

Chief Wharfinger Port of San Francisco
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**CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH
THE PORT OF SAN FRANCISCO APPLICATION AND AGREEMENT
FOR BERTH ASSIGNMENT**

Dates Requested (“**Term**“): _____ Arrival Date: _____ Departure Date: _____

Applicant/Agent of Behalf of Vessel: _____

(Identify individual point of contact if applicant is a business entity)

Physical Address: _____ Billing Address: _____

Berth Requested: Pier 68, [Wharf No. 3, West Berth]

Vessel: [Dry Dock Eureka, Dry Dock #2]

Owner’s Information: _____

All activities hereunder shall comply with the term and conditions of Port License **XXXXXX** dated for reference purposes as of _____, 2023 (the “**License**”), and the Operations Plan attached to the License as Exhibit C, as it may be updated from time to time. Failure to comply with the License is an automatic default of this Agreement.

[See Terms and Conditions on Next Page]

TERMS AND CONDITIONS

1. USE OF BERTH. This Agreement grants Applicant and Owner, and their officers, directors, employees, and crew (collectively “**Applicant**”), and their contractors, including without limitation persons providing stevedoring, chandlery, harbor services and other services (collectively, “**Contractors**”) the right to dock the vessel owned, operated, or represented by Applicant at the assigned berth (the “**Berth**”) at the facility for the duration specified in this Agreement for repair work associated with the Dry Dock Preparation Operation, as that term is defined in the License, for transportation and no other purpose. This Agreement grants a revocable, personal, non- assignable, non-exclusive, and non-possessory privilege to conduct the permitted use only on a temporary basis. Port, in its sole discretion, without liability to Applicant, shall have the right to permanently or temporarily close, revise or modify the Berth upon reasonable notice to Applicant and Applicant shall comply with any such revisions or modifications. Without limiting any of Port’s rights hereunder, Applicant agrees that Port may, in its sole and absolute discretion, revoke or terminate this Agreement without cause and without liability or obligation to pay any consideration to Applicant or its Contractors.

Applicant acknowledges that it has inspected the Berth and the Facility and is satisfied that such facilities are adequate for the safe and secure dockage of Applicant’s vessel and use. Applicant shall immediately notify the Port’s Wharfinger of any observed dangerous condition requiring attention by the Port. Neither Applicant nor its Contractors shall alter docks, pilings or any improvements or facilities of the Berth or Facility without notice to and the prior written approval of Port. There is no warranty of any kind as to the condition of the Berth, fendering, water depth, ramps, mooring points, or any other part of the Facility and Applicant accepts each in its “As Is” condition.

Applicant further acknowledges and agrees that neither Port nor any of its agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the physical or environmental condition of the Facility (including, but not limited to the substructure), the present or future suitability of the Facility for Applicant’s activities, or any other matter whatsoever relating to the Facility, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. Applicant shall cooperate with Port, other licensees and users of the Facility and approaches thereto, and will not unreasonably interfere with the operations of the Facility.

Nothing in this Agreement shall obligate Port to provide a Port representative at the Facility, nor shall the presence or absence of such representative obligate Port, its commissioners, officers, employees or agents to take any action whatsoever. Applicant agrees that Port, its commissioners, officers, employees and agents shall not be responsible for regulating traffic at the Facility.

Applicant shall, at its own cost and expense, provide all mooring lines, tackle, gear and labor for the mooring of vessels at the Facility, and shall provide, at its own cost and expense, such equipment and employ such persons as it may require for the handling of cargo, provisions, gear and machinery; provided, however, that nothing contained herein shall prevent Applicant from using such equipment as may be installed by Port at the Facility upon the payment of the charges fixed therefor.

2. PROHIBITED USES. The following are prohibited in, on or around the Berth and the Facility or surrounding or adjacent Port property: waste, nuisance or unreasonable annoyance to Port, its invitees, licensees, tenants, or the owners or occupants of adjacent properties; any action or inaction that could cause damage to a berth or the Facility; interference with Port’s use of its property or obstruction of traffic (including, but not limited to, vessel, vehicular and pedestrian traffic); and any activity which will in any way increase the existing rate of, affect or cause a cancellation of, any insurance policy covering the Facility, any part thereof or any of its contents.

Repairs, maintenance and cleaning in the interior of a vessel, such as fluid changes, painting, hot works and welding, and handling of Hazardous Materials (as defined in Section 9) are permissible only if performed wholly within the confines of a vessel.

3. SECURITY REQUIREMENTS. Applicant will at all times be in compliance with the provisions as required in the Maritime Transportation Security Act of 2002 as described in 33 CFR

Chapter 1 Subchapter H, Parts 101,103, 104 and 105. Applicant is responsible for designation of the onsite vessel security officer (VSO) who, in conjunction with the designated Facility Security Officer (FSO), will be responsible for the execution and administration of all required vessel and Facility security measures and staffing.

