior to discharging. All Toxic Materials for which Permittee is responsible under this Agreement shall be removed from the Premises in approved and labeled containers, or otherwise as required by Environmental Laws, and if recycled or disposed of as a regulated waste, be transported by duly licensed and insured carriers at appropriately permitted facilities and in compliance with all Environmental Laws, and in accordance with the Agreement and this Exhibit, including Section 9 of this Exhibit.

Section 5. Water Quality.

(a) Compliance with Laws. Permittee shall comply with, and shall require Permittee Representatives to comply with, all applicable Environmental Laws and Authorizations regarding discharges to or from water and land comprising the Premises, discharges to other

Port property, discharges to San Francisco Bay or receiving waters. Such Environmental Laws and Authorizations include: (i) any NPDES permit or waste discharge requirements applicable to waste or Storm Water discharges from Permittee Operations, facilities or the Premises; (ii) Port ordinances, Authorizations or conditions of approval; (iii) EBMUD approvals, permits or other Authorizations for discharges to the sanitary sewer system; and (iv) SPCC Plan requirements.

To the extent Environmental Laws place compliance responsibility or liability upon the Port for the Premises, activities thereon, or discharges therefrom, Permittee's and Permittee Representatives' compliance includes implementing requirements of those Environmental Laws, as applicable to Permittee Operations on the Premises, and cooperating with the Port to enable the Port to comply with those Environmental Laws. Such Environmental Laws directly applicable to the Port include Industrial Storm Water Requirements, Construction Storm Water Requirements and Municipal Storm Water Requirements.

(b) Right to Discharge Storm Water.

(i) The Port grants to Permittee a non-exclusive right, subject to the provisions of this Exhibit and the Agreement, as well as compliance with all applicable Environmental Laws, to discharge Storm Water flowing from the Premises. Permittee shall not discharge from the Premises any material other than Storm Water, except as authorized by Environmental Laws. Permittee shall provide a written description to the Port of its proposed BMPs and then adopt, implement and cause the implementation of appropriate BMPs to minimize, or, where possible, prevent, Storm Water, whether originating on or off the Premises, from contacting and transporting off the Premises any Toxic Materials, sediment, or any other material that may adversely affect the water quality of, or cause or threaten to cause nuisance in, receiving waters. For the purposes of this Section 5, compliance with applicable Environmental Laws includes the discharge prohibitions, effluent limitations and receiving water limitations in Environmental Laws applicable to discharges at the point of discharge to receiving waters, when Storm Water from the Premises does not discharge directly into such receiving waters.

(ii) If Permittee's Storm Water discharges fail to comply with all applicable Environmental Laws, Permittee shall take all necessary action to promptly achieve compliance. Any Storm Water Facilities on the Premises that Permittee constructs, reconstructs, installs or retrofits that drain Storm Water from the Premises must be constructed, reconstructed, installed or retrofitted in accordance with Port-approved plans and must be inspected and approved in writing by the Port before such storm drains may be connected to Port facilities that collect, convey, treat, or discharge Storm Water.

(iii) Except as otherwise determined by the Port, to the extent Permittee constructs, reconstructs, installs or retrofits any Storm Water Facilities, Permittee shall be responsible for the Operation and Maintenance of such Storm Water Facilities in accordance with an Operation and Maintenance Plan prepared by Permittee and approved by the Port. The Operation and Maintenance of any such Storm Water Facilities shall be conducted to ensure effective performance over the reasonable life of the Storm Water Facilities. The Port may require revision to Operation and Maintenance plans where Storm Water Facilities fail to perform as expected. Permittee shall be responsible for the Costs of such Operation and Maintenance, and shall annually report all such Operation and Maintenance activities to the Port each July 1, and at such other times as the Port may reasonably request. If Permittee fails to adequately maintain Storm Water Facilities to perform effectively as designed, the Port may, but is not obligated to, perform such work and Permittee shall reimburse the Port for all associated Costs and pay penalties to the Port as provided by applicable Port ordinance.

(c) Control of Storm Water During Construction. Permittee shall ensure that any Construction Activities fully comply with all applicable Construction Storm Water Requirements. Permittee shall immediately notify the Port upon obtaining and upon terminating Authorization to discharge under the Construction General Permit. Permittee shall provide to the Port the anticipated date Permittee Construction Activities will commence no less than twenty (20) Business Days in advance. Permittee shall fully cooperate with the Port in the Port's inspection of Permittee's Premises and Construction Activities under Section 7.

(d) Storm Water Considerations in Project Design. Permittee shall, in connection with any Permittee Improvements, consult with the Port to assure that all of Permittee's plans and specifications incorporate Storm Water Facilities required by the Port as reasonably necessary to meet the requirements of Environmental Laws, including Municipal Storm Water Requirements and any Port ordinance pertaining to Storm Water.

(e) Industrial Storm Water Requirements. Permittee shall be responsible for obtaining Authorization for Storm Water discharges associated with industrial activity on the Premises, if applicable. Permittee shall promptly notify the Port and provide documentation of such Authorization to discharge under the Industrial General Permit, if applicable. If Storm Water discharge associated with Permittee's activities is subject to Authorization issued by a Governmental Authority to the Port, Permittee shall fully cooperate with the Port with regard to such Authorization. At all times, Permittee shall fully cooperate with the Port in the Port's inspection of Permittee's Premises and Operations under Section 7.

If Permittee is eligible under Industrial Storm Water Requirements, the Port may, but is not obligated to, accept Permittee into the Port's Group Monitoring Program, to be evidenced by a separate agreement with the Port. The Port makes no assurance to Permittee or Permittee Representatives that the Group Monitoring Program will continue, and the Port expressly reserves the option, at its sole and absolute discretion, to modify, reorganize, or discontinue the Group Monitoring Program at any time.

(f) Records. Permittee shall keep and maintain for the period prescribed by Section 12(h) hereto, and shall require Permittee Representatives to promptly provide to Permittee, all non-privileged plans, data, reports, records, specifications, communications and other Documents relating to BMPs or Storm Water Facilities, and other Documents created in the course of compliance with Environmental Laws concerning water quality. Permittee shall make such non-privileged Documents and records promptly available to the Port upon request, in addition to providing Documents as required by Sections 12(c) and 12(h).

(g) Third Party Enforcement. Permittee shall immediately notify the Port of any actual or threatened Action initiated by any Third Party related to Storm Water originating from, or associated with, Permittee Operations or the Premises and shall promptly deliver, in accordance with Section 12(c), a copy of each and every notice, order or other Document alleging noncompliance, received by Permittee from any Third Party. In the event Action is threatened or taken against the Port concerning Storm Water discharged from the Premises, Permittee shall fully cooperate with the Port in responding to such Action.

(h) Dewatering. Permittee shall obtain and comply with, or cause Permittee Representatives to obtain and comply with, any permit required for any dewatering operations, or if no such permit is required, Permittee shall ensure that dewatering operations do not adversely impact receiving waters or wetlands. Permittee shall be responsible for obtaining Authorization from EBMUD, in accordance with Section 4 hereto, to discharge to any sanitary sewer.

(i) Protection of ESA During Construction.

(i) Lessee shall comply with any and all requirements, prohibitions and conditions of the Corps of Engineers respecting the Premises.

(ii) Lessee shall implement all best practices and appropriate measures to ensure that Construction Activities do not adversely impact ESA. Lessee shall employ best practices and take appropriate measures to prevent erosion and the discharge of sediment, pollutants, or non-Storm Water from Construction Activities to ESA.

(iii) Lessee's construction drawings shall indicate the location and boundaries of adjacent and nearby ESA, and the location of erosion and sediment control barriers to be installed.

