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Antonio R. Villaraigosa    *Mayor, City of Los Angeles*

Board of Harbor  
Commissioners

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*President*

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*Vice President*

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Sung Won Sohn, Ph.D.

Geraldine Knatz, Ph.D.    *Executive Director*

May 17, 2012

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

CD No. 15

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

SUBJECT:    RESOLUTION NO. 12-7300 - PROPOSED PERMIT 899 WITH PACIFIC  
                  BATTLESHIP CENTER, INC., FOR PREMISES AT BERTHS 87-89, FOR THE  
                  USS IOWA

Pursuant to Section 606 of the City Charter, enclosed for your approval is proposed Permit 899 with Pacific Battleship Center, Inc., for premises at Berths 87-89, for the USS Iowa. Permit No. 899 was approved by the Board of Harbor Commissioners at its meeting of May 17, 2012, and assigned Resolution No. 12-7300.

Please note that the Mayor's office is waiving Executive Directive No. 4 review for this item; therefore, no CAO report is attached.

RECOMMENDATION:

1.    Approve in accordance with Section 606 of the Los Angeles City Charter the proposed Permit with the Pacific Battleship Center, Inc.;
2.    Adopt the determination by the Los Angeles Harbor Department that the Harbor Department is the lead agency and has prepared an Environmental Impact Report (EIR) in accordance with the requirements of the California Environmental Quality Act (CEQA). The Board certified the Final Environmental Impact Report for the USS Iowa Project (Project) and approved the Project approval at its meeting of May 17, 2012; and
3.    Return to the Board of Harbor Commissioners for further processing.

Respectfully submitted,

KORLA G. TONDREAULT  
Commission Secretary

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

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

RECOMMENDATION APPROVED AND  
RESOLUTION NO. 12-7300 ADOPTED  
BY THE BOARD OF HARBOR COMMISSIONERS

May 17, 2012  
*Karla G. Tomkowiak*  
SECRETARY



DATE: MAY 11, 2012

FROM: REAL ESTATE

SUBJECT: RESOLUTION NO. 12-7300 - PROPOSED PERMIT WITH  
PACIFIC BATTLESHIP CENTER, INC, FOR PREMISES AT BERTHS  
87-89, FOR THE USS IOWA

**SUMMARY:**

The proposed Permit between the City of Los Angeles Harbor Department (Harbor Department) and Pacific Battleship Center, Inc. (PBC) will allow for the berthing of the historic battleship, USS Iowa (Iowa), at Berths 87-89 along the San Pedro waterfront. The vessel will serve as a military museum, military educational center, visitor attraction and special event venue. The Iowa, viewed as a potential significant contributor to the numerous attractions and activities currently in development to bring more visitors to the emerging, world-class LA Waterfront at the Port of Los Angeles (Port), also has the added benefit of supporting the downtown business district of San Pedro.

The proposed Permit is for a term of ten years, with two renewable five-year options, for use of approximately 4.43 acres of Harbor Department property (Premises) for the berthing of the vessel and landside operations. Proposed compensation is based on PBC paying the higher of two forms of compensation for the use of the Premises: (1) a fixed minimum compensation, or (2) a percentage compensation based on monthly gross receipts collected. Pursuant to the terms of the proposed Permit, the Harbor Department retains the exclusive right to relocate the Iowa to another suitable location in the Port should annual paid attendance at the Iowa fall below 100,000 visitors. This relocation option will allow for optimal revenue generation and use of prime waterfront property along the LA Waterfront.

**RECOMMENDATION:**

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

1. Approve in substantial form the proposed Permit with the Pacific Battleship Center, Inc. and authorize the Executive Director to finalize;
2. Approve Courtesy of the Port privileges to Pacific Battleship Center, Inc. pursuant to Tariff No. 4, which includes, pilotage, dockage, and use of wharf premises at Berths 51-53 for temporary layberthing purposes until such time as the Iowa is towed to Berths 87-89;
3. Direct the Board Secretary to transmit the Permit to the City Council for approval pursuant to Charter Section 606;

SUBJECT: PROPOSED PERMIT WITH PACIFIC BATTLESHIP CENTER, INC.

4. Authorize the Executive Director to execute and the Board Secretary to attest to the Permit upon Board approval contingent upon approval by the City Council; and
5. Adopt the foregoing as Resolution No. 12-7300.

**DISCUSSION:**

Background – In 2010, PBC began the application process with the United States Department of the Navy (Navy) to obtain the Iowa for use as a public military museum under the Navy's Inactive Ships Donation Program. Included in the award process was the request by PBC to the Board to permanently berth the vessel in the Port, preferably at Berths 87-89 (Transmittal 2), as required under the Navy guidelines for site identification.

On November 18, 2010, the Board approved Resolution No. 10-7038 which provisionally supported the use of Berths 87-89 for the permanent berthing of the Iowa based on PBC meeting the following conditions: 1) the Iowa shall not interfere with cruise operations; 2) completion of an Environmental Impact Report (EIR) certified by the Board; 3) compliance with all permitting and regulatory agency requirements regarding public health, safety and environment; and 4) presentation to the Board of evidence of sufficient funding to meet all financial obligations associated with this project, including costs to bring the Iowa to the Port, start-up funding, and plans for long-term operations and maintenance through establishment of an escrow account.

Although siting the Iowa at Berths 87-89 will result in near-term impacts to berthing of cruise vessels, the Harbor Department has determined that temporary accommodations to the cruise industry can occur at Berths 45-47. Temporary facilities and off-site Homeland Security screening will be used at this location until such time as a new permanent cruise facility can be constructed at this site, according to the San Pedro Waterfront EIR. Long-term use of Berths 87-89 for the Iowa should have no impact on the development of the North Harbor Cut, a basin planned for berthing the S.S. Lane Victory and tug boats.

In September 2011, the Navy conditionally awarded the Iowa to PBC, pending full execution of the Donation Agreement and completion of other federal agency requirements and approvals. The Iowa was then transferred from Suisun Bay to the Port of Richmond, where it has been undergoing extensive exterior restoration work, including sandblasting, painting, and deck refurbishment and replacement. In February 2012, PBC was awarded a \$3 million unrestricted grant from the State of Iowa to provide funding for restoration and start-up costs. Under the proposed Permit (Transmittal 1), PBC is prohibited from conducting such exterior repair work at Berths 87-89. On April 30, 2012, the Donation Agreement was formally executed between the Navy and PBC, giving full ownership of the Iowa to PBC.

SUBJECT: PROPOSED PERMIT WITH PACIFIC BATTLESHIP CENTER, INC.

LAYBERTHING AT BERTHS 51-53

The Iowa is tentatively expected to arrive in Southern California waters on May 24, 2012, where she will undergo hull cleaning six miles off the coast in deeper waters, a mitigation requirement of the EIR. Following the hull cleaning, the Iowa will be temporarily layberthed at Berths 51-53, until such time as the Permit is executed by the Executive Director, following City Council approval, and all vessel preparations are completed for the public opening at Berths 87-89. Courtesy of the Port privileges, pursuant to Tariff No. 4, are requested during this temporary period for all fees associated with pilotage, dockage and use of Berths 51-53 wharf premises, until arrival to Berths 87-89. The public opening of the vessel is tentatively expected to occur in July, following requisite approvals and permitting by the Los Angeles Fire Department.

PROPOSED PERMIT SUMMARY

Effective Date – The proposed Permit shall become effective following execution by the Harbor Department and PBC, and upon the last approval required by City's Charter and Administrative Code.

Term – Ten years with two, five-year options for renewal, predicated upon verification that PBC is a tenant in good-standing through demonstrated compliance of all Permit provisions during the first ten years of the Term and first option period; and achieving paid attendance of a minimum of 100,000 annually during the first ten years.

Premises – On the Effective Date, the proposed Permit shall entitle PBC to use and occupy Harbor Department property consisting of approximately 4.43 acres:

1. Preferential use of Parcel 1 – approximately 2.83 acres of water for berthing.
2. Preferential use of Parcel 2 – approximately 1.46 acres of wharf area for PBC visitor operations, including ticket booths and public restrooms.
3. Preferential use of Parcel 3 – approximately .14 acres of paved area for use by PBC, for the storage of operational equipment and supplies.
4. Future Parcel – approximately .50 acres located at the rear of Berth 87 for the construction, operation, and maintenance of the proposed PBC Museum and Visitor's Center (Building). The future Building pad shall be granted by the Harbor Department for inclusion in the proposed Permit after the first five years of the Term and upon the satisfactory completion of the following elements, as approved by the Board:
  - Evidence of sufficient funding and cash on-hand by PBC in the amount of \$5 million for construction and operation, separate and aside of funds allocated for Iowa operations or the escrow accounts described below;

SUBJECT: PROPOSED PERMIT WITH PACIFIC BATTLESHIP CENTER, INC.

- The identification and availability of alternate public parking spaces that will be lost due to the Building construction by PBC;
- Harbor Department's relocation of the Ralph J. Scott, the historic fireboat vessel; and
- Construction shall commence by PBC within one year of the granting of the Future Parcel by the Harbor Department or the Future Parcel premises shall be returned, with no future obligation for development.

Relocation Option – Annual attendance estimates range from 188,000 to 400,000. Should annual paid attendance at the Iowa fall below 100,000 in any calendar year, the Harbor Department shall have the right, at its sole discretion, to relocate the Iowa to another suitable location in the Port to allow for optimal use and revenue generation of this prime waterfront property at Berths 87-89.

Uses – PBC shall be permitted to use the Premises for the berthing, operation, and long-term maintenance of the Iowa as a museum and educational facility for the public to learn and explore the history of Navy battleships, the Iowa, the Iowa class of battleships, and the Iowa service history and crew.

Allowable uses of the Premises include: tours, youth sleepover programs (single day or weekend programs only as approved in advance by the Harbor Department); special military and maritime educational programs and events; maritime/naval conferences; weddings and anniversaries and other special events approved in advance by the Executive Director, gift/souvenir sales, filming, snack/concession sales and other related uses required for the operation of a battleship museum, and maritime related educational purposes.

For safety and security measures, one full-time watchman is allowed to work on the Premises in appropriate shifts on a 24-hour basis. Residential use of the premises is not allowed, including temporary or brief overnight stays by guests, workers, and volunteers. Work shifts for all other PBC employees, volunteers and guests are limited to a maximum of one 12-hour shift, per day, to prevent such overnight use of the Premises.

The parking of any automobiles, buses, and recreational vehicles is prohibited on the Premises. PBC will be allowed to use the shared public parking lot utilized by the Cruise Terminal and Catalina Express in the same manner as other Harbor Department tenants, with no special provisions for specified spaces for PBC employees, volunteers, and/or visitors. In consideration of its non-profit status, PBC will be granted 25 annual parking vouchers for its exclusive use; review of such use will occur on an annual basis by the Harbor Department.

Compensation – PBC shall pay the higher of two forms of compensation for the use of the Premises, (1) a fixed minimum compensation, or (2) a percentage compensation based on monthly gross receipts collected:

SUBJECT: PROPOSED PERMIT WITH PACIFIC BATTLESHIP CENTER, INC.

Period	Annual Minimum	Monthly Minimum	Percentage Gross Receipts
Years 1-2	\$50,000	\$4,167	2%
Year 3-5	\$100,000	\$8,334	4%

*Years Six through Year Ten and Option Periods:*

- Commencing at Year Six and throughout the Term, the compensation, consisting of the minimum annual guarantee and percentage of monthly gross receipts, shall be reset in five-year intervals, in accordance to current market conditions for similar operations. At no time shall the compensation rate be set to an amount lower than the previous compensation period.
- Year Seven, annual compensation, consisting of the minimum annual guarantee and the percentage of monthly gross receipts, shall be subject to annual adjustments, as per Consumer Price Index.

Establishment of Escrow Accounts for Special Funds - In addition to the regular monthly compensation paid to the Harbor Department for use of the Premises, additional funding of specified escrow accounts will be established through monthly payments by PBC into two separate escrow accounts, based upon a percentage of monthly gross receipts collected. The two escrow accounts are as follows:

*Towing Fund: 0.25% Monthly Gross Receipts*

- Pursuant to the general terms of Board Resolution 10-7038 adopted on November 18, 2010, evidence of sufficient and available funding in the amount of \$500,000 is required during the entire term of the Permit. Use of this fund is restricted to towing purposes only in the event of Permit termination for the towing of the Iowa to waters outside of the Port, as a requirement for the restoration of the premises under proposed permit terms.