4. COMPLIANCE WITH LAWS/TARIFF. Applicant shall comply with the terms and provisions of this Agreement and with all applicable federal, state and local laws and regulations including, without limitation, the rules and regulations of the Port Commission, as they may be amended or replaced from time to time (“**Laws**”) and Port’s Tariff #5, as it may be amended or replaced from time to time (“**Tariff**”) in its use of the Berth and all other activities undertaken by Applicant or its Contractors and their clients, customers, invitees, patrons, guests, licensees, permittees, and concessionaires (“**Invitees**”) on or about the Facility. Except as otherwise set forth in this Agreement, Applicant and its Contractors and their Invitees are contractually bound by all Tariff rates, terms and conditions as if the same were set forth in full herein. In the event of a conflict between the provisions of the Tariff and the provisions of this Agreement, the provisions of this Agreement shall prevail.

5. PAYMENT. Applicant shall pay the rates and fees in the amount and manner as set forth in the Tariff and as provided below in Section 18. All amounts shall be paid when due to Port, without prior demand and without any deduction, setoff or counterclaim whatsoever. Applicant agrees to keep accurate books and records and to make them available to Port and any auditor designated by Port for the purpose of examining same to determine the accuracy of Applicant’s payments to Port. Said books and records shall be retained for no less than four (4) years and shall be made available in San Francisco for the purposes of auditing these accounts, except that if an audit is made within that time and Port claims errors or omissions have occurred, the books shall be retained and made available until the matter is resolved.

In accordance with Division 3, Chapter 2 (Sections 490 *et seq.*) of the California Harbors and Navigation Code, outstanding charges for fees constitute a lien upon a vessel. Port may foreclose its maritime lien, including selling the vessel at a public auction as provided by Law.

Applicant shall pay all charges for services furnished to the Facility or used in connection with its or its Contractors’ use, including, but not limited to, heat, gas, electricity, power, telephone, water, light and janitorial services, and pay all deposits, connection fees, charges, and meter rentals required by the supplier of any such service, including Port.

6. REQUIRED INSURANCE COVERAGE.

6.1. Applicant, at its sole cost and expense, shall maintain and/or cause to be maintained by its Contractors as applicable to their operations, the following insurance:

(a) Marine Comprehensive Liability Insurance, including stevedore’s liability, in a form satisfactory to Port insuring against claims for bodily injury (including death), property damages, personal injury and advertising liability occurring on any part of the Berth or the Facility and operations incidental or necessary thereto, contractual liability, damage or loss of customer’s goods or vessels in Applicant’s or its Contractors’ care, custody or control, mobile equipment and other vehicles not licensed for highway use, such insurance to afford protection in an amount not less than One Million And No/100 Dollars (\$1,000,000) each occurrence and annual aggregate, and fire damage legal liability with limits of Five Hundred Thousand Dollars (\$500,000) for the Facility.

(b) Business automobile liability insurance covering all owned, non-owned or hired motor vehicles to be used in connection with such person’s use of the Facility, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Premises Damage policy with limits of not less than One Million And No/100 Dollars (\$1,000,000) per accident.

(c) Worker’s Compensation; Jones Act; Longshore and Harbor Workers’ Compensation Act Insurance in amounts required by Law, and employer’s liability coverage with limits not less than \$1,000,000 each accident, covering all persons employed by Applicant, its Contractors or Invitees in connection with the use of the Berth or Facility. In addition, if any employees of Applicant

may be eligible for Longshore and Harbor Workers' Compensation Act benefits or Jones Act benefits, Applicant, its Contractors or Invitees shall maintain coverage for such benefits, as applicable, with limits not less than One Million Dollars (\$1,000,000).

(d) Protection and indemnity insurance (watercraft liability insurance), including collision liability, with limits not less than One Million And No/100 Dollars (\$1,000,000) each occurrence, or such lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost, which limits and deductible are subject to Port approval, and including Jones Act benefits, wreck removal, damages in "Rem" (the vessel), and Longshore & Harbor Workers' Compensation Act coverages.

(e) Umbrella; Excess Insurance with policy limits of no less than Twenty-four million dollars (\$24,000,000) in excess of all the underlying policies required in this Section.

(f) Vessel pollution liability insurance coverage with limits not less than \$5,000,000 per occurrence and \$5,000,000 in the aggregate with a deductible not to exceed \$50,000 or such lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost, which limits and deductible are subject to Port approval. The insurance must cover liability imposed under federal Laws and the Laws of any state or subdivision thereof on the insured for any loss, damage, cost, liability or expense arising out of the sudden, accidental and unintentional discharge, spillage, leakage, emission or release of any substance of any kind into or upon the navigable waters of the United States or the adjoining shorelines.

(g) Hull and Machinery coverage for the full replacement cost of all owned vessels and insured as per the American Institute Hull Forms.

(h) Such other insurance as required by Law and by administrative agencies with jurisdiction over marine operations. In addition, Applicant shall obtain such other insurance as is reasonably requested by City's Risk Manager and is customary for other comparable operators and uses permitted under this Agreement.

6.2. Applicant, at its sole cost and expense, shall procure and maintain on all of its personal property, personal property insurance on all risk form, excluding earthquake and flood, in an amount not less than full replacement value or a stated value, at Applicant's sole discretion, for the replacement of its personal property. Port shall have no responsibility or obligation to maintain insurance or replace Applicant's personal property, alterations, or any improvements regardless of cause of loss.