(iv) Lessee shall ensure and verify that ESA, including wetlands specifically, are each marked on construction drawings, and staked and flagged in the field, before Construction Activities begin.

(v) No Construction Activities, personnel, vehicles, structures, equipment, tools, materials, debris, waste, or any other substance shall be allowed to enter or occur in any ESA.

(vi) During any activities that could impact ESA, Lessee shall have on-site a qualified biological specialist who is responsible for overseeing all ESA-related matters.

(vii) Lessee shall ensure that if ESA are disturbed or impacted by Construction Activities, such ESA are revegetated and restored to preconstruction conditions to the satisfaction of the Port and other Governmental Authorities asserting jurisdiction, including the Corps of Engineers.

(j) Conflicts. In the event of conflicting requirements in any Environmental Laws, this Exhibit or any Governmental Authority Authorization, the stricter terms shall apply.

Section 6. Air Quality.

(a) Compliance with Laws. Permittee shall comply with, and shall require Permittee Representatives to comply with, all applicable air quality requirements under Air Regulations and Environmental Laws regarding Releases and threatened Releases during Permittee Operations on the Premises and other Port property. Permittee shall also comply with requirements adopted by the Board related to the operation of Toxic Materials emitting vehicles, vessels, off-road diesel-fueled equipment, or drayage trucks.

(b) Submission of Information in Support of Port Air Emissions Inventory. Unless otherwise required more frequently by Environmental Laws or required Port-wide, Permittee shall, as requested, annually submit data, equipment inventory, fuel usage (including alternative fuel usage), operational information, and other information that the Port may, from time to time, deem reasonable to require of Permittee for the purpose of tracking emission reductions and completing periodic inventories of air emissions, including diesel particulate matter, lead and greenhouse gases, at the Premises and other Port property.

Section 7. Entry and Inspection.

(a) Port's Entry and Inspection Rights. The Port and authorized Port Representatives, shall have the right, but not the obligation, to enter the Premises at any reasonable time to:

(i) confirm Permittee's compliance, and Permittee Representatives' compliance, with the provisions of this Exhibit, including the right to physically inspect and investigate the condition of the Premises and review all non-privileged permits, reports, plans, and other Documents regarding: (A) the use, handling, storage, discharge, Release, or disposal of Toxic Materials; (B) implementation of BMPs to manage Storm Water or the Operation and Maintenance of Storm Water Facilities; or (C) compliance with applicable Environmental Laws;

(ii) perform the Port's rights and obligations under this Exhibit; and

(iii) perform any Response Action required of the Port by Environmental Laws or Governmental Authorities, or which the Port elects or is allowed to do pursuant to its rights under the Agreement.

(b) Limitation on Port's Entry and Inspection Rights and Associated Liability Issues. Subject to Permittee's reasonable cooperation with the Port and except in the event of an emergency as determined by the Port, the exercise of the rights in this Section 7 shall not unreasonably interfere with Permittee Operations and shall be subject to Permittee's reasonable security and safety procedures for the Premises if Permittee has provided prior written notice of such procedures to the Port. Except as otherwise provided in the Agreement and this Exhibit, in no event shall the Port be liable for any damages or Losses of any kind whatsoever suffered or sustained by Permittee or Permittee Representatives as a result of the exercise by the Port of its rights under this Section 7. The Port and Permittee each shall use good faith efforts to work cooperatively to minimize the impact of work conducted by the Port on Permittee Operations. Except as otherwise required by the Port's other obligations, upon completion of the work conducted by the Port, the Port shall cause the physical surface of the impacted area of the Premises to be returned to the condition the area was in before the Port's work thereon.

The Port shall make reasonable efforts to provide Permittee with prior notice of its entry onto, or inspection of, the Premises except to the extent such notice is not practical for any of the following reasons:

(i) in the event of an emergency;

(ii) if the Port is directed to act by another Governmental Authority acting or purportedly acting under any Environmental Laws;

(iii) for purposes of evaluating compliance with any Environmental Laws; or

(iv) if the Port reasonably and in good faith believes that the Port's entry at that time is required by any Environmental Laws.

If the Port determines in good faith that Permittee has not complied with Environmental Laws or this Exhibit, the Port shall have the right to recover all fees and costs incurred by the Port in conducting the entry and inspection.

(c) Required Compliance; Port Right to Stop Work. To the extent the Premises are not in compliance with this Exhibit as a result of the action or inaction of Permittee or Permittee Representatives, Permittee or Permittee Representatives shall, at its or their, as the case may be, sole expense, promptly take all action necessary to bring the Premises into compliance, including with regard to any Response Action for which Permittee is responsible under this Exhibit and including Section 9 hereof. If the Port reasonably and in good faith believes that such non-compliance is causing, or is likely to cause, an imminent danger to the health or safety of any Person, or substantial harm to the Environment, or subject the Port to any civil or criminal liability or penalty, or is reasonably likely to result in the Port incurring Losses from any Governmental Authority, or any Third Party bringing any Action against the Port, the Port may, without any liability or responsibility, direct Permittee or Permittee Representatives to immediately cease all work unless and until the Premises and Permittee Operations are brought into compliance, or until Permittee is actively working on bringing the Premises or activities into compliance in accordance with a schedule and plan approved in writing by the Port and applicable Governmental Authorities. Permittee or Permittee Representatives shall immediately comply with such schedule and plan.

Upon receipt of any Action against the Port for alleged violation of Environmental Laws resulting from Permittee Operations, the Port may, at its sole election, take all action reasonably necessary for as long as necessary to bring the Premises into compliance with Environmental Laws, and recover all of its Costs from Permittee. Notwithstanding the foregoing, the Port shall not be liable or responsible for any Costs to Permittee or Permittee Representatives resulting from any work stoppage and the Port shall have no liability or responsibility if it does not take any action that it is permitted to take pursuant to this Section 7.

(d) Entry by Governmental Authorities. Except for the Port, whose entry and inspection shall be governed by Section 7(a) through Section 7(c) above, Permittee shall permit and admit any Governmental Authority with jurisdiction over the Premises or Permittee Operations to enter the Premises, or any portion thereof, at any reasonable time.

Section 8. Release and Indemnity.

(a) Release Agreement by Permittee. Neither the Port, nor any officer, employee, or Board member thereof, is responsible for any damage or liability occurring by reason of anything done, or omitted to be done, pursuant to the Agreement and this Exhibit by Permittee or Permittee Representatives arising from or relating to (1) Environmental Laws, (2) any Response Actions, or (3) Toxic Materials at, on, or under the Premises. Except as specifically set forth herein, Permittee, for itself, Permittee Representatives, successors and assigns, waives, releases, acquits, and forever discharges the Port of, from, and against any Actions, direct or indirect, at any time on account of, or in any way arising out of or in connection with: (i) the Port providing advice, guidance, or assistance to Permittee or Permittee Representatives regarding Permittee's compliance with Environmental Laws; and (ii) Toxic Materials existing at, on, or under the Premises as of the Commencement Date, and any migration of Toxic Materials to, within, or from the Premises regardless of the origin or source of the Toxic Materials, whether known or unknown. Permittee's release of the Port shall apply to all unknown and known Actions and contingent or liquidated Actions, and shall specifically cover any potential liability which may be based on any Environmental Laws. The release shall also include a release of the rights provided under California Civil Code Section 1542 which states:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

It is each Party's intention that Permittee waive and relinquish any and all protections, privileges, rights and benefits it may have under Section 1542.