*Operation and Maintenance Fund: 0.75% Monthly Gross Receipts*

- Due to the start-up nature of Iowa museum operations, the Board requested evidence of sufficient and available funding by PBC to ensure adequate funding in the amount of \$1.875 million, an amount equal to approximately three months of PBC's estimated first year's operational costs. Since PBC does not currently have this much cash on hand, the proposed Permit requires funding of this escrow account. The use of this fund is restricted to operation and maintenance purposes only, as approved in advance by the Harbor Department. Additionally, a contingent use of the Operation and Maintenance fund will be allowed by the Harbor Department should the Iowa require towing out of the Port and insufficient funds are available in the Towing Fund. Monies can be transferred out of this account for this specific purpose and use by PBC. Five-year periodic review of this fund will occur by the Harbor Department to determine long-term necessity.

## SUBJECT: PROPOSED PERMIT WITH PACIFIC BATTLESHIP CENTER, INC.

Interest income from the escrow accounts will accrue to PBC once both escrow accounts have been fully funded to the dollar requirements of each: \$500,000 for the Towing Fund and \$1.875 million for the Operation and Maintenance Fund.

PBC Reporting Requirements – To ensure Permit compliance, and to be consistent with the allowable uses that can be conducted on the Premises, on or before the 15<sup>th</sup> day of each calendar month, PBC shall submit a Finance and Activity Report to the Harbor Department, in an approved format and signed by PBC which shall include the following details:

1. A detailed gross income report by category, upon which percentage rent and funding of each escrow account is to be paid for the previous calendar month;
2. A detailed report of all attendees visiting the Iowa during this period, classified by type of visitor: volunteer, paid visitor, or guest visitor of PBC;
3. A detailed report of monthly expenses of all PBC activities conducted on the premises.

Additionally, at the end of each calendar year, PBC must submit an annual financial report prepared by a certified public accountant that includes a summary of annual income, disbursements, and financial obligations incurred during the year. Included in the annual financial report shall be written operating report that details all programming activities and operations conducted on premises during the calendar years including a detailed report of volunteer hours worked.

## IMPROVEMENTS

### *Tenant Improvements*

- PBC shall be responsible for all tenant improvements constructed on the Premises, including installation of pre-fabricated ticket booths, restrooms and a public access ramp/elevator system to the vessel. The Premises will be granted on an "as-is" condition, with PBC responsible for submission and approvals of all plans, permits and associated documents for the construction of all tenant improvements, including a General Permit from the Chief Harbor Engineer and permits from the Los Angeles Department of Building and Safety, Los Angeles Fire Department, etc., prior to commencement of any museum operations, public or private.

### *Harbor Department Improvements*

- The Harbor Department shall provide the following in-place improvements: approximately 940 linear feet of wharf, located at Berths 87-89; wharf fendering system, including the use of five existing foam-filled floating fenders; and approximately 6,040 square feet of paved backland area specific for PBC operations. The Harbor Department shall not be responsible for electrical, water, gas, sewer, or any other utility lines serving the Iowa.

**SUBJECT: PROPOSED PERMIT WITH PACIFIC BATTLESHIP CENTER, INC.**

Promotion of the Port of Los Angeles and Harbor Facilities – PBC shall in good faith, and with all reasonable diligence, utilize best efforts for suitable advertising and other means to promote the use of the Premises. PBC must utilize local hotels, facilities, and venues in the City of Los Angeles for any off-site and/or ancillary purposes and events required for the associated use of the Premises.

Environmental – PBC shall agree to the compliance with all applicable environmental provisions of the Harbor Department's Leasing Policy, City's Environmental Management Policy, and the Water Resources Action Plan (WRAP), California Environmental Quality Act (CEQA) requirements and the final mitigation measures consistent with the mitigation measures identified and adopted by the Board in the "USS Iowa Project Final EIR."

Maintenance – During the entire Term, the operation and maintenance of the Premises, including structures and improvements, shall be the full responsibility of PBC. Certain wharf structural repair items are excluded, consistent with the permits with all other Harbor Department tenants.

**ENVIRONMENTAL ASSESSMENT:**

The Harbor Department is the lead agency and has prepared an EIR in accordance with the requirements of the CEQA. The Board will consider certification of the Final Environmental Impact Report (FEIR) for the USS Iowa Project (Project) and Project approval. This action must take place prior to considering approval of the Permit.

In approving the Project, the Board will need to make specific Findings of Fact (FOF) regarding the significant environmental impacts of the Project and mitigation measures to reduce or avoid such impacts, adopt a Statement of Overriding Considerations (SOC) and adopt a Mitigation Monitoring and Reporting Program (MMRP) to track mitigation. The Project would result in significant impacts related to air quality; greenhouse gases (GHGs), traffic and circulation, and cumulative impacts. Even with implementation of mitigation measures, lease measures, and standard conditions of approval, temporary significant and unavoidable air quality impacts will remain during transport of the USS Iowa from San Francisco Bay to Berth 87. Adopted mitigation measures, lease measures, and standard conditions of approval will be incorporated into the Permit.

**ECONOMIC BENEFITS:**

Staff has determined that the Iowa would create the following regional impacts:

- Start-up costs would result in one-time local spending supporting the equivalent of 38 direct and 35 secondary jobs in the region;
- Annual local spending on non-payroll operating and support costs would support the equivalent of 50 direct and 64 secondary regional jobs; and
- Visitor spending could support an additional 60 to 120 local jobs, depending on the number of visitors and the amount of local spending.



SUBJECT: PROPOSED PERMIT WITH PACIFIC BATTLESHIP CENTER, INC.

FINANCIAL IMPACT:

An internal rate of return analysis has been conducted by Financial Management on the Harbor Department improvement costs and estimated revenue over the term of the proposed Permit, indicating a range of 3.86-6.62 percent rate of return. This estimated rate of return does not include the use of the improved parking premises at the rear of Berths 87-89, as this area is not part of the Premises.

CITY ATTORNEY:

The proposed Permit is subject to approval as to form and legality by the Office of the City Attorney.


TRANSMITTALS:

1. Proposed Permit
2. Aerial photo of site plan

FIS Approval: KP (initials)  
CA Approval: TM (initials)

FOR   
JACK C. HEDGE  
Director of Real Estate

FOR   
KATHRYN McDERMOTT  
Deputy Executive Director

APPROVED:   
GERALDINE KNATZ, Ph.D.  
Executive Director

GK:KM:JH:CCW:raw  
Author: C. Wiancki  
BL414raw USS Iowa

PERMIT NO. 899  
GRANTED BY THE CITY OF LOS ANGELES  
TO PACIFIC BATTLESHIP CENTER

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THIS PERMIT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between THE CITY OF LOS ANGELES, a municipal corporation ("City") acting by and through its Board of Harbor Commissioners ("Board"), and the Pacific Battleship Center, a California Corporation, 1077 N. Bradford Ave. Placentia, CA 92870 ("Tenant").

**Section 1. Agreement.**

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

**Section 2. Effective Date; Term and Holdover.**

**2.1 Effective Date.** This Agreement shall become effective on \_\_\_\_\_ ("Effective Date"), the date of its approval by the City Council of City ("Council") pursuant to Section 606 of City's Charter.

**2.2 Term.** The term of this Agreement shall commence on the Effective Date and shall continue until it expires ten (10) years from the Effective Date, on \_\_\_\_\_ ("Expiration Date"), unless sooner terminated in accordance with Section 9.

**2.3 Extension Option.** Tenant shall have two (2) five-year options to renew this Agreement provided the City determines that both: (a) the Tenant is a tenant in good-standing as demonstrated by compliance with the terms of this Permit during the first ten years of this Agreement; and (b) annual (i.e., any consecutive twelve (12) month period) attendance at the USS Iowa exceeds 100,000 paid attendees during the first ten (10) years, and any subsequent option period. These extensions shall become effective only upon adoption of an order or resolution of the Board of Harbor Commissioners granting such extension.

**2.4 Holdover After Expiration Date.** Tenant shall not hold over any part of Premises after the Expiration Date unless it submits a written request to hold over (or part of the Premises to the Executive Director of City's Harbor Department ("Executive Director"), and Executive Director thereafter approves such request in writing. Any holdover shall be deemed an extension of this Agreement on a month-to-month basis and on the same terms and conditions as set forth in this Agreement, that, if Executive Director, prior to the Expiration Date, has not provided written approval of a written request from Tenant to hold over, the Surface Land Rent (as set forth in Section 5) applicable at the commencement of such holdover, at the sole and

absolute discretion of Executive Director, may be increased up to one hundred fifty percent (150%) of the Surface Land Rent last in effect before such holdover commenced. If Executive Director has provided written approval of a written request from Tenant to hold over prior to the Expiration Date, the Surface Land Rent applicable at the commencement of such holdover shall be the Surface Land Rent last in effect before such holdover commenced. City and Tenant acknowledge and agree that: (a) this Section 2.4 shall neither be deemed nor treated as a limitation or waiver of any rights or remedies of City provided in this Agreement or at law (all of which are reserved, including, without limitation, an action for unlawful detainer), an option to extend the Agreement, express or implied commitment to pursue or issue any approvals or entitlements, or express or implied permission for Tenant to remain on the Premises after the Expiration Date; and (b) City expressly reserves the right to require Tenant to surrender possession of the Premises to City as provided in this Agreement on the Expiration Date or sooner termination of this Agreement.

### **Section 3. Premises.**

**3.1 Description.** The Premises subject to this Agreement consist of Parcel Nos. 1, 2, and 3, as delineated and more particularly described on the draft of Drawing No. 1, ("Premises"). Such drawing is on file in the office of the Chief Harbor Engineer of the Harbor Department ("Harbor Engineer") and is attached hereto as Exhibit "A." A final drawing of the Premises shall be prepared by the Chief Harbor Engineer of City. Upon completion of such revised drawing, it shall be attached to the Agreement and incorporated therein as Exhibit A-1 and shall be substituted for Exhibit A. The total square footage of the Premises is 4.43 (four point forty-three) acres, equivalent to approximately 193,000 (one hundred ninety three thousand) square feet.

The improvements on the Premises as of the Effective Date, which improvements are owned by City and subject to this Agreement, are identified in Exhibit "B," a copy of which is attached hereto. This Agreement refers to the totality of such City-owned improvements as "City's Improvements."

City and Tenant acknowledge that improvements may be constructed on the Premises following the Effective Date. If, following the Effective Date, an improvement constituting an Alteration (as defined in Section 7) is added to the Premises, Harbor Engineer shall: (i) revise Exhibit "B" to include both depiction of such additional improvement and a statement identifying such improvement's ownership; (ii) renumber the revised Exhibit "B" (such that, for example, after any such revision and renumbering, Exhibit "B" becomes "Exhibit "B-1""); and (iii) transmit such revised and renumbered Exhibit "B" to Tenant. Upon City's transmittal to Tenant, such revised and renumbered Exhibit "B" shall be deemed to: (i) be incorporated into this Agreement without further action of Board or Council; (ii) supersede any earlier issued iterations of Exhibit "B," and (iii) with respect to improvements, depict all improvements on the Premises.

**3.1.1 Future Premises.** In addition to the Premises stated above, Tenant shall have the right to the use and occupancy of the Future Premises consisting of approximately 50 acres located at the rear of Berth 87 for the construction, operation and maintenance of the proposed PBC Museum and Visitor's Center ("Future Building"). If the Future Premises are added to this Agreement, such addition shall become part of the Premises and Exhibit "A" shall be amended to reflect the addition.

**3.1.2 Conditions for Future Premises.** The proposed land area for the Future Building shall be granted by City to Tenant, and be included as part of the Premises, after the first five years of the Term and upon the satisfactory completion of the following conditions and approval by the Board:

- (a) Evidence of sufficient funding and cash on-hand, separate and distinct from any funds constituting their general operating funds and any funds maintained in an escrow account described below in Section 5.15, by Tenant, separate and aside of funds allocated for USS Iowa operations, for the construction, operation and long-term maintenance of the Future Building in the amount of five million dollars (\$5,000,000.00);
- (b) City's completion of the Parking Lot Improvement Project, to include the planning, analysis and identification of the appropriate location of the building pad, taking into consideration traffic flow of all shared users of the parking lot, operational needs of all San Pedro Waterfront Project tenants, and the identification and availability of alternate public parking spaces that will be lost due to the Future Building construction by Tenant;
- (c) City's relocation of the Ralph J. Scott historic fireboat vessel; and
- (d) Construction of the Future Building shall commence by Tenant within one (1) year of the granting of the Future Premises by City through order or resolution of the Board, or the Future Premises shall be returned to City with no future obligation for development.

