



EXHIBIT B

**CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH THE
PORT OF SAN FRANCISCO
APPLICATION AND AGREEMENT FOR BERTH ASSIGNMENT AND USE OF
PIER 80 CARGO TERMINAL (“Facility”)**

Dates Requested – Start _____, 20____ **and Expire:** _____, 20____

Applicant/Agent on Behalf of Vessel: _____

Physical Address: _____

Billing Address: _____

Berth Requested: _____

Purpose for Berth Assignment: _____

Vessel Name: _____ **Flag:** _____ **Trade:** _____

Draft: _____ **Overall Length:** _____ **Beam:** _____

Dimension: Length _____ **Depth** _____ **Nationality:** _____ **IMO#** _____

Agent or Owner: _____

TERMS AND CONDITIONS.

1. USE OF BERTH.

This Agreement grants Applicant, its officers, directors, and employees and its crew (collectively “**Applicant**”), and its contractors, including without limitation persons providing stevedoring, chandlery, harbor services and other services (collectively, “**Contractors**”) the right to dock vessels owned, operated or represented by Applicant at the assigned berth (the “**Berth**”) at the Facility for the duration specified in this Agreement for layberthing and/or loading and unloading of cargo, provisions, gear and machinery of such vessel over through and upon the Facility. 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. There is no warranty of any kind as to the condition of the Berths, fendering, water depth, ramps, mooring points, or any other part of the Facility and Applicant accepts them in their "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 business, 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 such presence obligate Port, its officers, employees or agents to take any action whatsoever. Applicant agrees that Port, its 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 and maintenance to the exterior of vessels while berthed at the Facility are prohibited. In water hull cleaning or any other cleaning of the exterior of a vessel is prohibited, except with biodegradable soap and clean water. 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 and Port's Tariff #5, 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, this 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 for the purposes of auditing these accounts for four (4) years and to make them available in San Francisco to Port and any auditor designated by Port for the purpose of examining same to determine the accuracy of Applicant's payments to Port. If an audit is made within the four-year period 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 (§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, 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. 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.

6.3. 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.

6.4. 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 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 Terminal Operator'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, 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, 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 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.

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, 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

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 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 Hazardous Material (including its Handling, Release, or Remediation) 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.

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.

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; or (c) failure to provide any report required by this Agreement or the Tariff.

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 and as part of the consideration for Port's obligations hereunder Applicant expressly waives all such liability.

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. Each person executing this Agreement on behalf of Applicant does hereby covenant and warrant that Applicant is a duly authorized and existing entity, that Applicant has and is qualified to do business in California, 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, including without limitation a ship's agent that is not the owner of the vessel authorized under this Agreement has the requisite power and authority to execute and deliver this Agreement and to bind Applicant to carry out and perform all of the terms and covenants of this Agreement. Upon Port's request, Applicant shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

17. 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. Port and Applicant hereby irrevocably consent to the jurisdiction of and proper venue in the Superior Court for the City and County of San Francisco.

(b) 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.

(c) 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.

(d) 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.

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

18. 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.

[REMAINDER OF PAGE LEFT BLANK]

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

CITY AND COUNTY OF SAN FRANCISCO
A municipal corporation operating by and
through the SAN FRANCISCO PORT COMMISSION

By _____
Chief Wharfinger, Port of San Francisco

Date Executed: _____

APPLICANT NAME:

By _____
(sign name)

(print name)

Its: _____

Date Executed: _____

(To Be Completed by Chief Wharfinger)

Application Received: _____ Assignment Made Effective: _____

Berth Assigned: _____