6.3. If any of the required insurance is provided under a claims-made form of policy, Applicant, its Contractors or Invitees shall maintain such coverage without lapse for a period of three years beyond the expiration of this Agreement, to the effect that should claims occur, such claims shall be covered by such claims-made policies.

6.4. If any of the required insurance is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein. Port and Applicant release each other, and their respective authorized representatives, from any claims for damage to the Berth or Facility or to the fixtures, personal property, improvements of either Port or Applicant in or on the Berth or Facility which are caused by or result from risks insured against under any property insurance policies carried by the parties and in force at the time of any such damage, to the extent such claims for damage are paid by such policies. Each party shall cause each property insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against the other party in connection with any damage covered by any policy.

6.5. General Insurance Matters. All liability insurance policies required to be maintained by Applicant, its Contractors or Invitees hereunder shall contain a cross-liability clause, shall be endorsed to name as additional insureds (or its equivalent) "THE CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR COMMISSIONERS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS," shall be primary to any other insurance available to the

additional insureds (or its equivalent) with respect to claims arising under this Agreement, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability. Applicant, its Contractors or Invitees shall provide Port with an additional insured (or its equivalent) endorsement in the form of ISO 2010 (11/85) or its equivalent.

(a) All insurance policies required to be maintained hereunder shall be issued by an insurance company or companies reasonably acceptable to Port. Applicant's, its Contractors' or Invitees' compliance with this Section shall in no way relieve or decrease Applicant's liability under this Agreement.

(b) All insurance policies required to be maintained hereunder shall provide for thirty (30) days prior written notice of cancellation or intended non-renewal or reduction in coverage to Applicant and Port.

(c) Applicant, its Contractors or Invitees as applicable shall deliver to Port certificates of insurance in a form satisfactory to Port, such as hard copy documentation or use of an internet-based insurance compliance tracking systems such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums. Applicant shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

(d) Port may accept Applicant's or its Agents or Invitee's entry into a Protection & Indemnity Club that is a member of the International Group with a deductible subject to Port's approval in lieu of the third party commercial policies required above.

7. RELEASE; INDEMNITY. Applicant, as a material part of the consideration to be rendered to Port, to the fullest extent permitted by law, hereby waives any and all Claims, that it has or may have in the future against the Port or City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective agents (collectively, "**Released Parties**"), for any injury, loss or damage to any person or property in or about the Berth or Facility by or from any cause whatsoever including, inability to use all or any portion of the Facility due to sea level rise, but excluding any Claims caused solely by the Released Parties' willful misconduct or gross negligence.

Applicant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Agreement might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Agreement shall remain effective. Therefore, with respect to the Claims released in this Agreement, to the fullest extent permitted by law, Applicant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Initials: _____
Name: _____
Title: _____

Applicant specifically acknowledges and confirms the validity of the release made above and the fact that Applicant was represented by counsel who explained the consequences of the release at the time this Agreement was made, or that Applicant had the opportunity to consult with counsel, but declined to do so.

Applicant shall indemnify, defend and hold harmless forever, Port and City and County of San Francisco, and their agents, commissioners, officers, directors, contractors and employees

(collectively, “**Indemnified Parties**”), from, and shall defend them, without cost to the Indemnified Parties, against any and all Claims (excluding any Claims caused solely by the Indemnified Parties’ willful misconduct or gross negligence) arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Contractors and/or Invitees of Applicant, or loss or damage to or destruction of any property occurring in, on or about the Berth, Facility or any part thereof or any other Port property, from Applicant’s, its Contractors’ or Invitees’ acts or omissions, or (b) any default by Applicant in the observance or performance of any of the terms, covenants or conditions of this Agreement, or (c) the use or manner of use or condition of the Berth, Facility or the activities therein by Applicant, its Contractors or Invitees.

Applicant shall indemnify the Indemnified Parties from any and all Claims which arise during or after the term of this Agreement as a result of the handling, release, or discharge of Hazardous Materials at the Berth or Facility by Applicant, its Contractors or Invitees including without limitation, all costs of investigating and remediating the same, damages for diminution in value of the Berth or Facility, damages for the loss or restriction on use of any usable space or of any amenity of the Berth or Facility, damages arising from any adverse impact on marketing of any such space, and sums paid in settlement of claims, attorneys’ fees, consultant fees and expert fees. This Indemnification includes, but is not limited to, cost incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work requested by Port or required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater in, on or under the Berth or Facility introduced on the Berth or Facility during Applicant’s use thereof by Applicant, its Contractors or Invitees.

The indemnification obligations of Applicant set forth in this Agreement shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on, or validly retroactive to, the date of this Agreement and shall be enforceable regardless of the joint or concurrent, active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. Except as specifically provided otherwise, the Indemnification obligations of Applicant set forth in this Agreement shall exclude Claims resulting solely from the willful misconduct or gross negligence of the Indemnified Parties.