**3.2 Premises Subject to Tariff.** Tenant accepts the Premises and shall undertake the Permitted Uses set forth in Section 4.1 subject to each and every of the terms and conditions provided herein, and to each and every of the rates, terms and conditions of Tariff No. 4 of City's Harbor Department as it now exists or may be amended or superseded ("Tariff"). Tenant represents and warrants that it has received, read and understands the rates, terms and conditions of Tariff and covenants that, at all times during the term of this Agreement, it shall maintain a complete and current Tariff at the address set forth in Section 15.9 below. Except as otherwise set forth in this Agreement, Tenant is contractually bound by all Tariff rates, terms and conditions as if

the same were set forth in full herein. City in its sole and absolute discretion shall determine if a conflict exists between a provision of this Agreement and a Tariff provision. In the event of such conflict, this Agreement shall at all times prevail.

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

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

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

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

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

**3.3.5 Homeland Security.** Access, temporary occupancy and other rights reasonably necessary to comply with homeland security or related

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

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

**3.3.7 Telecommunication Equipment.** Access, temporary occupancy and the right of City or third-parties selected by City in its sole and absolute discretion to install, operate, maintain and repair telecommunication equipment, without compensation to Tenant unless otherwise agreed to in writing by City. City shall minimize any interference with the Permitted Uses to the extent possible.

**3.4 Inspection by Tenant.** Tenant has inspected the Premises in contemplation of occupying them for the Permitted Uses set forth in Section 4.1 and acknowledges and agrees that:

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

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

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

(a) So long as such change in area is not temporary within the meaning of Tariff Item 1035 (or its successor) or not temporary as determined by

City in its sole reasonable discretion, then the Surface Land Rent determined according to the provisions of Section 5 shall be increased or decreased pro rata to reflect any such addition or deletion;

(b) If permanent changes in the area of the Premises are made on more than one occasion, the cumulative net change in area may not exceed ten percent (10%) or 20,000 square feet, whichever is greater, of the originally designated area.

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

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

**3.8 Parking.** Tenant shall not have exclusive rights to parking. However, the City shall provide, at no charge to Tenant, shared, non-exclusive use of the improved adjacent parking lot located at the rear of Berths 87-93 which will be available to other tenants and the public at large at rates set by the Board, pursuant to Tariff No. 4 or its successor. Individual parking spaces will not be provided to Tenant to accommodate Tenant's employees, volunteer and/or service providers, and shall not be included within the Premises or Future Premises of the Permit. In consideration of Tenant's non-profit status, City shall grant to Tenant twenty-five (25) annual parking vouchers for its exclusive use. City may conduct an annual review of the use of such vouchers. The parking lot shall include sufficient Americans with Disabilities Act compliant parking spaces adjacent to the USS Iowa, as required by City's Department of Building and Safety. Tenant shall not park any automobiles, buses or recreational vehicles on the Premises.

**3.9 Relocation Option.** In the event that annual (i.e., any consecutive twelve (12) month period) attendance at the USS Iowa falls below 100,000 paid attendees, the City shall have the right, in its sole discretion, to relocate the USS Iowa to another suitable location in the Port of Los Angeles to allow for optimal use and revenue generation of Berth 87-89, which is recognized as prime City waterfront property.

## Section 4. Uses.

**4.1 Permitted Uses.** The Premises shall be used for the following purposes and no others: (1) the berthing, operation and long-term maintenance of the USS Iowa as a museum and educational facility for the public to learn and explore the history of the U.S. Department of Navy ("Navy") battleships, the USS Iowa, the Iowa class battleships and the USS Iowa service history and crew; and (2) other allowable uses of the Premises include: (a) youth sleepover programs with adequate adult supervision throughout the program and prior Harbor Department approval which shall not be unreasonably withheld; (b) tours, weddings, anniversaries, special military and maritime educational events (e.g. maritime/military oriented seminars, military ceremonial programs, military celebrations, military reunions, military receptions, etc. where food and beverages may be served); (c) maritime/naval educational programs, maritime/naval conferences; (d) gifts/souvenir sales, snack/concession sales, filming; (e) other special events with prior Harbor Department written approval; (f) miscellaneous other directly related uses required for the operation of a battleship museum and related educational purposes; (g) for the USS Iowa and no other vessel, minor repair and minor aesthetic maintenance consistent with the requirements of the Navy, subject to the Port of Long Beach and Port of Los Angeles Vessel Discharge Rules and Regulations, attached as Exhibit G-1 and in accordance with Tenant's environmental obligations under Section 6 of this Agreement; and (h) the storage of associated equipment, materials and supplies within the operations area (Parcel 3), and screened from the public, consistent with the City's San Pedro Waterfront Design Guidelines, and which at all times must be maintained in a clean and orderly manner, acceptable to the City ("Permitted Uses").

**4.2 Vessel Re-position.** Tenant may biennially re-position the USS Iowa, within Parcel 1 at Berth 87, only as required in writing by the Navy for maintenance purposes, as stipulated in the "Donation Agreement" executed between the Navy and the Tenant. Advance written notice to the City must be given by Tenant, three months prior to any scheduled move, to prevent any interference of navigational, cruise and commerce activities in the adjacent areas.

**4.3 Caretaker.** Tenant shall not use the Premises for residential purposes. However, one (1) caretaker for security and emergency purposes may be present at the USS Iowa during evening and nighttime hours. The caretaker shall not be allowed to have guests, visitors, spouse, partner, family members and/or pets present on the Premises. Special circumstances may arise requiring an extended stay by such personnel on the vessel. Such special circumstances shall require advance written notice by Tenant, with written authorization granted in the sole discretion of the Executive Director.

**4.4 Safety and Security.** To ensure the safety and security of all visitors and the protection of the local natural environmental resources, Tenant shall meet all federal, State and local government and regulatory agency requirements, including but not



limited to those that may be imposed the United States Coast Guard ("USCG") and the City of Los Angeles Fire Department ("LAFD").

**4.5 Limitations on Use.** Tenant shall not use or allow the Premises or any part thereof to be used for purposes other than the Permitted Uses without the prior written approval of Board (which approval may be withheld by the Board in its sole and absolute discretion), and subject to such restrictions, limitations and conditions as may be imposed by Board. Tenant's personnel, volunteers and other personnel shall not reside on the Premises or use the Premises for any type of overnight accommodations at any time with the exception of youth sleepover programs as stated in Section 4.1(a). No work shift shall exceed twelve (12) hours per person, in each twenty-four (24) hour day.

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

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

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

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

Premises, even a Permitted Use, which is or will be inconsistent with such limitations, conditions, restrictions and reservations.

**4.10 Load Limits.** City warrants and represents that City's Improvements, as described on Exhibit "B" attached hereto, shall be constructed to support the load limits specified in Exhibit "B." Tenant shall allow no loading in excess of such limits without the prior written consent of City's Harbor Department, which consent may be provided by a Harbor Engineer's Permit or a Heavy Lift Permit. Upon receipt of a notice from City that the load limits on Exhibit "B" have been exceeded, Tenant immediately shall take all appropriate steps to correct such condition and, irrespective of such notice, shall, as between City and Tenant, be solely responsible for any cost, expense or damage resulting therefrom.

**4.11 Temporary Assignments.** By issuing this Agreement, City does not grant to Tenant the sole or exclusive right to use the Premises. Whenever the Premises are not being used, in whole or in part, by Tenant for the Permitted Uses or if City requires the Premises on a project or emergency basis, Executive Director shall have the right, subject to Tenant's consent (which consent shall not be unreasonably withheld), to make temporary assignments to other persons, firms and/or corporations to use the Premises, or any part thereof, as provided in the Tariff. Any direct charges accruing against Tenant from the use of the Premises by a temporary user, and the allocated costs of utilities which Tenant furnishes to such temporary user, shall be paid by such temporary user. City and Tenant agree to negotiate in good faith regarding any other terms and conditions of such temporary assignments.

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

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

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

**4.15 Liens.** Except where contested by Tenant in good faith in a court of competent jurisdiction, and except for non-delinquent liens arising from taxes or tax assessments, Tenant shall keep the Premises free from liens of any kind or nature arising out of its use and/or occupancy of the Premises, including any liens arising out of any labor performed for or materials furnished to or on behalf of Tenant on the Premises. Tenant agrees that it will at all times defend and indemnify City from and against all claims for labor or materials in connection with the construction, erection or installation of improvements made by Tenant upon the Premises, or from additions or alterations made thereto, or the repair of the same, by or at the direction of Tenant, and the costs of defending against any such claim, including reasonable attorneys' fees. If a mechanic's or other similar lien shall at any time be filed against City's interest in the Premises, which is not contested by Tenant in good faith in a court of competent jurisdiction, Tenant shall cause the same to be discharged of record within thirty (30) days after the date of filing the same or otherwise free the Premises from such claim or lien and any action brought to foreclose such lien or Tenant shall promptly furnish City with a bond in the amount of the lien plus twenty-five percent (25%) thereof issued by a surety company acceptable to Executive Director, securing City against payment of such lien and against any and all loss or damage whatsoever in any way arising from the failure of Tenant to discharge such lien.

**Section 5. Compensation.**

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

**5.2** Said Compensation shall be due and payable as set forth below each month during the term and shall be made payable to City of Los Angeles Harbor Department and mailed to the following address: City of Los Angeles  
Harbor Department  
P.O. Box 514300  
Los Angeles, CA 90051-4300

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

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

**5.3.1** During the first two (2) years of this Agreement Tenant shall pay to City a Fixed Minimum Compensation annually of Fifty-thousand Dollars (\$50,000) to be paid in monthly payments, in lawful money of the United States, Four Thousand One Hundred Sixty-seven Dollars (\$4,167).

5.3.2 During the third (3<sup>rd</sup>) through the fifth (5<sup>th</sup>) years of this Agreement Tenant shall pay to City a the Fixed Minimum Compensation annually of One Hundred Thousand Dollars (\$100,000) to be paid in monthly payments, in lawful money of the United States, Eight Thousand Three Hundred Thirty-three Dollars (\$8,334).

5.3.3. The Fixed Minimum Compensation payable under this Agreement shall be re-set each successive five (5) year period pursuant to the method set forth in Section 5.4.3 and 5.4.4 below. Following the sixth (6th) year, the Compensation rate shall also be subject to annual adjustments pursuant to the Consumer Price Index (CPI) index, as set forth below, but in no event shall the Fixed Minimum Compensation be less than the previous year.

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

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

**5.4.1 Years 1 to 2 of the Permit Term:** Tenant shall pay to City Percentage Compensation of two percent (2%) of monthly Gross Receipts as defined above in excess of the Fixed Minimum Compensation.

**5.4.2 Years 3 to 5 of the Permit Term:** Tenant shall pay to City Percentage Compensation of four percent (4%) of monthly Gross Receipts as defined above in excess of the Fixed Minimum Compensation.

**5.4.3 Years 6 to 10 of the Permit Term:** Commencing at Year Six, the compensation, consisting of the minimum annual guarantee and percentage of monthly gross receipts, shall be reset, in accordance to current market conditions for similar operations. At no time shall the compensation rate be set to an amount lower than the previous compensation period.

**5.4.4 Option Period:** Years 11 to 20 of the Permit Term commencing on the eleventh and sixteenth years of this Permit, the compensation, consisting of the minimum annual guarantee and percentage of monthly gross receipts, shall be reset, in accordance to current market conditions for similar operations. At no time shall the compensation rate be set to an amount lower than the previous compensation period.

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

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

**5.4.6** The Percentage Compensation is due and payable within fifteen (15) days following the end of the preceding month. Should the term of this Agreement commence on a day other than the first day of a calendar year, the Percentage Compensation for the first fractional month and the month beginning immediately thereafter shall be due within fifteen (15) days following the end of the month beginning immediately after the first fractional month. The payment

for the last fractional month shall be made within fifteen (15) days following the end of the term of this Agreement.

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

**5.4.8** In the event the varying nature of the business causes the amount of Percentage Compensation for a period year to fluctuate, Tenant may be eligible for a refund or rent credit from the City. The amount of the refund or rent credit is the difference between (1) the amount of Compensation actually paid during the Permit year (assuming Tenant has paid all Compensation as it becomes due during the Permit year), and (2) Tenant's annual Gross Receipts multiplied by the percentage figure set forth above. In no event shall Tenant's total Compensation be less than the Fixed Minimum Compensation. Tenant shall be entitled to the refund or rent credit only if the Compensation payments due during the Permit year have been timely made pursuant to Sections 5.3 and 5.4 and the gross receipt information has been timely submitted to City pursuant to Sections 5.4.4 and 5.4.4.1. If Tenant is eligible for a refund or rent credit, City shall reimburse or credit Tenant for any undisputed credit due within ninety (90) days of the submission of reviewed financials pursuant to subsection 5.4.5.1 above.