(b) Environmental Indemnification Obligation. It is understood and agreed that Permittee shall be solely responsible for and shall fully indemnify, protect, defend (with counsel acceptable to the Port), and hold harmless the Indemnitees from and against any and all Actions, including claims, suits, Actions, and Losses of every name, kind, and description, that arise during or after the Term as a result of: (i) the failure or alleged failure of Permittee or Permittee Representatives to comply with Environmental Laws related to the Premises, Permittee Operations, or the terms of this Exhibit; (ii) a Release or Releases by Permittee or Permittee Representatives related to the Premises; or (iii) obligations Permittee or Permittee Representatives have for Contamination, as described in Section 9 below. Such Actions, including claims, suits, and Losses, shall include:

(i) diminution in value of the Premises or of any other Port property arising from or otherwise relating to Permittee's use of the Premises;

(ii) damages for the loss, or restriction on use, of rentable or usable space or of any amenity of the Premises (including CRUPs), or any other Port property;

(iii) damages arising from any adverse impact on marketing of space in the Premises or other Port property;

(iv) increased Costs of maintenance, restoration, construction, repairs, or major improvements to the Premises, or any other Port property;

(v) stigma damages;

(vi) Response Action Costs;

(vii) Actions asserted by any Governmental Authority acting or purportedly acting under any Environmental Laws, including Actions involving natural resource damages;

(viii) all orders and directives issued by a Governmental Authority pursuant to Environmental Laws;

(ix) all Third Party Actions for injury to Persons or to the Environment (including any such Actions brought for, or on account of, damage to or loss of property or injury as identified in California Government Code Section 810.8) or failure to comply with Environmental Laws;

(x) Actions involving lost opportunities, lost profits, lost revenues, business interruption, increased operating expenses, and any related damages, including any consequential or exemplary damages arising from, or attributable to, the requirements of Environmental Laws; and

(xi) sums paid in settlement of Actions, including all fees and costs.

(c) Notice; Defense of Action. If the Port receives a notice of any Action subject to the Environmental Indemnification Obligation hereunder, the Port shall, within a reasonable time, give notice to Permittee; however, the failure to do so shall not relieve Permittee of any liability it may have to the Port under this Exhibit. Upon receipt of such notice, Permittee

shall accept tender of defense of the Environmental Indemnification Obligation, except to the extent the Port's failure to give notice substantially prejudices Permittee's ability to defend the Action. The Port and Permittee shall cooperate with each other in the defense of such Environmental Indemnification Obligation, including the tendering of claims to appropriate insurance carriers or other Third Parties for defense and indemnity.

(d) Settlements. No compromise or settlement of any Environmental Indemnification Obligation affecting the Premises may be entered into by Permittee without the Port's prior written consent.

(e) Right to Defend. With respect to Actions brought by a Third Party, and with respect to any Environmental Indemnification Obligation as to which the Port determines in good faith that there is a reasonable probability that such Action may materially and adversely affect the Port, other than as a result of monetary damages, the Port may, by notice to Permittee, assume the exclusive right to defend, compromise, or settle such Action without prejudice to its rights to indemnification hereunder, and Permittee shall be responsible for payment and reimbursement of all Costs incurred by the Port. The defense of an Action shall be deemed to include pre-litigation defense costs, defensive cross complaint costs, the response to any request, directive or order by a Governmental Authority, and the Costs associated with tendering claims to, and pursuing coverage from, insurance carriers for defense and indemnity.

(f) Conflict. In the event of any conflict between the provisions of this Section 8 regarding obligations arising from, or relating to, Toxic Materials and any other provision of this Exhibit or the Agreement, the provisions of this Section 8 will control.

Section 9. Responsibility for Toxic Materials.

Permittee's obligations in connection with a Release or the presence of Contamination on, at or under the Premises and other Port property and any Response Action shall include the following:

(a) Acceptance of Premises "As-Is, Where-Is". Permittee acknowledges the notice and disclosure made by the Port pursuant to Section 17, and also acknowledges that it has received and has reviewed the reports and other Documents listed on Exhibit-2 (List of Key Environmental Documents and Reports) or provided to Permittee. Permittee acknowledges that Toxic Materials may be present on the Premises and other Port property. Accordingly, Permittee's acceptance of the Premises is in an "as-is, where-is" condition, with all faults, including such Toxic Materials.

(b) Permittee's Obligations for Releases and Contamination. As between the Port and Permittee only, Permittee shall be responsible for undertaking and completing, at no Cost or expense to the Port, any and all Response Actions that are required by a Governmental Authority to respond to Releases, threatened Releases, or Contamination, if such Releases, threatened Releases or Contamination on the Premises or other Port property were caused, exacerbated, or permitted by Permittee or Permittee Representatives. Permittee shall be responsible for pre-existing Contamination, on the Premises or on other Port property, to the extent Permittee's activities disturb, Release, or exacerbate such pre-existing Contamination. Permittee shall be responsible for Response Actions for Releases or threatened Releases caused by Permittee or Permittee Representatives, and for pre-existing Contamination that is exacerbated by Permittee Operations, on all Port property impacted, including beyond the Premises, to achieve the Clean Up Standard specified in Section 9(i).

(c) Permittee's Other Obligations. Permittee shall also: (i) grant access to the Port, Third Parties, and any other Governmental Authority to perform Response Actions as necessary; (ii) cooperate with the Port in accounting for Response Action Costs expended by

Permittee for potential reimbursement. All such environmental accounting shall be submitted by Permittee to the Port within thirty (30) calendar days of incurring such Costs; and (iii) without limiting Permittee's Environmental Indemnification Obligations under Section 8(b) hereto, reimburse the Port for all oversight, monitoring and direction provided by the Port to ensure Permittee's compliance with Environmental Laws, including all associated fees and costs.

(d) Port's Rights Regarding Permittee Obligations. Notwithstanding Permittee's responsibility for Response Actions as provided in Section 9(b) above, the Port shall be the lead Party to interact with any Governmental Authority overseeing all Response Actions on the Premises or other Port property. All Documents that Permittee proposes to have submitted to such Governmental Authority shall be provided to the Port for its review, comment, and approval. The Port shall have the right to disapprove all or part of any such submission, and to provide suggested changes to such submission and Permittee must, in good faith, consider and address the Port's disapproval, partial disapproval, or comments, if any. Once the proposed submission has been approved, the Port shall submit Permittee's Document to the Governmental Authority.

(e) Port's Right to Take Over Response Actions from Permittee. If the Port determines, in its reasonable discretion, that Permittee is not diligently conducting any Response Action as required herein, the Port may, but is not obligated to, take over such Response Action from Permittee after providing reasonable notice and opportunity for Permittee to resume diligently conducting such Response Action. If the Port reasonably and in good faith believes that Permittee's failure to diligently conduct any Response Action is causing, or is likely to cause, an imminent danger to the health or safety of any Person, or substantial harm to the Environment, or subject the Port to any civil or criminal liability or penalty, or is reasonably likely to result in the Port incurring Losses from any Governmental Authority, or any Third Party bringing any Action against the Port, the Port may direct Permittee and Permittee Representatives to immediately cease all work, and the Port may take over the Response Action, without providing reasonable notice and opportunity for Permittee to resume conducting such Response Action. If the Port elects to take over any such Response Action, any and all Costs incurred by the Port in conducting or overseeing the Response Action shall be reimbursed by Permittee promptly upon demand by the Port, which demand shall include supporting documentation to substantiate the demand.

(f) Permittee's Responsibility for Construction, Excavation and Disposal of Toxic Materials. Except as otherwise provided in this Section 9, Permittee, at no Cost or expense to the Port, shall be responsible for any Toxic Materials that are disturbed, spread, dispersed, Released or exacerbated as the result of any Permittee Operations including grading, excavation, disposal or other activity made or undertaken on the Premises by Permittee or Permittee Representatives. To the extent that any soils or other materials are disturbed, Released or exacerbated by Permittee's Operations on the Premises or other Port property, and due to the presence of Toxic Materials, a Response Action is required under Environmental Laws or the Agreement, or due to the specific needs of Permittee Operations, Permittee shall be responsible for such Response Action.