In addition to Applicant’s obligation to indemnify the Indemnified Parties, Applicant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Applicant set forth in this Agreement, even if the allegations are or may be groundless, false or fraudulent. This Indemnification by Applicant shall begin from the first notice that any claim or demand is or may be made and shall continue until a court determination that such Claim does not fall within the indemnification obligations set forth in this Agreement. Applicant’s obligation to Indemnify the Indemnified Parties includes: (i) costs incurred in connection with any investigation or remediation requested by Port or required by any environmental regulatory agency and to restore the affected area to its condition before a release of Hazardous Materials by Applicant, its Contractors or Invitees; (ii) damages for diminution in the value of the Facility; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Facility; (iv) damages arising from any adverse impact on marketing the space; (v) sums paid in settlement of Claims, including fines and penalties; (vi) natural resource damages; and (vi) attorneys’ fees, consultant fees, expert fees, court costs, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port pays any costs within the scope of this section, Applicant must reimburse Port for Port’s costs, plus interest, within thirty (30) days after Port’s payment demand. The Indemnified Parties shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Applicant, or any of its Contractors or Invitees, even though such equipment is furnished, rented or loaned by Port unless such damage to persons or property is attributable solely to the willful misconduct or gross negligence of the Indemnified Parties.

Notwithstanding any other provision of this Agreement, in no event shall the Indemnified Parties be liable, regardless of whether any Claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

The provisions of this indemnity section shall supersede any contrary rules, regulations or provisions of the Tariff, and shall survive the departure of the vessel(s). “**Claims**” means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys’ fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

8. DAMAGE TO PORT PROPERTY. Applicant shall be responsible for any and all damage, other than normal wear and tear, incurred during the Term hereof which arises out of or in connection with Applicant’s, its Contractors’ and Invitees’ use of the Berth or Facility. If Applicant damages the Berth or Facility, Applicant shall take immediate steps to mitigate the damage to prevent injury or further damage. Applicant shall notify Port of such damage and Applicant shall inform Port of the mitigating action it will take or has taken. Applicant shall repair, or cause to be repaired, such damage after (i) receiving Port approval of the design, plans and specifications, if any, through the building permit process, (ii) receiving approval from Port of the contractor, (iii) obtaining all necessary regulatory approvals, and (iv) complying with any other reasonable requirements of Port.

Port may in its discretion repair any such damage at the sole cost and expense of Applicant, and Applicant shall pay such costs with thirty (30) days after notice thereof.

9. ENVIRONMENTAL PROTECTION AND HAZARDOUS MATERIALS.

9.1. Applicant must comply with the following operational requirements:

Clean spills and releases of liquids / fluids immediately and completely upon discovery including removal and proper disposal of all absorbent materials.

Properly manage and dispose of hazardous waste.

Maintain spill kits to respond to releases of Hazardous Materials. Spill kit contents shall include: Instructions for use; Absorbent spill pads and / or socks; Absorbent material (e.g., solvent absorbent, vermiculite, kitty litter, etc.); Hydrophobic mop (i.e., a mop that absorbs oil, but not water); Safety gloves (that are appropriate for oils, and other petroleum); 5 gallon bucket/drum with lid; and Hazardous Waste Labels.

9.2. Neither Applicant nor its Contractors or Invitees, shall handle in, on, or about the Berth or Facility any Hazardous Material without the prior written consent of Port, which consent shall not be unreasonably withheld so long as Applicant demonstrates to Port’s reasonable satisfaction that such Hazardous Material is necessary to Applicant’s business, will be handled in a manner which strictly complies with all Environmental Laws and will not materially increase the risk of fire or other casualty to the Facility. Notwithstanding the foregoing, Applicant may handle at the Facility materials in such limited amounts as are customarily used for maritime berthing and stevedoring purposes so long as such handling is at all times in full compliance with all Environmental Laws.

9.3. Applicant shall not be compelled by the Port to handle any Hazardous Materials of any kind. However, should Hazardous Materials be introduced on the Facility for handling by the Applicant, Applicant shall handle all Hazardous Materials, including cargo, introduced on the Facility during the term of this Agreement in compliance with all Laws at its sole cost and expense. Applicant shall not be responsible for the safe handling of any Hazardous Material introduced on the Facility during the term of this Agreement by City or Port or their Contractors. Applicant shall protect its employees and the general public in accordance with all applicable laws on Hazardous Materials. Port may from time to time request and Applicant shall be obligated to provide adequate information for Port to determine that the Hazardous

Materials are handled in a manner that complies with all Laws. Port shall have the right to inspect the vessel and the Facility for Hazardous Materials at reasonable times.

9.4. Applicant, at its sole cost and expense, shall remediate any and all releases of Hazardous Materials introduced on the Facility by Applicant, its Contractors or Invitees, including without limitation any Hazardous Material that has been released into the environment due to Applicant's, its Contractors' or Invitees' acts or omissions. Within fifteen (15) days of Port's request, Applicant must submit and obtain Port's approval of a remediation work plan, whether or not required under Environmental Laws. Applicant must begin remediation immediately following Port's approval of the work plan and continue diligently until remediation is complete, as determined by Port, in its sole discretion. If Environmental Laws governing remediation require a remedial action plan, Applicant must provide a draft of its plan to Port for comment and approval before submittal to the appropriate environmental regulatory agency. In all situations relating to handling or remediating Hazardous Materials, Applicant must take all actions that are reasonably necessary in Port's sole judgment to protect the value of the Facility, such as obtaining environmental regulatory approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Facility in any manner related directly or indirectly to Hazardous Materials.