**5.5 Compensation Deposit.** For the first five (5) years of the term of this Agreement, Tenant shall deposit the sum of Eight Thousand Three Hundred Thirty-four Dollars (\$8,334), equivalent to two (2) months Fixed minimum Compensation, with Board at the address shown in subsection 5.2 above prior to the issuance of the Permit granted by this Agreement. To the extent City has a Compensation Deposit from Tenant as of the Effective Date, the Tenant may offset the amounts on such deposit against any Compensation Deposit then due. Following Year Five (5) of the term, Tenant shall deposit the sum equal to two (2) months Fixed Minimum Compensation, as determined by the Board. Said deposit shall be held as a guarantee to cover delinquent Compensation. In the event all or a part of the deposit is used to apply against Compensation due and unpaid, Tenant shall immediately make another deposit in an

amount equal to the amount so used, so that at all times during the term of this Agreement said deposit shall be maintained in the sum stated above.

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

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

**5.8 Promotion of Los Angeles Harbor and Local Community Facilities.** Tenant shall in good faith and with all reasonable diligence use its best efforts, suitable advertising and other means to promote the use of the Premises granted by this Agreement. Tenant shall utilize local hotels, facilities and venues in the City of Los Angeles, and particularly in the communities of San Pedro and Wilmington, and encourage its visitors and guests to utilize such hotels, facilities and venues, for any off-site and/or ancillary purposes and events required for the associated use of the Premises, including but not limited to conventions, to its best ability.

**5.9 Supervision of Business Practices.** The nature and manner of conducting any and all business activities on the Premises shall be subject to reasonable regulation by Board. In the event such business is not conducted in a reasonable manner as determined by Board, it may direct that corrective action be taken by Tenant or its Third Party Users or sublessees to remedy such practices and

upon failure to comply therewith within thirty (30) days of Tenant receiving such written notice, or as otherwise reasonably agreed to by the parties. Board may declare this Agreement terminated.

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

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

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

5.9.4. In addition to Gross Receipts, Tenant shall submit to City every month on the 15<sup>th</sup> day of the month a written report detailing all attendees visiting the Iowa during the preceding month, classified by visitor type: volunteer, paid visitor, or guest visitor; Tenant shall also admit a detailed report of monthly expenses for all Tenant activities conducted on their Premises.

**5.10 Renegotiation of Compensation.** The Compensation to be paid by Tenant to Board for each five (5) year period or any portion thereof following the first five (5) year period of the term of this Agreement shall be readjusted, except with respect to the Percentage Compensation, the first readjustment of which pursuant to this Section 5.11 shall occur after the period set forth in Section 5.4.2.3 above, following the fifteenth (15) year, but which Percentage Compensation thereafter shall be readjusted for each five (5) year period or any portion thereof. Such Compensation shall be mutually agreed upon between Tenant and Board at some time not more than nine (9) months and not less than three (3) months before the beginning of each such period. The Compensation shall be established by order of Board provided that if Compensation has not been determined by the beginning of the new Compensation



period, Compensation for the new period, subject to the final Compensation being negotiated, shall be one hundred fifty percent (150%) of the Compensation for the former period, which shall be paid in the same manner as provided in Section 5.1 et seq of this Agreement, except that the Board, at its sole discretion, by written notice to Tenant, may reduce the percentage increases of one hundred fifty percent (150%) to a lesser amount. If negotiation for the new Compensation has not begun six (6) months prior to expiration of each five (5) year period, Tenant shall immediately set a date with City to discuss the readjustment of Compensation. If Tenant and Board cannot agree upon the amount of such Compensation, the Compensation for the new period shall be determined in the following manner:

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

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

Upon the filing of three opinions, Board shall properly set a date for, and on said date hold, a public hearing. At such hearing, said opinions and such other

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

Each party shall pay the costs and expenses of the appraiser appointed by it, together with fifty percent (50%) of the costs and expenses of the third appraiser. The monies paid at the one hundred fifty percent (150%) rate shall count against the new Compensation which shall accrue from the date the new five (5) year period commences. If the new Compensation is more than the Compensation paid at the one hundred fifty percent (150%) rate, Tenant shall immediately pay City the difference due for the period in question. If the new Compensation is less than the amount paid at the one hundred fifty percent (150%) rate, Tenant shall be entitled to a credit against future sums owed to City under this Agreement. No interest shall accrue on the amount due to City or Tenant pursuant to this provision except to the extent Tenant fails to pay any deficiency within thirty (30) days of a billing from City. If interest is due, it shall accrue at the rate provided in Item No. 270 of Port of Los Angeles Tariff No. 4 (or its successor), currently consisting of simple interest of 1/30 of two percent (2%) of the invoice amount remaining unpaid each day.

**5.11 Disputed Payments.** Tenant recognizes that disputes may arise over monies due City in accordance with this Agreement. Tenant and City shall make a good faith effort to resolve any disputes as expeditiously as possible. Tenant agrees, upon receiving a billing from City which it disputes, to deposit the disputed amount in the form of cash, or certificate of deposit, in City's name in an escrow account to be mutually agreed upon by the parties within sixty (60) days of the date of billing. The deposit shall be held in the escrow account pending the resolution of the dispute. Each party shall share the costs of the escrow account on a 50/50 basis. If the dispute is resolved in City's favor, City shall receive the money and all accumulated interest. If the dispute is resolved in Tenant's favor, Tenant shall receive the money and all accumulated interest. Tenant understands that its failure to provide a deposit acceptable to City within sixty (60) days shall be considered a material default of this Agreement and City shall be entitled to cancel this Agreement upon thirty (30) days' written notice. If Tenant is obligated to pay City any charges due under Port of Los Angeles Tariff No. 4 (or its successor) pursuant to this Agreement, then failure to provide a deposit shall require Tenant to make all payments in accordance with Item

No. 265 of the Tariff and Tenant shall be removed from the Credit List authorized by Item No. 260 of the Tariff or as amended or superseded. This subsection 5.12 shall not apply to any one billing for a disputed amount exceeding One Hundred Thousand Dollars (\$100,000), provided Tenant shall be required to deposit One Hundred Thousand Dollars (\$100,000) with City. If City prevails in the dispute and the amount due City exceeds One Hundred Thousand Dollars (\$100,000), Tenant shall pay the difference due within fifteen (15) days with interest at the rate set forth in Section 5.7 from the date of City's initial billing to Tenant.

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

**5.13 Effective Date of Compensation.** The effective date of Compensation shall be the date of execution by the Executive Director.

**5.14 Special Fund Accounts.** In addition to the requirements above, Tenant shall open and maintain two escrow accounts with City listed as joint account holder with a financial institution acceptable to City into which funds shall be deposited as follows:

(1) **Towing Fund Account:** Tenant shall deposit 0.25% of all monthly Gross Receipts into an escrow account, the use of which is restricted to towing the USS Iowa from its Berth in the Port of Los Angeles to a location outside of the Port in the event of Permit Termination. Tenant's obligation to make such deposits shall cease when the account total reaches \$500,000; and

(2) **Operations and Maintenance Fund Account:** Tenant shall deposit 0.75% of all monthly Gross Receipts into an escrow account, the use of which is restricted to operations and maintenance of the USS Iowa with prior approval by the Harbor Department in the event of Permit Termination due to Tenant default. Tenant's obligation to make such deposits shall cease when the escrow account balance reaches \$1.8 million; however, the City may undertake a periodic review of the adequacy of this fund every five (5) years and increase or decrease the amount as the City deems necessary in its sole discretion. In the sole discretion of the Executive Director, funds in this Operations and Maintenance Fund Account may be used for towing the vessel.

(3) Interest income from both the Towing Fund Account and Operations and Maintenance Fund will accrue to and be payable to Tenant once both accounts have been fully funded to the dollar requirements of each: \$500,000.00 for the Towing Fund and \$1.875 million for the Operation and Maintenance Fund.

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

### **6.1 Definitions.**

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

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

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

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

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

(e) Asbestos in any form or condition;

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

(g) Petroleum products.

**6.1.2 Environmental Laws.** "Environmental Laws" shall mean the environmental laws and implementing regulations which are a subset of the

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

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

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

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

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

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

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

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

## **6.2 Tenant Responsibility for Term Contamination.**

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

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

~~6.2.3 Tenant acknowledges and agrees that it has reviewed and approved the document attached hereto as Exhibit "F," which document constitutes the written depiction of the environmental condition of the Premises on the Effective Date ("Baseline Condition") and which hereinafter shall be referred to as the "Baseline Report."~~

6.2.4 City and Tenant acknowledge that prior to the Effective Date, the Premises were occupied by users including Tenant for approximately twenty (20) years under an entitlement separate from this Agreement ("Tenant Prior Occupancy") and others and that as a result of such prior use and occupancy, the Premises on the Effective Date possess levels of contamination depicted in the Baseline Report ("Existing Contamination"). As to City, Tenant bears no responsibility for Existing Contamination.

6.2.5 Tenant acknowledges and agrees that a presumption shall exist that any contamination not specifically depicted and analyzed in the Baseline Report constitutes Term Contamination for which, as between City and Tenant, Tenant is solely responsible. City shall provide written notice of the existence of any such contamination to Tenant. Tenant may rebut such presumption by providing to City, within ninety (90) days of City's written notice, conclusive evidence demonstrating that such contamination is not Term Contamination. Otherwise, such presumption shall be deemed confirmed making Tenant solely responsible for such contamination. Whether any information submitted by Tenant rebuts the aforementioned presumption shall be within City's sole and absolute discretion, exercised reasonably and in good faith. This provision shall survive the expiration or earlier termination of this Agreement.

### 6.3 Environmentally Regulated Material on Premises.

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

#### **6.4 Tenant Obligations In the Event of a Term Release.**

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

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

**6.4.3** According to a schedule prescribed in writing by Executive Director or the applicable governmental agency with jurisdiction, Tenant shall make or cause to be made any and all necessary corrective actions to address the cause or suspected cause of the Term Release, including but not limited to equipment repairs and/or replacements.

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



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

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

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

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

6.4.9 If so requested in writing by Executive Director, within sixty (60) calendar days following such request, Tenant shall prepare at its sole cost and expense and submit to City for its approval the Term Remediation Action Plan, together with a list of the consultants Tenant proposes to execute such plan and such consultants' qualifications (both organizationally and broken down by consultant team member), both of which City shall approve in its sole reasonable discretion. Provided Tenant delivers to City a complete Term Remediation Action Plan, City shall use its best efforts to approve or disapprove such plan in a timely manner. Tenant shall provide additional information upon request of City if City deems the Term Remediation Action Plan inadequate.

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

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

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

## 6.5 Environmental Compliance.

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

6.5.2 Tenant shall establish and thereafter observe and maintain a written program to facilitate such compliance in accordance with the format and content and other requirements set forth on Exhibit "G" hereto, which program shall be referred to as the "Environmental Compliance Program" or "ECP." City's review and approval of such ECP shall not relieve Tenant of its obligations pursuant to this Section 6.5.

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

**6.6 Environmental Audits.** Tenant shall perform annual written audits of its ECP. The results of such audits shall be maintained on Premises for review by City. City shall have the right to conduct, at its sole cost and expense, periodic audits of Tenant's compliance with the ECP and management of Environmentally Regulated Material. Tenant shall provide access to backup materials supporting the ECP necessary for City to conduct such audits. City shall provide Tenant with copies of any written reports or results of such audits promptly upon completion of such documents.

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

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

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

## **Section 7. Alteration of Premises by Tenant.**

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

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

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

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

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

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

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

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

**7.4 Cost of Permits.** Tenant, at its sole cost and expense, shall obtain all permits necessary for such construction and shall require by contract that its construction contractors and subcontractors comply with all applicable federal, state, regional, and local statutes, ordinances, rules and regulations.

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

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

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

If Tenant neglects, fails or refuses within the time specified in said notice to begin or fails to prosecute diligently to complete the work of locating any pipeline or any other substructure under Tenant's control or servicing Tenant's operation within the Premises

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

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

**7.7.2 Pipeline Tests or Inspections.** Within thirty (30) days from the Effective Date of this Agreement, and at least annually thereafter, Tenant shall provide the Director of Real Estate of City's Harbor Department and the Director of Environmental Management of City's Harbor Department with a master schedule showing dates for pipeline testing and inspection(s) in accordance with the requirements referenced in Section 7.7.1 above. The master schedule shall include an itemized list with corresponding line item reference numbers for each pipeline covered under the subject Agreement, corresponding required test(s) or inspection(s), date(s) of test(s) or inspection(s), method(s) of test(s) or inspection(s), applicable agency, the frequency of required test(s) or inspection(s), and the California State Fire Marshall Line No. and the California State Fire Marshall Test ID No., if applicable. If Tenant's existing pipelines are modified, or new pipelines are added to Tenant's Premises, Tenant shall follow the authorization procedure described in Section 7.7.1; and provide an updated master schedule with any addition or subtraction of pipelines. This shall cover testing or inspection requirements of all agencies mentioned in Section 7.7.1 of this Agreement, as well as any other additional required test(s) or inspection(s).