(g) Permittee's Responsibility for Releases and Contamination Not Within the Premises. Permittee shall not be responsible for any Response Action with respect to any Contamination outside of the Premises unless: (i) the Contamination is a result of a Release by Permittee or Permittee Representatives; (ii) the Contamination is a result of Toxic Materials that are disturbed, Released or exacerbated by Permittee Operations on the Premises or other Port property; (iii) Permittee is responsible or liable for the Response Action or for preventing a Release or Contamination outside the Premises pursuant to Environmental Laws; or (iv) to the extent that Permittee fails to comply with the terms of insurance carried by or available to the Port or cooperate with the Port in making claims thereunder, where all or a part of the Costs of

the Contamination-related or Release-related Response Action would have been covered by such insurance.

(h) Permittee's Obligations for Certain Third Party Releases and Contamination. If any Release or Contamination is caused by any Third Party within the Premises during the Term, and such Release or Contamination requires a Response Action, including, if necessary, a Response Action outside the Premises, Permittee shall be responsible for performing such Response Action in compliance with all applicable Environmental Laws and to the satisfaction of the Port and the Governmental Authority having jurisdiction over such Toxic Material or Response Action.

(i) Permittee's Clean Up Standard for Contamination. During the Term, Permittee shall, at no Cost or expense to the Port, implement all Response Actions necessary to completely remove or remediate all Contamination on, at, or under the Premises or other Port property for which Permittee is responsible under this Agreement to contaminant concentrations below the lowest commercially available laboratory reporting limits for such detected Toxic Materials using analytical methods that are approved by an applicable Governmental Authority, or, in the case of metals, to regional background concentrations for metals as documented in the *Analysis of Background Distributions of Metals in the Soil at Lawrence Berkeley National Laboratory*, dated June 2002, and revised April 2009, published by the Lawrence Berkeley National Laboratory, and *Establishing Background Arsenic in Soil of the Urbanized San Francisco Bay Region*, dated December 2011, and authored by D.J. Duverge at San Francisco State University. For purposes of this Section 9(i), Permittee's obligation to completely remove or remediate all Contamination shall not include the use of CRUPs or institutional or engineering controls and shall be irrespective of (i) levels possibly allowed by the Governmental Authority having jurisdiction over such Contamination or the Response Action, or (ii) whether the Governmental Authority would otherwise allow residual amounts of the Toxic Materials to remain on, at or under the Premises or other Port property.

(j) Response Actions After Termination. In the event any Response Action for which Permittee is responsible is not completed prior to expiration or sooner termination of the Agreement, including any extensions thereof, then: (i) Permittee shall deposit in an escrow account an amount of money equal to the balance of the estimated Costs of the Response Actions necessary to complete the Response Action or remove all Contamination from the Premises and other Port property, together with instructions for the disbursement of such amount in payment of the Costs of any remaining Response Actions as they are completed; and (ii) if the Toxic Materials are of such a nature or the Response Action required of Permittee is of such a nature as to make the Premises or other Port property untenable or unleaseable, then Permittee shall be liable to the Port as a holdover tenant until all Response Actions are completed to make the Premises and other Port property suitable for leasing to Third Parties. The estimated Cost of any Response Action shall require the approval of the Port.

If the Port determines, in its reasonable discretion, that Permittee does not have insurance or other financial resources sufficient to enable Permittee to fulfill its obligations under this Section 9(i), whether or not accrued, liquidated, conditional, or contingent, then Permittee shall, at the request of the Port, procure and thereafter maintain in full force and effect such environmental impairment liability and cost cap insurance policies and endorsements, or shall otherwise provide such collateral or security reasonably acceptable to the Port, including interest bearing certificates of deposit made payable to the Port (with interest to Permittee) or irrevocable letters of credit in forms acceptable to the Port, as is appropriate to assure that Permittee will be able to perform its duties and obligations hereunder.

(k) Port Approval of Response Actions. Permittee shall obtain the approval of the Port prior to undertaking any Response Action related to Contamination. Notwithstanding the foregoing, in the event of an emergency, Permittee may perform any necessary Response

Action without first attempting to obtain Port approval if so directed by a Governmental Authority with jurisdiction under any Environmental Laws.

(l) Reporting Obligations for Contamination, Releases, or Response Action. Permittee shall promptly give notice to the Port and, to the extent required by Environmental Laws, the applicable Governmental Authority, of the discovery of Contamination at, under, or about the Premises, or a Release or threatened Release that could result in Contamination on, under or about the Premises or that could result in a violation of Environmental Laws. In addition to Permittee's other reporting obligations herein, Permittee shall immediately provide the Port with telephonic notice, which shall later be confirmed by written notice within 5 (five) Business Days, of any discovery of any such Contamination, Release, or threatened Release at, under or within the Premises, or other Port property, caused by Permittee or Permittee Representatives, and any injuries or damages resulting directly or indirectly therefrom, regardless of whether reporting to a Governmental Authority is required by the Governmental Authority or Environmental Laws. If so directed by the Port, or if required by Environmental Laws, Permittee shall also report such Contamination, Release, or threatened Release to the appropriate Governmental Authority. Further, Permittee shall deliver to the Port copies of each and every notice, communication, directive, or order received by Permittee or Permittee Representatives from a Governmental Authority concerning Releases, threatened Releases, or Contamination, including any pre-existing Contamination, at, under, or about the Premises or other Port property, or any Response Action promptly upon receipt of each such notice, communication, directive, or order.

(m) Cooperation. The Port and Permittee shall cooperate with each other and the applicable Governmental Authority in connection with any Response Action to assist each other and the Governmental Authority in identifying and pursuing any Person or entity that may be liable for any Contamination or Release necessitating Response Action pursuant to Environmental Laws, the Agreement, or this Exhibit. Permittee shall also cooperate fully with the Port in pursuing and making claims under any applicable regulatory Document or insurance policy available to the Port with respect to the Premises, including any claims for or involving Contamination, Releases, threatened Releases, or Response Actions, and other activities related to the Premises.

(n) Generator Status. To the extent any Toxic Materials are removed from the Premises or other Port property to address (i) any Release caused by Permittee or Permittee Representatives, or (ii) Releases caused by Permittee's or Permittee Representatives' exacerbation of, or other negligent handling of, existing Toxic Materials, then Permittee or Permittee Representatives shall be deemed the generator of such materials for purposes of disposing of such materials, including any manifest costs (including the execution of hazardous waste manifests or other waste profile sheets as generator), taxes, landfill disposal fees, and transportation taxes or fees. For all other Toxic Materials removed from the Premises or other Port property by Permittee or Permittee Representatives and disposed of at a landfill, the Port shall be deemed the generator of such materials; however, Permittee or Permittee Representatives shall either directly pay for or reimburse the Port for all Costs associated with such disposal.

Section 10. Environmental Insurance Requirement.