Port shall have the right, but not the obligation, to conduct at Applicant's cost, an inspection and audit of the Facility for the purpose of identifying Hazardous Materials existing on the Facility required to be remediated by Applicant. Port's failure to conduct an audit or to detect conditions if an audit is conducted shall not be deemed to be a release of any liability for environmental conditions subsequently determined to be Applicant's responsibility under this Agreement. If Applicant fails to comply with this provision, Port may perform the remediation at Applicant's expense and Applicant shall immediately reimburse Port therefor.

9.5. Environmental Condition Notification Requirements. Applicant shall immediately notify Port in writing of any release or discharge of any Hazardous Materials on or from the vessel or Facility, whether or not the release is of quantities that would require reporting of such releases to a regulatory agency under applicable law. Applicant shall also notify Port in writing of, and shall contemporaneously provide Port with a copy of:

- (a) Any written notice of release of Hazardous Materials in, on, or about the Facility that is provided by Applicant to a regulatory agency;
- (b) Any notice of a violation, or a potential or alleged violation at the Berth or in, on or about the Facility, of any Environmental Law that is received by Applicant from any regulatory agency;
- (c) Any inquiry, investigation, enforcement, cleanup, removal, or other action that is instituted or threatened by a regulatory agency against Applicant and that relates to the release or discharge of Hazardous Materials, at the Berth or in, on, or from the Facility.
- (d) Any claim that is instituted or threatened by any third party against Applicant and that relates to any release or discharge of Hazardous Materials at the Berth or on or from the Facility; and,
- (e) Any notice of the loss of any environmental operating permit by Applicant.

9.6. Failure to comply with this Section 9 shall constitute a material default of this Agreement. In the event of such default, Port shall have all rights available under this Agreement and at law or equity including, without limitation, the right to either: (a) terminate this Agreement and collect damages Port incurs as a result of such default, including, without limitation, remediation costs incurred by Port; or (b) continue this Agreement and require Applicant to Remediate such Hazardous Materials at the Applicant's sole cost and expense.

9.7. Prohibition on Discharges into San Francisco Bay.

- (a) Applicant shall not discharge or allow to be discharged incidental or intentional ballast water.

(b) Applicant shall not discharge or allow to be discharged, or store materials that may be discharged, any pollutants including without limitation: sewage, gray water, hazardous waste, solid waste, fuel, oil-related substances, bilge water, spirits, flammable liquid, crude petroleum, coal tar, refuse or residuary product of coal tar, petroleum, asphalt, bitumen, carbonaceous material, Hazardous Material, or any other substance that has the potential to adversely affect the environment.

“**Environmental Laws**” means any Laws relating to any Hazardous Material (including the Handling, Release, or Remediation thereof) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Facility. “**Hazardous Material**” means any substance, waste, or material that is now or in the future designated by any regulatory agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

9.8. The obligations of this Section 9 shall survive the expiration or termination of this Agreement.

10. ALCOHOL AND DRUG-FREE WORKPLACE. Applicant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises. Port reserves the right to deny access to, or require Applicant to remove from, Port facilities personnel of Applicant or its subcontractor who Port has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs Port’s ability to maintain safe work facilities or to protect the health and well-being of Port employees and the general public. Port shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, Port facilities.

Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

11. TAXES AND ASSESSMENTS. Applicant shall pay the proper authority any and all taxes, assessments and similar charges on the Berth in effect at the time this Application is executed, or which become effective thereafter, including all taxes levied or assessed upon the possession, use or occupancy, as distinguished from the ownership to the of the Berth. Applicant, on behalf of itself and any permitted successors and assigns, recognizes and understands that this Application may create a possessory interest subject to property taxation and that Applicant may be subject to the payment of such taxes. Applicant agrees to provide such information as may be requested by Port to enable Port to comply with any reporting requirements under applicable Law with respect to possessory interest. Applicant shall indemnify, defend and hold harmless forever, Port and City from and against any Claims resulting from any taxes and assessments related to this Agreement. Applicant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Applicant under this Agreement is withheld, then Port will not be in breach or default under this Agreement, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section to Applicant without interest, late fees, penalties, or other charges, upon Applicant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

12. DEFAULT BY APPLICANT; REMEDIES. The occurrence of any one or more of the following events shall constitute a default by Applicant: (a) failure to pay when due any fees and/or all other charges due; (b) failure to perform any other provisions of this Agreement, if the failure to perform

is not cured within twenty-four (24) hours after Port has given notice to Applicant; (c) failure to provide any report required by this Agreement or the Tariff; or (d) any uncured default by Applicant of any other contract, license, lease or agreement with Port.

Upon default by Applicant, Port shall, without further notice or demand of any kind to Applicant or to any other person, and in addition to any other remedy Port may have under this Agreement and at law or in equity, have the ability to immediately terminate this Agreement and Applicant's right to use the Berth or Facility. Upon notice of any such termination, Applicant shall immediately vacate and discontinue its use of the Berth and Port may take any and all action to enforce Applicant's obligations.