If Tenant's pipeline test(s) or inspection(s) are approved by the applicable agency requiring or overseeing the test(s) or inspections(s), Tenant shall confirm in writing to the City approval of the test(s) or inspections(s) and/or submit

documentation including master schedule reference number for pipeline(s) being reported on, date(s) of test(s) or inspection(s), method(s) of test(s) or inspection(s) and a general non-technical summary of results.

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

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

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

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

## **Section 8. Maintenance and Repair.**

Except for those items identified on Exhibit "H" hereto (which Exhibit "H" may be amended by Executive Director in his or her sole reasonable discretion), at all times,

Tenant, at its sole cost and expense, shall keep and maintain the Premises, and all buildings, works and improvements of any kind thereon, including the improvements existing on the Premises as of the Effective Date and City's Improvements as depicted on Exhibit "B," in good and substantial repair and condition and shall be responsible for and perform all necessary inspection, maintenance and repair thereof, including preventive maintenance, using materials and workmanship of similar quality to the original improvements. Tenant shall obtain any permits, including but not limited to those issued by City, necessary for such maintenance and repair. City shall reimburse Tenant for any repairs made necessary by use of the Premises by a temporary user pursuant to Section 4.8. Tenant maintenance and repair personnel and associated volunteers are prohibited from residing on the USS Iowa, with shift limitations for all maintenance and repair purposes not to exceed 10 hours per person, in each twenty-four hour day. The City recognizes that continual on-going security and maintenance programs are a requirement of USS Iowa operations. Special circumstances may arise requiring an extended stay by such personnel on the vessel. Such special circumstances shall require advance written notice by Tenant, with written authorization granted in the sole discretion of the Executive Director.

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

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

**8.3 Litter and Debris.** Tenant, at its sole cost and expense, shall provide sufficient dumpsters or other like containers for trash collection and disposal and keep the Premises free and clear of rubbish, debris and litter at all times. Tenant shall perform periodic inspections and cleaning of the storm water catch basins (including filters), maintenance holes, and drains, maintaining the submerged land underlying the



water berthing area at the Premises free and clear of debris from the wharf and from vessels, and cargo loading and unloading operations of vessels berthed at said berths in connection with Tenant's undertaking of the Permitted Uses. Tenant, at its sole cost and expense, further shall keep and maintain the Premises in a safe, clean and sanitary condition in accordance with all applicable federal, state, municipal and other laws, ordinances, rules and regulations.

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

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

~~**8.6 Services and Utilities.** Unless otherwise provided for herein, Tenant shall pay all charges for services furnished to the Premises or used in connection with its use and occupancy, including but not limited to heat, gas, power, telephone, light, and janitorial services, and pay all deposits, connection fees, charges and meter rentals required by the supplier, including City.~~

**Section 9. Default and Termination.**

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

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

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

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

(d) To the extent permitted by law:

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

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

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

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

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

**9.2 Replacement of Statutory Notice Requirements.** When this Agreement requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by Code of Civil Procedure Section 1161 or any similar or successor statute. If City serves a statutory notice pursuant to Code of Civil Procedure Section 1161 et seq. to declare Tenant's default, City may proceed to obtain a judgment and/or order for possession and/or for any other remedy available at law and/or equity without further notice. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Agreement) in the manner required by Section 15.9 shall replace and satisfy the statutory service-of-notice procedures, including those required by Code of Civil Procedure Section 1162 or any similar or successor statute.

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

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

(a) The worth at the time of the award of any unpaid rent that had been earned at the time of the termination, to be computed by

allowing interest at the rate set forth in Item 270 of the Tariff but in no case greater than the maximum amount of interest permitted by law;

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

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

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

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

**9.3.2 Continuation of Agreement in Effect.** City shall have the remedy described in Civil Code Section 1951.4, which provides that, when a tenant has the right to sublet or assign (subject only to reasonable limitations), the City may continue the Agreement in effect after the tenant's breach and abandonment and recover rent as it becomes due. Accordingly, if City does not elect to terminate this Agreement on account of any default by Tenant, City may enforce all of City's rights and remedies under this Agreement, including the right to recover all rent as it becomes due.

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

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

(b) Choose to succeed to Tenant's interest in such an arrangement. If City elects to succeed to Tenant's interest in such an

arrangement, Tenant shall, as of the date of notice by City of that election, have no further right to, or interest in, the rent or other consideration receivable under that arrangement.

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

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

**9.6 Letter of Credit.** Tenant shall be required to tow the USS Iowa back to the Navy upon termination of this Permit. To ensure that Tenant has adequate resources to accomplish this requirement, City reserves the right to require Tenant to maintain a letter of credit with City in the amount of Five Hundred Thousand Dollars (\$500,000.00), solely for such towing purposes.

#### **Section 10. Force Majeure.**

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

period in which the Premises are not reasonably useable in whole or in part for the Permitted Uses by reason of any cause contemplated by this Section 10, Tenant shall not be relieved of its obligation to pay any compensation already due to City at the time of the occurrence.

## **Section 11. Restoration and Surrender of Premises.**

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

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

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

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

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

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

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

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

(b) If a Term Release has occurred or is reasonably suspected, a work plan detailing all work necessary to obtain, at Tenant's sole cost and expense, environmental and other entitlements (pursuant to CEQA,

the National Environmental Protection Act ("NEPA") and any other applicable Environmental Laws) necessary to undertake the work contemplated by Section 11.2.1(a);

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

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

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

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

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

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

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

Consultants or contractors selected by Tenant to perform such work shall be subject to City's reasonable written approval;

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

**Section 12. Indemnity and Insurance.**

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

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

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

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

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

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

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

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

The indemnity obligations in this Section shall survive the expiration or earlier termination of this Agreement and shall apply regardless of the active or passive negligence of City and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on City.

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

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

dollar coverage except that the Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Tenant. The retention or self-insurance provided shall provide that any other insurance maintained by the Department shall be excess of Tenant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Where Tenant operates watercraft, liability coverage for such craft must be provided as follows:

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

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

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

"Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that City, Board, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all operations, uses, occupations, acts and activities of the insured under Permit No. 899, and under any amendments, modifications, extensions or renewals of said Permit regardless of whether such operations, uses, occupations, acts and activities occur on the Premises or elsewhere within the Harbor District.

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

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

"In the event of one of the named insureds incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability; and

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

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

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

(d) Environmental Impairment Liability Insurance. Should Tenant's operations involve the storage or use of any type of hazardous materials or pollutants, the Tenant will be required to maintain environmental impairment

liability insurance which shall include coverage for bodily injury, property damage, including third-party claims for on-site and off-site bodily injury and property damage, clean-up and defense, with a limit of at least Five Million Dollars (\$5,000,000) per occurrence, which is to remain in effect at least five (5) years after the termination of the Agreement.

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

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

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

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

<http://track4la.lacity.org/> and follow the instructions to register and submit the appropriate proof of insurance on Tenant's behalf.

(c) **Renewal of Policies.** Prior to the expiration of each policy, Tenant shall show through submitting to Track4LA<sup>®</sup> that the policy has been renewed or extended or, if new insurance has been obtained, submit the appropriate proof of insurance to Track4LA<sup>®</sup>. If Tenant neglects or fails to secure or maintain the required insurance, or if Tenant fails to submit proof of insurance as required above, the City's Harbor Department may, at its option and at the expense of Tenant, may obtain such insurance for Tenant.

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

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

### **Section 13. Tenant Transfers of Interest in Agreement.**

**13.1 Transfers Prohibited.** Unless processed and approved strictly in accordance with this Section 13, no transfer of this Agreement, or any interest therein or any right or privilege thereunder, regardless of whether accomplished by a separate agreement, sale of stock or assets, merger or consolidation or reorganization by or of Tenant (or any entity that directly or indirectly controls or owns fifty percent (50%) or more of Tenant), or accomplished in any other manner, whether voluntary or by operation of law, including but not limited to assignment, sublease, transfer, gift,

hypothecation or grant of total or partial control, or any encumbrance of this Agreement (hereafter collectively referred to as "Transfer"), shall be valid or effective for any purpose. For purposes of this Agreement, "Transfer" also shall include the involvement of Tenant or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise) whether or not a formal assignment or hypothecation of this Agreement or Tenant's assets, which involvement results in a reduction of the net worth of Tenant (defined as the net worth of Tenant, excluding guarantors, established by generally accepted accounting principles) by an amount greater than twenty-five percent (25%) of such net worth as it was represented at the time of the execution of this Agreement, or at the time of the most recent Transfer to which City has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater. For purposes of this Section 13, the term "by operation of law" includes but is not limited to: (1) the placement of all or substantially all of Tenant's assets in the hands of a receiver or trustee; or (2) a transfer by Tenant for the benefit of creditors; or (3) transfers resulting from the death or incapacity of any individual who is a Tenant or of a general partner of a Tenant (except as provided in Section 13.2.1(e) below).

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

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

- (a) Specific identification of the entity or entities with whom Tenant proposes to undertake the Transfer ("Transferee");
- (b) Specific and detailed description of the Transferee's entity type, ownership (including identification of all parent and subsidiary entities), background/history, nature of the Transferee's business, Transferee's character and reputation and experience in the operations proposed;
- (c) Specific and detailed description of the type of Transfer proposed (e.g., assignment, sublease, grant of control, etc.) and the rights proposed to be transferred;
- (d) Specific and detailed description of the operations proposed to be undertaken at the Premises by Tenant and Transferee if City consents to the Transfer which includes a breakdown of the responsibilities and duties of Tenant and Transferee;



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

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

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

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

(i) A description of the worth of the proposed Transferee including an audited financial statement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Whether the Transfer will negatively impact the short-term or long-term development, land use or other plans of City's Harbor Department, and whether consent to such Transfer would violate any of the legal duties of City's Harbor Department, including duties owed to other tenants;

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

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

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

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

(a) City reserves the right to recapture any portion of the Premises proposed by Tenant to be subleased (with appropriate amendments to this Agreement) and to undertake the transaction with the proposed Transferee directly;

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

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

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

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

**13.7 Indemnity in Favor of City.** In addition to and not as a substitute for the indemnities Tenant provides to City pursuant to Section 12 of this Agreement, Tenant shall indemnify, defend and hold harmless City and any and all of its boards, officers, agents, or employees from and against any and all claims and/or causes of action of any third-party (including but not limited to Transferee) arising out of or related to a proposed Transfer.

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

**13.9 Transfers of Ownership.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Assume as principal all of the obligations and duties arising on or after the foreclosure conveyance date, and thereafter reassign the Agreement with the consent of Board by order. Notwithstanding any provision of this Agreement to the contrary, in the event the lender initiates any action to foreclose the interest of any subsequent assignee of the Agreement, the lender agrees to make the notifications and elections required herein.

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

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

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

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

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

(2) When requesting Board's consent to such a transfer, the lender shall demonstrate that: (a) the financial condition of the proposed transferee is as sound as that of Tenant at the time this Agreement was

initially entered into or as at the time of the proposed transfer - whichever provides the better financial security to Board; (b) the proposed transferee has the requisite experience and reputation or has retained an operator with the requisite experience and reputation to operate the Premises; and (c) the proposed transfer will not unfavorably affect the revenues of the City, employment or the services available to the maritime community.

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

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

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

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

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

#### **Section 14. Records and Reports.**

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

#### **Section 15. Miscellaneous.**

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

**15.2 Construction of Agreement.** This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

**15.3 Entire Agreement; Amendments.** This Agreement and all exhibits referred to in this Agreement constitute the final complete and exclusive statement of the terms of the agreement between City and Tenant pertaining to Tenant's use and occupancy of the Premises and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Agreement by, and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

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

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

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



**15.7 Joint and Several Obligations of Tenant.** If more than one individual or entity comprises Tenant, the obligations imposed on each individual or entity that comprises Tenant under this Agreement shall be joint and several. Regardless of the individual or entity involved in determining consistent use of the Premises or collection of revenues, in order to ensure compliance with the terms of this Agreement, Tenant shall submit to the City a Finance and Activity Report in a format approved by the Harbor Department and signed by the Tenant which shall include the following details: (1) a detailed Gross Receipts report by category upon which percentage rent and payment into escrow accounts shall be based; (2) a detailed report of all attendees visiting the Premises during the period in question, classified by type of visitor, volunteer, paid visitor, or guest visitor; (3) a detailed report of all programming activities and operations conducted on the Premises during the period in question; and (4) a detailed report of volunteer hours worked and activities performed during the period in question.