(a) Contractors' Pollution Legal Liability Insurance. If Permittee Improvements, Response Actions or Permittee Operations on the Premises involve any Construction Activities, grading, excavating, underground utilities or piping, trenching, or any work below the surface of the ground, or involves the hauling or disposal of Toxic Materials, Permittee shall require Permittee Representatives performing such work to obtain Contractors' Pollution Legal Liability Insurance. Such insurance shall provide coverage for liabilities caused by, or resulting from, a Release or threatened Release of Toxic Materials, Contamination or other

pollution conditions, whether sudden or gradual, in connection with Permittee Improvements, Response Actions or Permittee Operations, whether such Permittee Improvements, Response Actions or Permittee Operations are performed by Permittee or Permittee Representatives. Such insurance shall have limits of at least \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate with a deductible not to exceed \$100,000.00. Such insurance shall, at a minimum, provide coverage for: (i) remediation/clean-up Costs for Releases or threatened Releases of Toxic Materials, Contamination or other pollution conditions; (ii) bodily injury (including death), property damage and environmental clean-up Costs (on-Premises and off-Premises) claimed by Third Parties; (iii) the use or operation of motor vehicles (whether owned, non-owned or leased) in connection with Permittee Improvements, Response Actions or Permittee Operations; and (iv) claims by Third Parties (other than disposal site owners) arising out of any disposal location or facility, both final and temporary, to which any waste is delivered that is generated in connection with Permittee Improvements, Response Actions or Permittee Operations. Such insurance shall name as additional insureds "the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its Commissioners, Officers, Agents and Employees" and shall have a cross liability/separation of insureds provision and a waiver of subrogation in favor of such additional insureds. Such insurance shall be written on an occurrence form and be in effect during the Term of this Agreement until the completion and acceptance of Permittee Improvements, Response Actions or Permittee Operations or, if not available on an occurrence form, then on a claims-made form. If written on a claims-made form, such insurance shall be maintained without lapse for, or contain an extended reporting period of, as applicable, at least two (2) years following completion and acceptance of Permittee Improvements, Response Actions or Permittee Operations. The definition of "covered operations" or any other such designation of activities covered by the insurance shall include Permittee Improvements, Response Actions or Permittee Operations performed by Permittee or Permittee Representatives.

Section 11. Fees, Taxes and Fines.

Permittee shall pay, prior to delinquency, any and all fees and costs (including Governmental Authority oversight fees), taxes, and fines that are charged upon or incident to its responsibilities under this Exhibit, and shall not allow such obligations to become a lien or charge against or upon the Premises, other Port property, Improvements, Permittee, or the Port.

Section 12. Environmental Documentation.

(a) Copies to the Port. If Permittee makes any disclosure, or provides any report, to any Governmental Authority concerning Permittee's storage, use, generation, Release, Response Action or disposal of Toxic Materials on the Premises or other Port property, Permittee shall concurrently provide a copy of such disclosure or report to the Port in the same form provided to the Governmental Authority. Further, Permittee shall promptly, but in any event not more than five (5) Business Days of receipt, deliver to the Port copies of each and every inquiry, communication, notice, directive, or order received by Permittee or Permittee Representatives from a Governmental Authority or Third Parties concerning Permittee's storage, use, generation, Release, Response Action or disposal of Toxic Materials on the Premises or other Port property or Permittee's non-compliance or alleged non-compliance with any Environmental Laws related thereto.

(b) Business Plan. At any time that Permittee's Operations require the establishment and implementation of a business plan pursuant to H&S Code Section 25500 or any other Environmental Laws concerning the handling of Toxic Materials, or preparation of an inventory pursuant to any Environmental Laws, Permittee shall:

- (i) timely comply with such requirement;

(ii) promptly give written notification to the Port that Permittee Operations are subject to the business plan requirement of H&S Code Section 25500 or other Environmental Laws;

(iii) promptly advise the Port whether Permittee Operations are in compliance with H&S Code Section 25500 and other Environmental Laws; and

(iv) simultaneously deliver to the Port and the appropriate Governmental Authority any such business plans, and all updates or modifications to the plans.

(c) Water Quality Protection Documents. In addition to complying with the specific requirements of Section 5 of this Exhibit, Permittee shall promptly deliver to the Port the following documentation related to Permittee Operations and the Premises: (i) any Governmental Authority Authorization to discharge Storm Water (including a discharger or facility identification number issued under the Construction General Permit or Industrial General Permit); (ii) documentation of termination of such Authorization; (iii) any report submitted to a Governmental Authority of any violation of, or exceedance of, an effluent limit in any such Authorization; and (iv) any enforcement Action concerning Environmental Laws pertaining to Storm Water, expressly including any order, notice of violation, notice to comply, complaint, or any other notice or correspondence from a Governmental Authority or a Third Party alleging violation of Environmental Laws pertaining to Storm Water by Permittee or Permittee Representatives on the Premises or on other Port property.

(d) Spill Response Plan. Permittee shall at all times maintain and post in an appropriate location on the Premises a complete copy of any spill response plan, including SPCC Plans required under 33 U.S. Code Section 1251, *et seq.* and implementing regulations at 40 CFR 112 and other emergency response plans required by applicable Environmental Laws, and simultaneously deliver to the Port and the appropriate Governmental Authority any such spill response plan, and all updates or modifications to the plan.

(e) Safety Data Sheets. Upon request by the Port, Permittee shall provide the Port with all Safety Data Sheets maintained by Permittee in connection with Permittee Operations.

(f) Storage Tank Documents. Permittee shall provide to the Port all Documents referenced in Section 2(b) of this Exhibit, including all updates or modifications to such Documents.

(g) Air Quality Documents. Permittee shall provide to the Port all Documents necessary to comply with any requirements described in Section 6 of this Exhibit, including all updates and modifications to such Documents.

(h) Environmental Documents. Notwithstanding and in addition to any other provision of the Agreement and this Exhibit, Permittee shall maintain for periodic inspection by the Port and deliver to the Port, concurrently with the receipt from, or submission to, any Governmental Authority, true and correct copies of any Environmental Documents upon the Port's request (unless required by other provisions of this Exhibit or by Environmental Laws without the stated requirement for a Port request). Permittee shall keep and maintain such Environmental Documents for the longer of (i) the time period required by Environmental Laws, or (ii) ten (10) years from the date of creation. Permittee is not required, however, to provide the Port with any portion(s) of the Environmental Documents containing information of a proprietary nature or that is protected by the attorney-client privilege, and that, in and of itself, does not contain a reference to any Toxic Materials or related to environmental matters covered by this Exhibit and that is not otherwise contained in other Environmental Documents provided to the

Port, unless the Environmental Document names the Port as an “**Owner**” or “**Operator**” of the facility in which Permittee is conducting its business. It is not the intent of the foregoing, unless necessary for the Port to comply with Environmental Laws or to enforce provisions of the Agreement and this Exhibit or otherwise secure the Port’s rights, that Permittee provide the Port with information that could be detrimental to Permittee Operations should such information become possessed by Permittee’s competitors.

Section 13. Storage Tank Closure

(a) Storage Tanks. With regard to Storage Tanks, if any, at least ninety (90) calendar days, but not more than one-hundred twenty (120) calendar days, before expiration of the Term, or, in the event of earlier termination, prior to the Termination Date, Permittee shall give the Port written notice expressly referring to the provisions herein and stating Permittee’s intention either to close or to remove any Storage Tanks. The Port may elect by written notice to Permittee, given at any time not later than thirty (30) calendar days after receipt of notice of Permittee’s intention, to require Permittee either to (i) remove said Storage Tanks, or (ii) request that Permittee provide the Port with: (A) documentary evidence that the Storage Tanks are in full compliance with Environmental Laws; (B) if applicable, any Storage Tanks have been modified to comply with the upgrade requirements for USTs, spill and overfill prevention and underground piping pursuant to Chapter 6.7, Underground Storage of Hazardous Substances, H&S Code; (C) if applicable, with documentary evidence that the Storage Tanks have passed Tank Tightness Integrity Tests for the past five (5) years; (D) soil and groundwater monitoring data verifying that there has been no Release from the Storage Tanks; and (E) all other monitoring records, equipment testing or maintenance records required by California Code of Regulations Title 23, Chapter 16, Section 2610, *et seq.* Upon the review of the documentary evidence and information provided in subsection (ii) above, the Port may elect, in its sole discretion, to have Permittee leave the Storage Tanks in place in operating condition or remove said Storage Tanks. If the Port gives notice of election to Permittee during said thirty (30) day period, Permittee shall handle the Storage Tanks in accordance with the Port’s intention as stated in its notice to Permittee. If no notice of election is given to Permittee, or if Permittee fails to satisfy the requirements under Section 13(a)(ii)(A)-(E) above, Permittee shall properly remove all Storage Tanks as required by Environmental Laws.