13. LITIGATION. The prevailing party in any action or proceeding (including any cross complaint, counterclaim or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this Agreement, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to, reasonable attorneys' fees, which fees shall be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal. For purposes of this Agreement, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the bar of any state) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

14. LIMITATION ON DAMAGES. Applicant agrees that Applicant will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this Agreement, or for any Claim based upon this Agreement, except to the extent of the fair market value of Port's fee interest in the Berth (as encumbered by this Agreement). Applicant's execution and delivery hereof expressly waives all such excess liability, which waiver is a material condition of this Agreement and is part of the consideration for Port's obligations hereunder.

15. NON-LIABILITY OF CITY OFFICIALS, EMPLOYEES AND AGENTS. No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Applicant, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Applicant, its successors and assigns, or for any obligation of City and/or Port under this Agreement. Under no circumstances shall Port, City, or their respective agents be liable under any circumstances for any consequential, incidental or punitive damages.

16. AUTHORITY. If Applicant signs as a corporation or a partnership, each of the persons executing this Agreement on behalf of Applicant does hereby covenant and warrant that Applicant is at the time of execution and at all times while this Agreement is in effect will continue to be: (1) a duly authorized and existing entity, (2) qualified to do business in California; and that Applicant has full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of Applicant are authorized to do so. Upon Port's request, Applicant shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties, and covenants.

17. CITY REQUIREMENTS. The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this License are incorporated by reference as though fully set forth in this License. The descriptions below are not comprehensive but are provided for notice purposes only; Applicant is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Applicant understands and agrees that its failure to comply with any provision of this License relating to any such code provision shall be deemed a material breach of this License and may give rise to penalties under the applicable

ordinance. Capitalized or highlighted terms used in this Section and not defined in this License shall have the meanings ascribed to them in the cited ordinance.

17.1. Nondiscrimination.

(a) **Covenant Not to Discriminate.** In the performance of this Agreement, Applicant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Applicant, any City and County employee working with Applicant, any applicant for employment with Applicant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Applicant in the City and County of San Francisco.

(b) **Sublicenses and Other Contracts.** Applicant shall include in all sublicenses and other contracts relating to the permitted activities a non-discrimination clause applicable to such sublicensee or other contractor in substantially the form of Section 17(a). In addition, Applicant shall incorporate by reference in all sublicenses and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all sublicensees and other contractors to comply with such provisions.

(c) **Nondiscrimination in Benefits.** Applicant does not as of the date of this Agreement and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) **CMD Form.** On or prior to the Agreement commencement date, Applicant shall execute and deliver to Port the "**Nondiscrimination in Contracts and Benefits**" form approved by the CMD.

(e) **Penalties.** Applicant understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Applicant and/or deducted from any payments due Applicant.

17.2. Requiring Health Benefits for Covered Employees. Unless exempt, Applicant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Administrative Code Chapter 12Q (Chapter 12Q).

(a) For each Covered Employee Applicant shall provide the appropriate health benefit set forth in Section 12Q.3(d) of the HCAO.

(b) Notwithstanding the above, if Applicant meets the requirements of a "**small business**" by the City pursuant to Section 12Q.3 of the HCAO, it shall have no obligation to comply with Section 1.1(a)(i)(1) above.

(c) If, within 30 days after receiving written notice of a breach of this Agreement for violating the HCAO, Applicant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Applicant fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 12Q.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublicense or Contract regarding services to be performed on the harbor area entered into by Applicant shall require the Sublicensee or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Applicant shall notify the Office of Labor Standards Enforcement (“OLSE”) when it enters into such a Sublicense or Contract and shall certify to OLSE that it has notified the Sublicensee or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Sublicensee or Contractor through written agreement with such Sublicensee or Contractor. Applicant shall be responsible for ensuring compliance with the HCAO for each Sublicensee, Contractor and Subcontractor performing services on the harbor area. If any Sublicensee, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Applicant based on the Sublicensee’s, Contractor’s, or Subcontractor’s failure to comply, provided that OLSE has first provided Applicant with notice and an opportunity to cure the violation.

(e) Applicant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Applicant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Applicant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Applicant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Sublicensees, Contractors, and Subcontractors.

(i) Within ten (10) business days of any request, Applicant shall provide the City with access to pertinent records relating to any Applicant’s compliance with the HCAO. In addition, the City and its agents may conduct random audits of Applicant at any time during the Term. Applicant agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor’s or Subcontractor’s contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

17.3. First Source Hiring. The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 *et seq.*) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Applicant acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with all requirements of the ordinance as implemented by Port and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Applicant acknowledges and agrees that it may be subject to monetary penalties for failure to comply with the ordinance or a First Source Hiring Agreement and that such non-compliance shall be a default of this Agreement.

17.4. Local Business Enterprises. The Port Commission encourages the participation of local business enterprises (“LBEs”) in Applicant’s operations. Applicant agrees to consult with CMD to determine appropriate methods for promoting participation by LBEs. Architecture, Engineering,

Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: <http://sfgov.org/cmd/lbe-certification-0>.