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

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

If to Tenant:

Pacific Battleship Center, Inc.  
1077 N. Bradford Avenue  
Placentia, CA 92870  
Attn: President

And

Pacific Battleship Center, Inc.  
P.O. Box 1739  
San Pedro, CA 90733

If to City:

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

with copies to:

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

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

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

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

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

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

**15.14 Possessory Interest.** Tenant is aware that the granting of this Agreement to Tenant may create a possessory property interest in Tenant and that

Tenant may be subject to payment of a possessory property tax if such an interest is created.

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

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

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

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

**15.19 Extent of Water Frontage.** In case this Agreement or any improvements made hereunder or this Agreement or any part thereof shall be assigned, transferred, leased or subleased and the control thereof be given or granted to any person, firm, or corporation so that such person, firm or corporation shall then own, hold or control more than the length of water frontage permitted or authorized under Section 654(a) of the

Charter of City or if Tenant shall hold or control such water frontage, then this Agreement and all rights hereunder shall thereupon and thereby be absolutely terminated, and any such attempted or purported assignment, transfer or sublease, or giving or granting of control to any person, firm or corporation, which will then own, hold or control more than such permitted or authorized length of water frontage, shall be void and ineffectual for any purpose whatsoever.

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

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

**15.22 Wage and Earnings Assignment Orders/Notices of Assignments.** Tenant is obligated to fully comply with all applicable state and federal employment reporting requirements for the Tenant and/or its employees. Tenant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders/Notices of Assignments applicable to them personally. Tenant shall fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Section 5230 et seq. Tenant shall maintain such compliance throughout the term of this Agreement.

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

**15.24 State Tidelands Grants.** This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore,

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

**15.25 Prior Permits.** This Agreement shall supersede the Agreement granted by any prior agreement with the City for the berthing of the U.S.S. IOWA, including but not limited to Berth Assignment No. \_\_\_\_\_. From and after the Effective Date of this Agreement, said prior agreement shall have no further force or effect.

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

**15.27 Disclosure Laws.** Tenant acknowledges that City is subject to laws, rules and/or regulations generally requiring it to disclose records upon request, which laws, rules and/or regulations include but are not limited to the California Public Records Act (California Government Code Sections 6250 et seq.) ("Disclosure Laws"). Tenant further acknowledges City's obligation and intent to comply with such Disclosure Laws in all respects. Notwithstanding the foregoing, in the event that City receives a request for disclosure of records in connection with this Section 15.27, City will immediately notify Tenant in writing, enclosing a copy of such request, at which point Tenant may take whatever steps deemed appropriate, including but not limited to seeking a protective or other order excusing disclosure from a court of competent jurisdiction. In the absence of such an order from a court of competent jurisdiction excusing City from its disclosure obligations, City shall undertake whatever action is necessary to comply with the requirements imposed by the applicable Disclosure Law(s). In the event that any action is filed by Tenant and/or by any requester of information where Tenant elects to challenge any disclosure, and City is named as a party to that action, Tenant shall defend and hold City and City's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, subsidiary and affiliated entities, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing harmless from any and all defense costs and judgments or settlements in any such action as well as all other losses and expenses arising out of or related to such action.

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

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

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Executive Director

Attest: \_\_\_\_\_  
Board Secretary

PACIFIC BATTLESHIP CENTER, INC.

Dated: 5-15-12

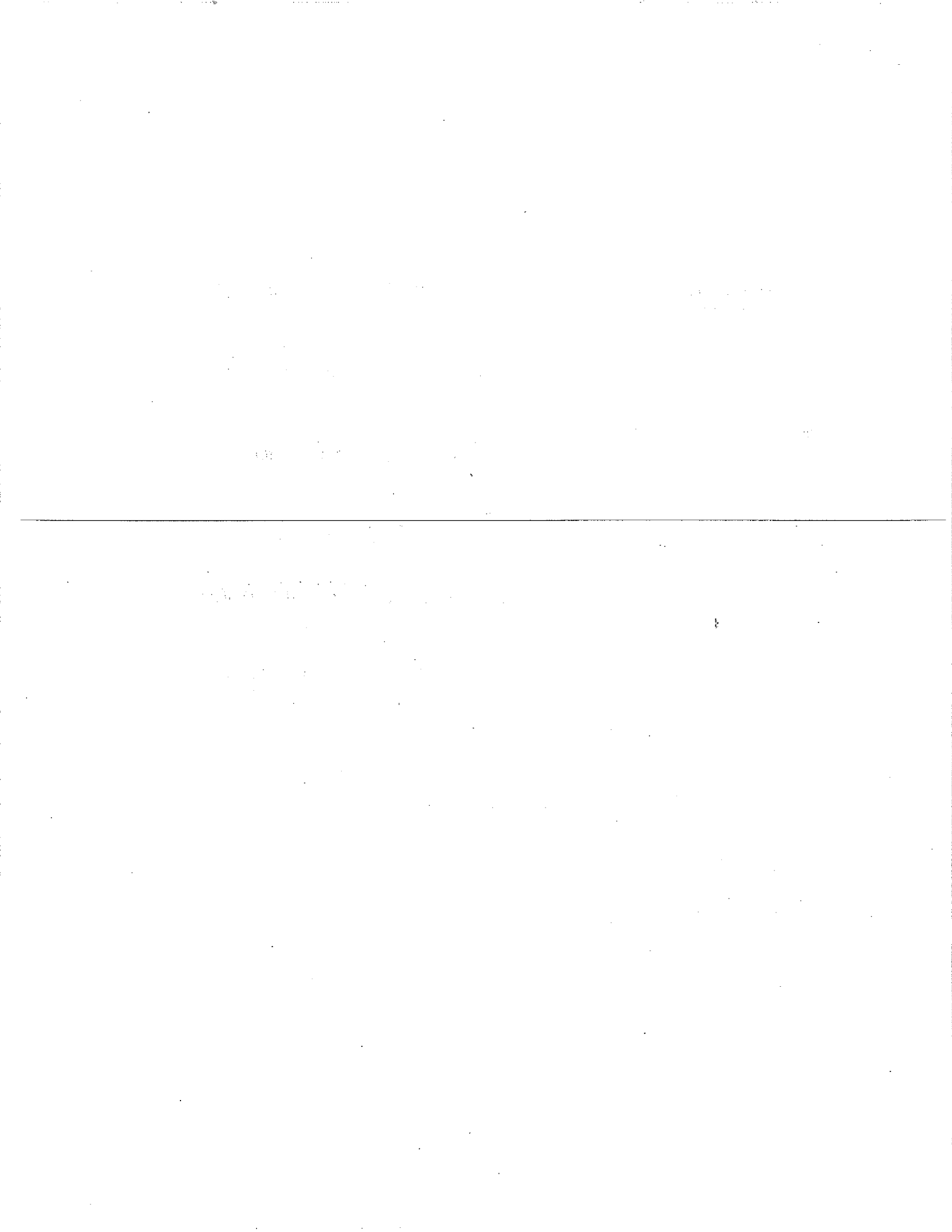
By Robert Kent  
ROBERT KENT - PRESIDENT  
(Print/type Name and Title)

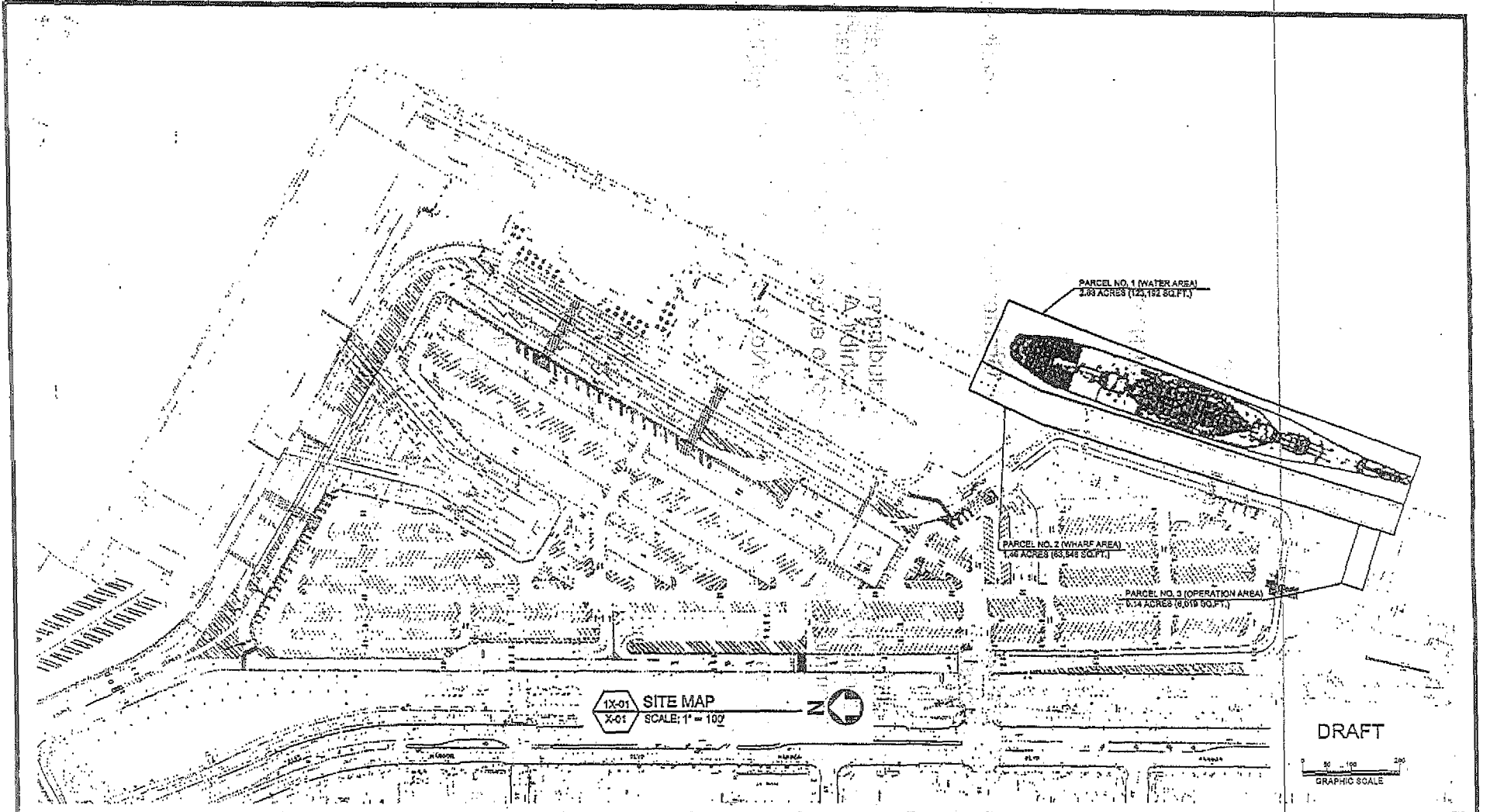
Attest: Jonathan Williams  
Jonathan Williams - VICE PRESIDENT  
(Print/type Name and Title)

APPROVED AS TO FORM

\_\_\_\_\_, 2012  
CARMEN A. TRUTANICH, City Attorney  
Thomas A. Russell, General Counsel

By \_\_\_\_\_  
CHRISTOPHER B. BOBO, Assistant





NO.	DATE	DRAWN	REVISIONS -	CH'KD	APP'D	SCALE: AS SHOWN	RECOMMENDED FOR APPROVAL	PERMIT MAP - AUTHORITY NO. XXX	
						DRAWN:	CHIEF OF DESIGN	USS IOWA BATTLE SHIP	
						CHECKED:		DRAWING NUMBER	
						DESIGNED:	ASSISTANT CHIEF HARBOR ENGINEER	APPROVED	45638
						ENGR/ARCH		CHIEF HARBOR ENGINEER	

LA THE PORT OF LOS ANGELES  
ENGINEERING DIVISION  
OFFICE OF THE PORT ENGINEER

EXHIBIT A

UNIVERSITY MICROFILMS



## EXHIBIT B

### PERMIT NO. 899

#### GRANTOR'S IMPROVEMENTS

Upon the effective date of the Agreement, the Grantor Improvements present on the Premises are as follows:

- Timber and concrete wharf improvements, including new fendering system, as designated on Parcel No. 2 of the Site Plan "Exhibit A." The Berth 87-89 wharf structure can accommodate a uniform load not to exceed 800 PSF.
- Paved backland area, as designated on Parcel No. 3 of the Site Plan "Exhibit A."

#### GRANTOR'S IMPROVEMENTS

Upon the effective date of the Agreement, the Grantor Improvements outside of the Premises to be used by the Tenant, as shared with other City tenants and the public are as follows:

- Improved parking lot, located at rear of Premises at Berths 93-87, as depicted on Site Plan, "Exhibit A."