Section 14. Consultants and Contractors.

Permittee shall provide to the Port the qualifications and licenses of all Permittee Representatives proposed to perform work on behalf of Permittee in connection with Response Actions or storage of Toxic Materials at, on, or under the Premises or other Port property. Permittee shall provide such qualifications and licenses to the Port at least ten (10) Business Days prior to the commencement of any work by such Permittee Representatives (except in an emergency, in which case the Port shall be notified within one (1) Business Day after the selection of Permittee’s Representatives).

Section 15. Asbestos.

Permittee shall comply, or ensure compliance, with all asbestos notification requirements, asbestos management plans, asbestos handling, asbestos abatement, and asbestos removal and disposal requirements required by Environmental Laws and as set forth in (but not limited to) H&S Code Chapter 10.4 Asbestos Notification, Sections 25915, *et seq.*

Section 16. Insurer and Third Party Claims.

Nothing in this Exhibit shall be construed to prohibit or restrict the Port from pursuing any and all claims, causes of action, proceedings, and the like, against insurance carriers, and against any other Third Party that the Port believes may have caused or otherwise contributed to

the Actions and Losses of any kind arising directly or indirectly out of any Toxic Materials on, at, or under the Premises. Except as provided in Section 9, the Port shall be entitled to the recovery of all sums secured as a result of the pursuit of such Actions; provided, however, that the Port shall reimburse Permittee for any sums paid that would result in the Port receiving a duplicative recovery after full reimbursement of the Port's Losses and Costs. Permittee shall also cooperate fully with the Port in pursuing and making claims under any applicable insurance available to the Port with respect to the Premises, including any Toxic Materials, Response Actions, and other activities related to the Premises.

Section 17. Notices and Disclosures Regarding Toxic Materials.

Pursuant to H&S Code Section 25359.7, the Port notifies Permittee that Toxic Materials have come to be located on, at, beneath or emanating from the Premises and other Port property. Permittee acknowledges that prior to execution of the Agreement, the Port has given to Permittee written notice, based on the Port's commercially reasonable efforts, of the final non-privileged reports, which reports are listed in attached Exhibit-2 and by this reference incorporated herein, relating to the presence of Toxic Materials on, at, beneath or emanating from the Premises. Permittee shall provide notice as required by H&S Code Section 25359.7 or other applicable Law to Permittee Representatives, employees, contractors, licensees, invitees, or agents of such Toxic Materials.

The Port accepts no liability for ensuring that Permittee's Representatives, employees, contractors, licensees, invitees, or agents, including those conducting testing, construction and maintenance activities on the Premises, are satisfactorily protected from residual contaminants provided in 29 Code of Federal Regulations. Permittee shall assess all human health risks from vapor transport or direct contact with residual Toxic Materials or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect the human health of onsite Permittee Representatives, employees, contractors, licensees, invitees, agents, and transient visitors. Permittee hereby waives any Action, or potential Action, related to Permittee Representative, employee, contractor, licensee, invitee, agent or visitor exposure or alleged exposure to any residual onsite Toxic Materials and shall indemnify, defend and hold harmless the Indemnitees in accordance with Section 8 from and against any and all such Actions, or potential Actions.

Section 18. Approvals, Permits and California Environmental Quality Act.

(a) Existing CEQA Requirements. Permittee shall comply with conditions set forth in any environmental review Documents completed pursuant to CEQA or any mitigation measures or requirements existing as part of a MMRP applicable to the use or activities on the Premises as of the Commencement Date.

(b) Regulatory Permits and Approvals. Prior to proceeding with any construction, extension, alteration, improvement, erection, remodeling, demolition, or repair of any yard, building, or structure on the Premises or within Port properties, Permittee or Permittee Representatives shall apply to the Port for a building permit and any other required Authorizations and shall obtain any other Authorization from any other applicable Governmental Authorities having jurisdiction over the Premises or proposed activity, including the Corps of Engineers, the United States Fish and Wildlife Service, the SWRCB, the RWQCB, the County of Alameda, the BAAQMD, the United States EPA, the California State Lands Commission, the National Marine Fisheries Service, the California Coastal Commission, the Federal Aviation Administration, DTSC, the California Department of Fish and Game, the BCDC, the California State Fire Marshal and the City.

(c) CEQA and NEPA. Permittee shall, at its sole Cost and expense, pay for all Costs of environmental review required under CEQA and NEPA (as reasonably determined by

the Port in its sole discretion as the CEQA lead or responsible Governmental Authority and as specifically required for any project proposed by Permittee) prior to any Authorization (including the Port building permit and other approvals described in Section 18(b) above, including Costs attributable to in-house environmental staff time, outside consultants, studies, in-house and outside attorneys' fees and testing or monitoring, preparation of any Documents that the Port deems necessary, in its sole discretion, and the preparation, publication/circulation and filing of notices to comply with CEQA and NEPA). The selection of any and all private entities involved in preparing environmental review Documents must be approved by the Port. In exercising its independent judgment as to the adequacy of any environmental review Document, the Port, in its sole discretion, may require any number of administrative drafts, including multiple screenchecks. Permittee shall cooperate with, and provide all necessary information to, the Port for the completion of any environmental analysis, study, or report deemed necessary under CEQA or NEPA by the Port at its sole discretion as the CEQA lead or responsible Governmental Authority. The Port retains its discretion as the CEQA lead or responsible Governmental Authority to impose mitigation measures and adopt conditions of approval to avoid or mitigate impacts to the Environment of any proposed construction or Project, adopt alternatives to the proposed Project or disapprove the proposed Project.

(d) Compliance Requirements. Permittee shall, at its sole Cost and expense, fund, comply with, and implement all designated mitigation measures or conditions of Authorizations or permits, including those that are required under any Document prepared pursuant to CEQA or NEPA, contained in any MMRP or in any EIR or Mitigated Negative Declaration or similar Documents prepared pursuant to CEQA or NEPA that are specific to Permittee's Project.

(e) Indemnification Requirements. In connection with any of Permittee's Projects, permits, or Authorizations subject to CEQA or NEPA, Permittee shall protect, defend (with counsel selected by Permittee and acceptable to the Port), indemnify, and hold harmless the Port, and the Port's commissioners, officers, agents, and employees, from any and all Actions and Losses, fees and costs arising from or related to the approval or disapproval of such Project, Authorization, or permit subject to CEQA or NEPA, or certification of Project Environmental Documents, including the actual Costs of preparing the Administrative Record and any award of attorney fees to the prevailing Party (if applicable). To provide for an efficient defense, to the extent legally permissible and agreed to by the Parties, the Port and Permittee shall cooperate in any challenge to the approval of such Project, Authorization, or permit subject to CEQA or NEPA, or certification of Project Environmental Documents by pursuing a joint and common defense against any such challenging Action. This cooperation includes the preparation or certification by the Port of the Administrative Record required under the California Public Resources Code; the development of legal strategies; attendance at settlement conferences; and the review of all pleadings before they are filed. Notwithstanding the foregoing, the Port and Permittee each reserves the right to obtain its own counsel and pursue its own defense of an Action. Permittee shall indemnify and pay or reimburse the Port, within thirty (30) calendar days of invoice, for the fees and costs the Port incurs in the defense of any such Action. The Port shall have no liability for its actions taken in the role of CEQA lead or responsible Governmental Authority. Any indemnification pursuant to this Section 18(e) is in addition to all other indemnification requirements set forth in the Agreement.