17.5. Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution. Applicant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed in the harbor. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Applicant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed in the harbor and such prohibition must be included in all sublicenses or other agreements allowing use of the harbor. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

17.6. Prohibition of Alcoholic Beverages Advertising. Applicant acknowledges and agrees that no advertising of alcoholic beverages is allowed at the berth or in the harbor. For purposes of this section, “**alcoholic beverage**” shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

17.7. MacBride Principles Northern Ireland. Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

17.8. Conflicts of Interest. Through its execution of this Agreement, Applicant acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 *et seq.* and Sections 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Applicant becomes aware of any such fact during the Term, Applicant shall immediately notify the Port.

17.9. Consideration Of Criminal History In Hiring And Employment Decisions.

(a) Applicant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; “**Chapter 12T**”), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Applicant who would be or are performing work at the harbor.

(b) Applicant shall incorporate by reference the provisions of Chapter 12T in all sublicenses relating to the berth, and shall require all sublicensees to comply with such provisions. Applicant’s failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) Applicant and sublicensees shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any

other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Applicant and sublicensees shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Applicant and sublicensees shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Applicant and sublicensees shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Applicant or sublicensee at the berth, that the Applicant or sublicensee will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Applicant and sublicensees shall post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the berth and at other workplaces within San Francisco where interviews for job opportunities related to the permitted activities occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the berth or other workplace at which it is posted.

(g) Applicant and sublicensees understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this Agreement, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

(h) If Applicant has any questions about the applicability of Chapter 12T, it may contact Port for additional information. Port may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

17.10. Consideration of Salary History. Applicant shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "**Pay Parity Act.**" For each employment application to Applicant for work that relates to this Agreement or for work to be performed in the City or on City property, Applicant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Applicant shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Applicant is subject to the enforcement and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

17.11. Labor Peace Agreement. The City has adopted a Labor Peace Agreement ordinance ("**LPA Ordinance**") codified at SF Administrative Code Sections 23.70 *et seq.*) which requires among other things, Employers of Employees working in Excursion Vessel Operations to agree, upon request by their Employees' labor representative, to enter into a Labor Peace Agreement with a union seeking recognition containing specified minimum terms and to engage in mediation and arbitration if the parties are unable to agree on the terms of a Labor Peace Agreement within the specified timeframe and to make certain reports to the Office of Labor Standards and Enforcement ("**OLSE**"). Applicant shall comply with the requirements of the LPA Ordinance, if applicable.

17.12. Prevailing Wages. Applicant shall comply with all applicable prevailing wage requirements, including but not limited to any such requirements in the California Labor Code, the City and County of San Francisco Charter or City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Applicant shall require its contractors and subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair,

carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “**Prevailing Wage Requirements**”). Applicant agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Applicant shall include and shall require its sublicensees, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Applicant’s failure to comply with its obligations under this Section shall constitute a material breach of this License. A contractor’s or subcontractor’s failure to comply with this Section will enable the City to seek any remedy provided by Law, including those specified in San Francisco Administrative Code Section 23.61 against the breaching party.

Applicant shall also pay, and shall require its sublicensees, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the License Area as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

17.13. Graffiti Removal. Applicant agrees to remove all graffiti from the Facility, including from the exterior of the Facility if included within the Facility, within forty-eight (48) hours of the earlier of Applicant’s: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. “**Graffiti**” means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner’s authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this License or the Port Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code Sections 987 *et seq.*) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. Sections 101 *et seq.*).

17.14. Restrictions on the Use of Pesticides. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “**IPM Ordinance**”) describes an integrated pest management (“**IPM**”) policy to be implemented by all City departments. Applicant shall not use or apply or allow the use or application of any pesticides on the Facility, and shall not contract with any party to provide pest abatement or control services to the Facility, without first receiving City’s written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Applicant may need to apply to the Facility during the term of this License, (ii) describes the steps Applicant will take to meet the City’s IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Applicant’s primary IPM contact person with the City. Applicant shall comply, and shall require all of Applicant’s contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM

Ordinance, as if Applicant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Applicant to keep certain records and to report to City all pesticide use by Applicant's staff or contractors. If Applicant or Applicant's contractor will apply pesticides to outdoor areas, Applicant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state Law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

17.15. Notification of Limitations on Contributions. If this License is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 17.15 shall apply. Through its execution of this License, Applicant acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Applicant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Applicant further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Applicant; each member of Applicant's board of directors, and Applicant's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Applicant; and any subcontractor listed in the Applicant's bid or contract. Additionally, Applicant certifies that if this Section 17.15 applies, Applicant has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of each of the persons required to be informed.

17.16. Sunshine Ordinance. In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

17.17. Conflicts of Interest. Through its execution of this License, Applicant acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 *et seq.* and Sections 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Applicant becomes aware of any such fact during the Term, Applicant shall immediately notify the Port.

17.18. Public Transit Information. Applicant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Applicant employed on the Facility, including, without limitation, the distribution to such employees of written materials explaining

the convenience and availability of public transportation facilities adjacent or proximate to the Facility and encouraging use of such facilities, all at Applicant's sole expense.