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

Ruta designado de camión de carga

# Designated Truck Route

at the Port of Los Angeles

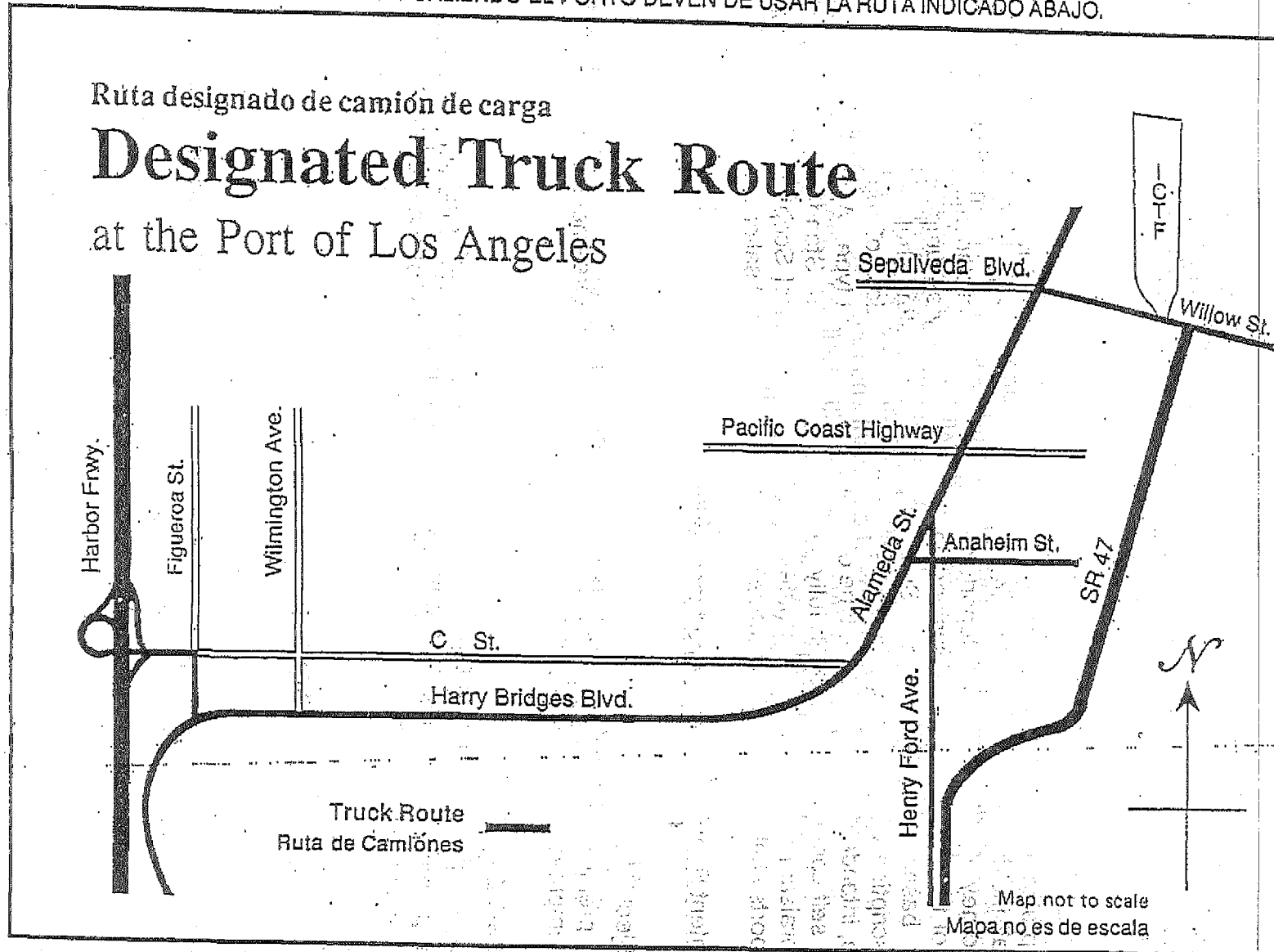


EXHIBIT C

**Exhibit "D"**  
**Appraisal Scope of Work**

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

**Format Requirements for Appraisal Reports:**

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

**Content Requirements for Appraisal Reports:**

**Subject Property**

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

**Interest Appraised**

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

**Date of Appraisal**

Current, prospective and retrospective.

**Date of Value**

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

**Scope of Appraisal**

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

## Externalities

Information, including but not limited to:

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

## Highest and Best Use

The Appraisal Report shall include a highest and best use analysis of the Premises as improved and as if vacant. Rent and value shall be based upon the greater of the existing use or the highest and best use as if vacant.

## Zoning

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

## Comparable Information

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

## Method of Appraisals

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

## The Income Capitalization Approach

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

properties or industrial zoned properties within a 15 mile radius of the Port of Los Angeles ("POLA-Adjacent Properties").

#### The Cost Approach

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

---

#### The Sales Comparison Approach

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

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

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

#### Reconciliation

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

**Exhibit "E"**  
**Appraiser Qualifications**

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

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

THIS DOCUMENT IS UNCLASSIFIED  
DATE 01/11/2011 BY 60322 UCBAW/STP/STP

# Baseline Environmental Assessment Report

---

THERE HAS BEEN NO BASELINE REPORT PREPARED  
OF THE SUBJECT PREMISES

EXHIBIT F

**EXHIBIT "G"**  
**FORMAT AND CONTENT REQUIREMENTS FOR TENANT'S**  
**ENVIRONMENTAL COMPLIANCE PROGRAM ("ECP")**

---

**Introduction and General Requirements**

This exhibit incorporates by reference all terms defined in the Agreement to which it is attached ("Agreement").

Tenant's ECP shall be set forth on letter-sized paper and shall be maintained in a three-ring or similar binder denominated "Environmental Compliance Program." Tenant additionally shall maintain the ECP in electronic form in a format acceptable to City and Tenant. Tenant's ECP shall possess separate sections devoted to (1) applicable Environmental Laws, (2) Port Environmental Policies, (3) Mitigation Measures, (4) the Source Control Program, (5) Violations and Corrective Action, (6) Document Retention and Organization and (7) Training.

Within ninety (90) days following the Effective Date, Tenant shall provide written notice to Executive Director of the employee(s) of Tenant responsible for establishing, observing and/or maintaining compliance with Section 6 of the Agreement and the ECP, as well as any third-party consultants retained for or on behalf of Tenant to assist in such task, and contact information for such employees and/or third-party consultants. By executing the Agreement, Tenant authorizes and permits City to directly contact such employees and/or third-party consultants at any reasonable time.

Starting on the thirtieth day of the sixth month after the Effective Date and every six (6) months thereafter during the term of the Agreement, Tenant shall submit a written report to Executive Director, with a copy to the Environmental Management Division of City's Harbor Department, with sufficient information to demonstrate compliance with each of the Port Environmental Policies identified in Exhibit "G-1"; each of the mitigation measures identified in Exhibit "G-2"; and the Source Control Program attached as "Exhibit G-3" for the preceding six (6)-month period. All reports submitted by Tenant shall be verified and contain the following statement signed by an authorized officer of Tenant:

"I, (Name of Officer), am the (Title of Officer) of (TENANT), and I hereby verify that I have personal knowledge of the information contained in this report and that the same is true, correct and complete under penalty of perjury under the laws of the State of California."



On the second anniversary of the Effective Date and every two (2) years thereafter, Tenant shall submit to Executive Director either a written certificate that Tenant's ECP complies with Section 6.5 of the Agreement and Exhibit "G," or a revised ECP conforming to Section 6.5 and Exhibit "G" for review and approval by Executive Director. Review and approval of any revised ECP shall not relieve Tenant of its obligations pursuant to Section 6.5 of the Agreement.

### Applicable Environmental Laws

Application of Environmental Laws to Tenant and/or its use and/or occupancy of the Premises requires Tenant to hold entitlements (such as permits and licenses), including but not limited to those entitlements listed in Table 1 below.

Table 1

AGENCY	POSSIBLE PERMITS
South Coast Air Quality Management District	Permit to Construct
	Permit to Operate
Los Angeles Regional Water Quality Control Board	NPDES Permit
	Waste Discharge Permit
	Stormwater Permit
Los Angeles Fire Department	Unified Program Permit
Los Angeles Department of Public Works	Industrial Wastewater Discharge Permit
	Sewer Connection Permit
U.S. Coast Guard	Explosives and Dangerous Cargo Permit
Department of Toxic Substances Control	Hazardous Waste Facility Permit
	Hazardous Waste Haulers Permit

The section of Tenant's ECP devoted to applicable Environmental Laws shall:

- affirm the application of such aforementioned applicable Environmental Laws;
- state to the best of Tenant's ability any additional Environmental Laws that apply to Tenant and/or Tenant's use and/or occupancy of the Premises;
- provide certified copies of all entitlements held in connection with the applicable Environmental Laws covered by items (a) and (b) above; and
- set forth the issuing agency, purpose and expiration date of each such entitlement.

Tenant shall, on a continuing basis during the term of the Agreement and any holdover, provide City with complete and legible copies of all notices, reports, correspondence and other documents sent by Tenant to or received by Tenant from any governmental agency with jurisdiction over the Premises or any contamination thereof. Within forty-five (45) calendar days following the Effective Date, Tenant shall provide City with copies of all such writings currently in its possession.

Such written materials include, without limitation, all documents related to any threatened or actual release of Environmentally Regulated Material, or to any investigations into or clean up of any actual or threatened release of Environmentally Regulated Material, including all test results. Applicable

documentation includes but is not limited to the types of documentation listed in Table 2 below.

Table 2

COMPLIANCE CATEGORY	TYPICAL DOCUMENTATION
All	Construction, operating, and discharge permits; logs; compliance reports required by HDP special conditions; and other permits
Hazardous Wastes	Manifest, shipping records, quarterly and annual reports, and Materials and correspondence files
	Reportable quantity records; inventory
	Emergency response plan
Air	Inspection, operating, and service log of burners, generators, and diesel engines
	Citations for violations; records of agency enforcement actions
Water	Monitoring records of discharges to receiving waters and POTWs by source
	Logs of process, wastewater, and receiving water sampling
	Treatment plant records, certifications, and Licenses
	Incident records for spills and upsets
	Citations for violations; records of agency enforcement actions
Solid Waste	Manifests and other records of quantities and shipments
Miscellaneous	Records of inspections by regulatory agencies
	Citations for pollution control violations and records of agency enforcement action
	SPCC plans for oil handling facilities
	Underground Storage Tank (UST) Monitoring Reports

### Port Environmental Policies

The section of Tenant's ECP devoted to Port Environmental Policies shall contain a narrative summary of the pollution prevention and response procedures in force on the Premises, and a description of all relevant pollution prevention equipment and structures on the Premises or on call. Pursuant to Section 6.3 of the Agreement, the ECP shall describe the types and amounts of Environmentally Regulated Material typically handled and their potential environmental hazards.

For potentially flammable (NFPA rating 2 or higher), toxic, and corrosive materials, the ECP shall specify the location of the relevant Material Safety Data Sheet (MSDS) and shall describe the storage, monitoring, and reporting procedures. This section of the ECP shall include Tenant's Business Emergency Plan required by the Los Angeles Fire Department for the Premises.

### **Mitigation Measures**

The section of Tenant's ECP devoted to Mitigation Measures shall consist of documentation necessary to document Tenant's monitoring and reporting on the Mitigation Measures as required by the Mitigation Monitoring and Reporting Program attached to the Agreement as Exhibit "G-2."

### **Source Control Program**

The section of Tenant's ECP devoted to Source Control Program shall consist of

### **Violations and Corrective Action**

Tenant acknowledges and agrees that it possesses a non-delegable obligation to ensure that the conduct of it as well as of visitors and invitees to the Premises complies with Section 6 of the Agreement and/or its ECP. Tenant further acknowledges and agrees that it possesses a non-delegable obligation and to report any violations of Section 6 and/or its ECP.

The section of Tenant's ECP devoted to Violations and Corrective Action shall set forth: (a) any violations of Section 6 and/or Tenant's ECP during the relevant reporting period; (b) Tenant's corrective action, if any, in connection with such violation(s); and (c) governmental agencies receiving notice of such violation or acting in connection with such violation.

### **Document Retention and Organization**

Tenant shall maintain all documents necessary to comply with Section 6 and the ECP at its Premises located at the Port of Los Angeles.

The section of Tenant's ECP devoted to Document Retention and Organization shall set forth its document retention policy and its method of organizing and maintaining documents necessary to comply with Section 6 of the Agreement and the ECP.

### **Training**

Tenant shall undertake and provide training to its employees as required by Applicable Environmental Laws and shall maintain records thereof.

The section of Tenant's ECP devoted to Training shall list the training requirements for Applicable Environmental Laws and shall list dates required training was provided to its employees.