(f) Evidence of Compliance with CEQA, NEPA and Permits. For purposes of ensuring compliance with any and all CEQA and NEPA obligations, environmental standards and requirements, including mitigation measures, Permittee shall provide the Port with evidence of its environmental compliance activities, including permits (including documentation of compliance with permit conditions), logs, monitoring reports, records, and other Documents.

Section 19. Permittee Construction Activities.

Permittee shall comply with, and shall require Permittee Representatives to comply with, the City Municipal Code, Chapter 15.34, "Construction and Demolition Debris Waste Reduction and Recycling Requirements," the Port's Materials Management Program, and the Port's Board Resolution No. 01197 establishing the "Construction and Demolition Debris Waste Reduction and Recycling Requirement for Port Public Works Projects" to the extent such requirements apply to Permittee Operations.

Section 20. Permittee Sub-Permit of the Premises.

Permittee shall, in any agreement involving the sub-permitting or reletting of the Premises, or any portion thereof, require that all such agreements be subject to and subordinate to all the terms, covenants, and conditions of the Agreement, including this Exhibit.

Section 21. Covenant Not to Sue.

Permittee and Permittee successors covenant that Permittee shall not initiate any Action against any Third Party relating in any manner to, or arising out of, Toxic Materials.

Section 22. Dispute Resolution/Arbitration of Disputes.

(a) Scope. Any dispute arising out of, relating to, or in connection with, this Exhibit, including any question as to whether such dispute is subject to the dispute resolution procedures set forth below, that the Parties have been unable to resolve by the informal dispute resolution procedures described in Section 22(b) below, shall first be submitted to non-binding mediation under the mediation procedures described in Section 22(c) below, and if the matter is not resolved through such mediation procedures, then any Party may thereafter elect to pursue such dispute in any State court of competent jurisdiction sitting in the County of Alameda, or by the United States District Court for the Northern District of California.

(b) Informal Dispute Resolution Procedures. The Parties agree that, at all times, they will attempt in good faith to resolve all disputes that may arise under this Exhibit. The Parties further agree that, upon receipt of written notice of a dispute from a Party, the Parties will refer the dispute to the Designated Person of each Party. The Designated Persons shall negotiate in good faith to resolve the dispute, conferring as often as they deem reasonably necessary, and shall gather and in good faith furnish to each other the information pertinent to the dispute. Statements made by Permittee Representatives or Port Representatives during the dispute resolution mechanisms set forth in this Section 22(b) and documents specifically created for such dispute resolution mechanisms shall be considered part of settlement negotiations and shall not be admissible in evidence by any proceeding without the mutual consent of the Parties.

(c) Mediation. Mediation of a dispute under this Exhibit may not be commenced until the earlier of: (i) such time as both of the Designated Persons, after following the procedures set forth in Section 22(b), conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) fifteen (15) calendar days after the date of the notice referring the dispute to the Designated Persons, pursuant to Section 22(b). If, after such time period, the dispute remains unresolved, the Parties shall attempt to resolve the dispute through non-binding mediation administered by the Judicial Arbitration Mediation Services ("JAMS"), or such other association as may be agreed to by the Parties. The Parties will cooperate with each other in selecting the mediator from the panel of neutral mediators knowledgeable in port operations from the JAMS, and in scheduling the time and place of the mediation. Unless otherwise agreed to by the Parties, such selection and scheduling shall be completed within forty-five (45) calendar days after the date of the notice referring the dispute to the Designated Persons. Unless otherwise agreed to by the Parties, the

mediation shall not be scheduled for a date that is greater than one-hundred twenty (120) calendar days from the date of the notice referring the dispute to the Designated Persons. The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs shall be borne by such Party). Statements made by Permittee Representatives or Port Representatives during the mediation procedures set forth in this Section 22(c) and documents specifically created for such mediation procedures shall be considered part of settlement negotiations and shall not be admissible in evidence by any proceeding without the mutual consent of the Parties.

(d) Provisional Remedies. Notwithstanding anything to the contrary in this Section 22, no Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Exhibit.

(e) Tolling. If a Party receiving a notice of default under this Exhibit contests, disputes, or challenges the propriety of such notice by making application to the dispute resolution procedure in this Section 22, any cure period that applies to such default shall be tolled for the time period between such application and final resolution of such dispute.

Section 23. Survival.

Permittee's obligations under this Exhibit, including Permittee's Release and Environmental Indemnification Obligations under Section 8 and Section 18(e) and Responsibility for Toxic Materials under Section 9, shall survive expiration or other termination of the Agreement.

Section 24. Exceptions to Notice and Approval.

To the extent either Party is obligated under this Exhibit to provide notice to the other Party, or secure the approval of the other Party, before taking any action or engaging in any conduct, the Party may proceed with any such action or conduct without giving such notice, or getting such approval: (a) in an emergency; or (b) where failure to do so could in the Party's reasonable judgment: (i) present an imminent danger to the health or safety of any Person, substantial harm to the Environment; or (ii) subject the Party to any criminal liability or penalty, or the suspension or revocation of any required permits; in such case, however, the Party shall provide notice to the other Party of the intent to begin the action or conduct before doing so.

**EXHIBIT-1
STORAGE TANKS**

The Port is informed, but has not verified, that the following operational Storage Tanks exist on the Premises, where noted, as of the Commencement Date:

EXHIBIT-2
LIST OF KEY ENVIRONMENTAL DOCUMENTS AND REPORTS

EXHIBIT "C"

ADDITIONAL PROVISIONS

EXHIBIT "D"

ARTICLE VII, SECTION 728
OAKLAND CITY CHARTER

and making of such grant is hereby authorized. (Amended by: Stats. November 1988.)

Section 727. Land Use and Development. The Board shall develop and use property within the Port Area for any purpose in conformity with the General Plan of the City. Any variation therefrom shall have the concurrence of the appropriate City board or commission; provided, that the Board may appeal to the Council for final determination of adverse decisions of such board or commission, in accordance with uniform procedures established by the Council. (Amended by: Stats. November 1988.)

Section 728. Living Wage and Labor Standards at Port-Assisted Businesses.

(1) Scope and Definitions. The following definitions shall apply throughout this Section:

(A) "Port" means the Port of Oakland.

(B) "Port-Assisted Business" or "PAB" means (1) any person involved in a Port Aviation or Port Maritime Business receiving in excess of \$50,000 worth of financial assistance from the Port, or (2) any Port Contractor involved in a Port Aviation or Port Maritime Business if the person employs more than 20 persons per pay period, unless in the prior 12 pay periods the person has not had more than 20 such employees and will not have more than 20 persons in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an 'enterprise' as defined under the Fair Labor Standards Act employing more than 20 persons. "Port Contractor" means any person party to a Port Contract as herein defined.

(C) "Port Contract" means:

(1) Any service contract with the Port for work to be performed at the Port under which the Port is expected to pay more than \$50,000 over the term of the contract;

(2) Any contract, lease or license from the Port involving payments to the Port expected to exceed \$50,000 either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment;

(3) Any subcontract, sublease, sublicense, management agreement or other transfer or assignment of any right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses.