17.19. Applicant's Compliance with City Business and Tax Regulations Code. Applicant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Applicant under this License is withheld, then Port will not be in breach or default under this License, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 21.26 to Applicant, without interest, late fees, penalties, or other charges, upon Applicant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

17.20. Southern Waterfront Community Benefits and Beautification Policy. The Port's "Policy for Southern Waterfront Community Benefits and Beautification" identifies beautification and related projects in the Southern Waterfront (from Mariposa Street in the north to India Basin) that require funding. Under this policy, Applicant shall provide community benefits and beautification measures in consideration for the use of the Facility. Examples of desired benefits include: (i) beautification, greening and maintenance of any outer edges of and entrances to the Facility; (ii) creation and implementation of a Community Outreach and Good Neighbor Policy to guide Applicant's interaction with Port, neighbors, visitors and users; (iii) use or support of job training and placement organizations serving southeast San Francisco; (iv) commitment to engage in operational practices that are sensitive to the environment and the neighboring community by reducing engine emissions consistent with the City's Clean Air Program, and use of machines at the Facility that are low-emission diesel equipment and utilize biodiesel or other reduced particulate emission fuels; (v) commitment to use low impact design and other "green" strategies when installing or replacing stormwater infrastructure; (vi) employment at the License Area of a large percentage of managers and other staff who live in the local neighborhood or community; (vii) use of truckers that are certified by the San Francisco Human Rights Commission as "Local Business Enterprises" under the City's Local Business Enterprise and Nondiscrimination Ordinance (SF Administrative Code Chapter 14B, as amended); and (viii) use of businesses that are located within the Potrero Hill and Bayview Hunters Point neighborhoods. Applicant agrees to provide Port with documents and records regarding these activities upon Port's request.

17.21. Local Truckers. As material consideration for Port's agreement to enter into this License, Applicant agrees that, for all directly contracted or service agreement trucking opportunities associated with Applicant's operations at the Facility, including, without limitation, hauling of materials on and off the Facility, Applicant shall make good faith efforts to first use Local Truckers.

For purposes of this Section, "truckers" means a business that provides trucking services for a profit. "Local truckers" means those truckers that are certified by the Contract Monitoring Division of the City's General Services Agency as "Local Business Enterprises" pursuant to the City's Local Business Enterprise and Nondiscrimination in Contracting Ordinance as amended from time to time (Administrative Code Chapter 14B.)

To the extent that Applicant in its sole discretion directly contracts or enters into a service agreement with truckers for trucking opportunities as described in this Section, Applicant shall use Local Truckers for a minimum of sixty percent (60%) of all contracted or service agreement trucking. Only the actual dollar amount paid to truckers will be counted towards meeting the sixty percent (60%) requirement; equipment rental and disposal fees will not be counted. Notwithstanding the foregoing, if Applicant fails to meet the sixty percent (60%) minimum, Applicant shall not be in default of this provision so long as Applicant first offered trucking opportunities to Local Truckers, and such Local Truckers were unavailable or unwilling to perform the work.

Applicant shall submit a monthly report to the Port and CMD stating the total cost to Applicant of trucking through a contract or service agreement during the preceding month and identifying the total amount paid to Local Truckers by the Applicant. The monthly report shall document all truckers who conducted contract or service agreement work for Applicant, and identify those truckers which are Local

Truckers. If Applicant fails to meet the 60% minimum in any month, the report shall document Applicant's good faith outreach efforts to contact Local Truckers and the reasons that such work could not be conducted by Local Truckers. At Port or CMD's request, Applicant shall provide additional documentation required to ensure Applicant's compliance with this provision. Applicant's failure to comply with this Section shall be deemed a material breach under this License.

18. MISCELLANEOUS.

(a) This Agreement is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Agreement has been brought in an inconvenient forum. The parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to federal court. If any provision of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by Law.

(b) No failure by Port to insist upon the strict performance of any obligation of Applicant under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial payment of fees during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Applicant requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Applicant. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this Agreement.

(c) Port is not, and none of the provisions in this Agreement shall be deemed to render Port, a partner in Applicant's business, or joint venturer or member in any joint enterprise with Applicant. Neither party shall act as the agent of the other party in any respect hereunder. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any third party.

(d) This Agreement does not create a bailment of the vessel its equipment or personal effects or of any vehicle.

19. PAYMENT OF FEES. Applicant guarantees the payment of all charges and fees associated with the berthing of the above-mentioned vessels in accordance with the Tariff and outlined herein:

- 1) Dockage _____ per 24hr period.
- 2) Area: Pier _____ berth located on: _____ linear feet of exterior dock space. No interior shed space is included in this Agreement.
- 3) Water service for the account of: _____
- 4) Phone service for the account of: _____
- 5) Electrical service for the account of: _____
- 6) Trash and Debris removal for the account of: _____
- 7) Other: _____

(To Be Completed by Chief Wharfinger)

Application Received: _____ Assignment Made Effective: : _____

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates indicated below.

Port: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Andre Coleman
Deputy Director, Maritime

Date signed: _____

Applicant: _____

By: _____
Name: _____
Title: _____

Date signed: _____

By: _____
Name: _____
Title: _____

Date signed: _____

Approved as to Form: DAVID CHIU, City Attorney

By: _____
Deputy City Attorney