A contract, lease or license with the Port or any agreement derived therefrom shall not be deemed a Port Contract unless entered into after enactment of this Section, or amended after enactment of this Section to benefit in any way the party dealing with the Port.

(D) "Employee" means any individual employed by a PAB in Port related employment.

(E) "Person" includes any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity.

(F) "Valid collective bargaining agreement" as used herein means a collective bargaining agreement entered into between the person and a labor organization lawfully serving as the exclusive collective bargaining representative for such person's employees.

(G) "Port Aviation or Port Maritime business" means any business that principally provides services related to maritime or aviation business related services or whose business is located in the maritime or aviation division areas as defined by the Port.

(2) Exemptions from Coverage. In addition to the above exemption for workforces of fewer than 20 workers, the following persons shall also be exempt from coverage under this Section:

(A) An Employee who is (1) under twenty-one (21) years of age and (2) employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than ninety (90) days, shall be exempt.

(B) An Employee who spends less than 25 percent of his work time on Port-related employment.

(C) A person who employs not more than 20 employees per pay period.

(3) Payment of Minimum Compensation to Employees. Port-Assisted Businesses shall provide compensation to each Employee of at least the following:

(A) Minimum Compensation. The minimum compensation shall be wages and health benefits totaling at least the rate of the living wage ordinance of the City of Oakland.

(B) Credit for Health Benefits. The PAB shall receive a credit against the minimum wage required by this Section for health benefits in the amount provided by and in accordance with the living wage ordinance of the City of Oakland.

(4) Notifying Employees of their Potential Right to the Federal Earned Income Credit. Each PAB shall inform each Employee who makes less than twelve dollars (\$12.00) per hour of his or her possible right to the federal Earned Income Credit ("EIC") under Section 2 of the Internal Revenue Code of 1954, 26 U.S.C. §32, and shall make available the forms required to secure advance EIC payments from the business. These forms shall be provided to the eligible Employees in English (and other languages spoken by a significant number of such Employees) within thirty (30) days of employment under this Section and as required by the Internal Revenue Code.

(5) Preventing Displacement of Workers. Each PAB, which is to replace a prior PAB shall offer employment to the Service Employees of the prior PAB, if, these Employees worked for the prior PAB for at least 90 calendar days. Such Employees may be not be terminated by the new PAB during the first 90 workdays except for just cause. The new PAB may operate at lower staffing levels than its predecessor but in such event, shall place the prior Employees on a preferential reinstatement list based on seniority. For purposes of this Section, a PAB "replaces" another if it (1) assumes all or part of the lease, contract or subcontract of a prior employer or obtains a new lease, contract, or sublease, and (2) offers employment which Employees of the prior PAB can perform. In the case of a replacement connected to the new PAB relocating from another location, in staffing decisions the new PAB may recognize seniority from its prior locations in addition to the seniority of the prior PAB's workforce. "Service Employees" means all employees except manager, supervisors, professionals, paraprofessionals, confidential

and office employees.

(6) Waiver.

(A) A PAB who contends it is unable to pay all or part of the living wage must provide a detailed explanation in writing to the Port Executive Director who may recommend a waiver to the Port board. The explanation must set forth the reasons for its inability to comply, including a complete cost accounting for the proposed work to be performed with the financial assistance sought, including wages and benefits to be paid all employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the PAB. The PAB must also demonstrate that the waiver will further the public interests in creating training positions which will enable employees to advance into permanent living wage jobs or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.

(B) The Port Board will grant a waiver only upon a finding and determination that the PAB has demonstrated the necessary economic hardship and that waiver will further the public interests in providing training positions which will enable employees to advance into permanent living wage jobs or better. However, no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.

(C) Such waivers are disfavored, and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver. If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year the PAB may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.

(D) Any party who objects to the grant of a waiver by the Port Board may appeal such decision to the City/Port Liaison Committee, who may reject such waiver.

(7) Retaliation and Discrimination Barred; No Waiver of Rights.

(A) A PAB shall not discharge, reduce the compensation of or otherwise discriminate against any person for making a complaint to the Port, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Section.

(B) Any waiver by an individual of any of the provisions of this Section shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees shall not be barred from entering into a written valid collective bargaining agreement waiving a provision of this Section if such waiver is set forth in clear and unambiguous terms. Any request to an individual by a PAB to waive his or her rights under this Section shall constitute a violation of this Section.

(8) Enforcement.

(A) Each PAB shall maintain for each person in Port-related employment a record of his or her name, pay rate and, if the PAB claims credit for health benefits, the sums paid by the PAB for the Employee's health benefits. The PAB shall submit a copy of such records to the Port at least by March 31st, June 30th, September 30th and

December 31st of each year, unless the PAB has employed less than 20 persons during the preceding quarter in which case the PAB need only submit a copy of such records every December 31st. Failure to provide a copy of such records within five days of the due date will result in a penalty of five hundred dollars (\$500.00) per day. Each PAB shall maintain a record of the name, address, job classification, hours worked, and pay and health benefits received of each person employed, and shall preserve them for at least three years.

(B) If a PAB provides health benefits to persons in Port-related employment but does not pay for them on a per-hour basis, then upon the PAB's request, the amount of the hourly credit against its wage obligation shall be the Port's reasonable estimate of the PAB's average hourly cost to provide health benefits to its Employees in Port-related employment. The PAB shall support its request with such documentation as is reasonably requested by the Port or any interested party, including labor organizations in such industry.

(C) Each PAB shall give written notification to each current Employee, and to each new Employee at time of hire, of his or her rights under this Section. The notification shall be in the form provided by the Port in English, Spanish and other languages spoken by a significant number of the Employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees.

(D) Each PAB shall permit access to work sites and relevant payroll records for authorized Port representatives for the purpose of monitoring compliance with this Section, investigating employee complaints of noncompliance and evaluating the operation and effects of this Section, including the production for inspection and copying of its payroll records for any or all persons employed by the PAB. Each PAB shall permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas for the purpose of ensuring compliance with this Section.

(E) Notwithstanding any provision in Article VI of this Charter to the contrary, the City Administrator may develop rules and regulations for the Port's activities in (1) Port review of contract documents to ensure that relevant language and information are included in the Port's RFP's, agreements and other relevant documents, (2) Port monitoring of the operations of the contractors, subcontractors and financial assistance recipients to insure compliance including the review, investigation and resolution of specific concerns or complaints about the employment practices of a PAB relative to this section, and (3) provision by the Port of notice and hearing as to alleged violations of this section.

(9) Private Rights of Action.

(A) Any person claiming a violation of this Section may bring an action against the PAB in the Municipal Court or Superior Court of the State of California, as appropriate, to enforce the provisions of this Section and shall be entitled to all remedies available to remedy any violation of this Section, including but not limited to back pay, reinstatement or injunctive relief. Violations of this Section are declared to irreparably harm the public and covered employees generally.

(B) Any employee proving a violation of this Section shall recover from the PAB treble his or her lost normal daily compensation and fringe benefits, together with

interest thereon, and any consequential damages suffered by the employee.

(C) The Court shall award reasonable attorney's fees, witness fees and costs to any plaintiff who prevails in an action to enforce this Section.

(D) No criminal penalties shall attach for any violation of this Section, nor shall this Section give rise to any cause of action for damages against the Port or the City.

(E) No remedy set forth in this Section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This Section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

(10) Severability. If any provision or application of this Section is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Section in order to preserve the maximum permissible effect of each subsection herein. Nothing herein may be construed to impair any contractual obligations of the Port. This Section shall not be applied to the extent it will cause the loss of any federal or state funding of Port activities. (Amended by: Stats. March 2002 and March 2004)

Reference: <http://bpc.iserver.net/codes/oakland/>