EXHIBIT G-1

---

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

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

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

POLICY FOR OPERATION OF HAZARDOUS WASTE TRANSFER, STORAGE  
AND DISPOSAL (TSD) FACILITIES  
ON HARBOR DEPARTMENT PROPERTY

WHEREAS, maritime trades, maritime terminal and industrial operations, recreational boating, and commercial support industries in the Port of Los Angeles ("Port") comprise essential uses of Port property; and

WHEREAS, such industries and activities do naturally and inherently generate significant quantities of oily waste, oil-contaminated water and other oil/water mixtures arising from contamination of ships' fuels, barge and storage tank washings, and other industrial sources; and

WHEREAS, the State of California classifies, regulates, and issues permits for the handling of these materials as hazardous wastes; and

WHEREAS, several tenants of the Port operate and maintain oily waste transfer, storage and disposal facilities handling waste generated solely by their activities; and

WHEREAS, the Port desires to accommodate and provide for the proper commercial transfer, storage and disposal of oily wastes generated by maritime industries located within the San Pedro Bay

as a convenience and service to other tenants and users of Port property and the maritime industry; and

WHEREAS, this resolution establishes a policy for the Board of Harbor Commissioners to accommodate and regulate any hazardous waste transfer, storage and disposal facility on Port property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Harbor Commissioners adopt the following Harbor Department Policy for Operation of a Hazardous Waste Transfer, Storage and Disposal Facility:

1. Oily waste will continue to be generated in significant quantities by tenants and users of the Port;
2. Transportation and proper disposal of the oily waste is the responsibility of the transporter and generator of the waste;
3. Oily waste is defined as slop oils, contaminated bilge water, barge and storage tank washings and other oil/water mixtures arising from maritime, industrial and recreational activities;

4. In order to minimize the transportation distance and cost of disposal of oily waste, the Board may consider and approve on a case-by-case basis, subject to appropriate environmental review and regulatory agency permits and guidelines, the siting of a public oily waste transfer, storage and disposal facility on Port property provided:

100%

(a) ~~Four-fifths-or-greater~~ of the total quantity of oily waste volume handled at the transfer, storage and disposal facility must be generated by qualifying maritime facilities, defined as:

- (i) a facility on San Pedro Bay which receives materials, in whole or in part, by marine carrier; or
- (ii) a facility on San Pedro Bay which ships materials, in whole or in part, by marine carrier; or
- (iii) a facility located on Los Angeles Harbor Department property.

(b) ~~The one-fifth-or-lesser-quantity-of-oily-waste which-may-be-volume-handled-at-the-transfer,~~

~~storage and disposal facility must be generated within a 20-mile radius of the Harbor Administration Building;~~

- (c) The transfer, storage and disposal facility operator must obtain and be in compliance with all necessary regulatory agency permits and approvals;
- (d) The transfer, storage and disposal facility must be assessed for its impact on the environment in accordance with CEQA; and
- (e) The transfer, storage and disposal facility shall be subject to monitoring and quarterly compliance audit conducted by the Environmental Management Division or its designee, at the operator's expense; and
- (f) A gross annual volume limit shall be established in an amount equal to the total oily waste generated by qualifying maritime facilities, as estimated by Environmental Management Division or its designee, plus twenty percent (20%).



BE IT FURTHER RESOLVED that the Executive Director is instructed to develop a program to implement the above Policy.

I HEREBY CERTIFY that the foregoing Resolution was adopted by the Board of Harbor Commissioners of the City of Los Angeles at its meeting held

PETER MANDIA  
Board Secretary

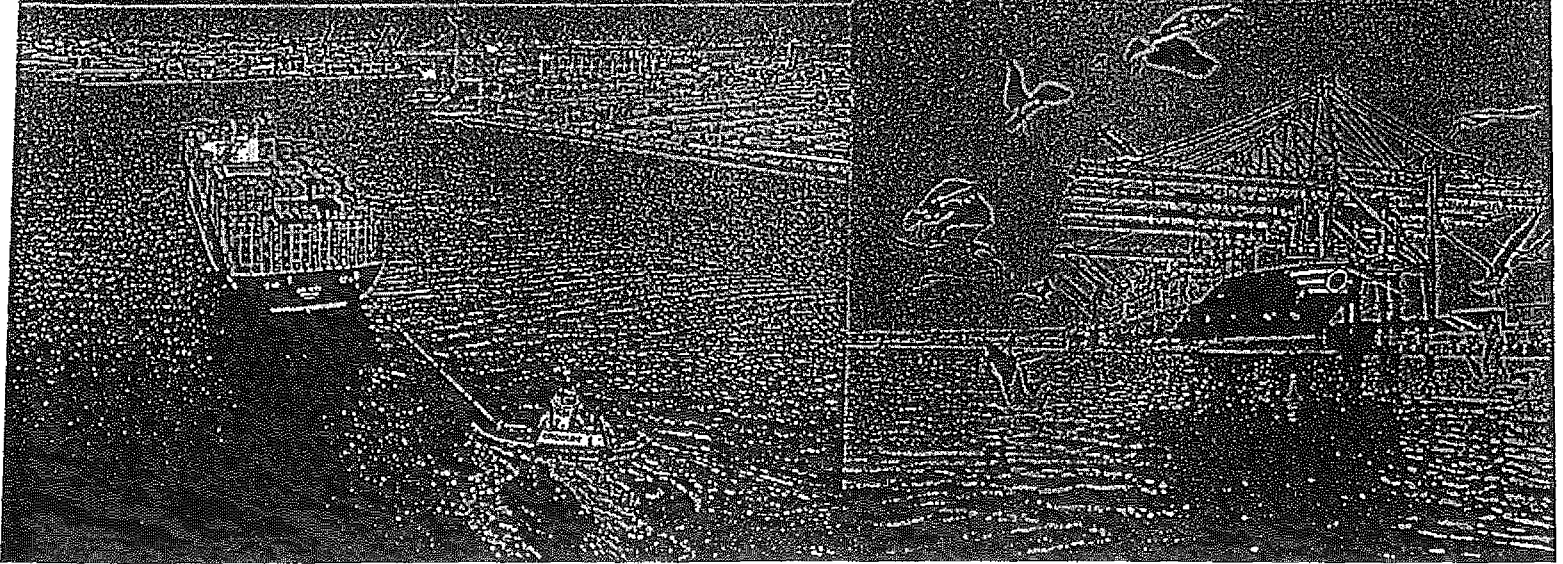
APPROVED AS TO FORM

*June 8*, 1993  
JAMES H. HAHN, City Attorney

By   
DAVID MCKENNA, Deputy

DRM/dls  
06/09/93

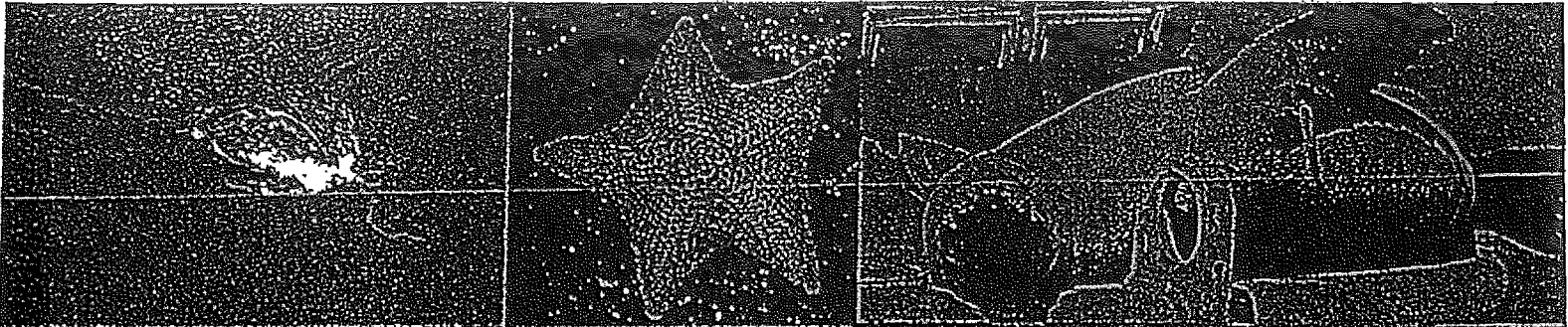
Port of Long Beach and Port of Los Angeles  
**Vessel Discharge Rules and Regulations**



Port of  
**LONG BEACH**  
*The Green Port*



**THE PORT**  
OF LOS ANGELES



ITEM #3

EXHIBIT G-1

Port of Long Beach and Port of Los Angeles

# Vessel Discharge Rules and Regulations

May 2012



Port of  
**LONG BEACH**  
*The Green Port*



## Table of Contents

<b>SECTION 1: INTRODUCTION</b> .....	<b>3</b>
1.1 Purpose.....	4
1.2 Allowable and Prohibited Discharges and Maintenance Activities.....	4
1.3 Contact Information.....	9
<b>SECTION 2: REGULATIONS</b> .....	<b>10</b>
2.1 Federal Laws and Regulations.....	10
2.2 State Laws and Regulations.....	11
2.3 Local Laws and Regulations.....	14
2.4 International Regulations.....	16
<b>SECTION 3: VESSEL DISCHARGE, MAINTENANCE, AND BEST MANAGEMENT PRACTICES 17</b>	
3.1 Best Management Practices .....	17
3.2 Prohibited Discharges .....	17
3.3 Discharge Status and BMPs.....	18
3.3.1 Deck Washdown and Runoff.....	18
3.3.2 Above Water Line Hull Cleaning and Painting.....	19
3.3.3 Sandblasting.....	21
3.3.4 Propeller Polishing and Other In-water Maintenance.....	22
3.3.5 Aqueous Film Forming Foam (AFFF).....	24
3.3.6 Firemain Systems.....	25
3.3.7 Cathodic Protection.....	26
3.3.8 Ballast Water.....	27
3.3.9 Chain Locker Effluent.....	29
3.3.10 Seawater Piping Biofoul Prevention.....	30
3.3.11 Anti-Fouling Leachate from Anti-Fouling Hull Coatings.....	31
3.3.12 Underwater Hull Cleaning/Ship Husbandry Discharges .....	33
3.3.13 Bilgewater.....	35
3.3.14 Boiler/Economizer Blowdown.....	36
3.3.15 Elevator Pit Effluent .....	37
3.3.16 Gas Turbine Wash Water.....	38
3.3.17 Motor Gasoline and Compensating Discharge .....	39
3.3.18 Weldeck Discharges .....	40
3.3.19 Exhaust Gas Scrubber Washwater Discharges .....	41
3.3.20 Boat Engine Wet Exhaust.....	42

3.3.21	Distillation and Reverse Osmosis Brine .....	43
3.3.22	Freshwater Layup.....	44
3.3.23	Non-Oily Machinery Wastewater .....	45
3.3.24	Refrigeration and Air Condensate Discharge .....	46
3.3.25	Seawater Cooling Discharge.....	47
3.3.26	Sonar Dome Discharge .....	48
3.3.27	Graywater.....	49
3.3.28	Sewage .....	51

**SECTION 4: REFERENCES..... 52**

**List of Acronyms and Abbreviations**

AFFF	aqueous film forming foam
BMP	best management practice
CAAP	Clean Air Action Plan
CARB	California Air Resources Board
CCR	California Code of Regulations
CFR	Code of Federal Regulations
CPP	controllable pitch propellers
CWA	Clean Water Act
EGS	exhaust gas scrubber
EPA	Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
ICCP	impressed current cathodic protection
IMO	International Maritime Organization
LA-RWQCB	Los Angeles Regional Water Quality Control Board
MARPOL	International Convention for the Prevention of Marine Pollution from Ships
MEPC	Marine Environmental Protection Committee
MSD	marine sanitation device
nm	nautical mile
NPDES	National Pollutant Discharge Elimination System
POLA	Port of Los Angeles
POLB	Port of Long Beach
Ports	Port of Los Angeles and Port of Long Beach
PCB	polychlorinated biphenyl
PRC	Public Resources Code
SLC	California State Lands Commission
SWRCB	State Water Resources Control Board
TBT	tributyltin
VGP	Vessel General Permit
WRAP	Water Resources Action Plan

## SECTION 1: Introduction

The Port of Long Beach (POLB, Ports) and Port of Los Angeles (POLA, Ports) are the two busiest container ports in the United States, with dozens of vessel calls on any given day. These vessels, which enter the waters of the Ports from domestic and international locations, are required to follow all federal, state, and local laws regulating the discharges and maintenance activities that are incidental to the normal operation of vessels. In August of 2009, the Ports adopted the Water Resources Action Plan (WRAP), an all-encompassing plan designating Port resources to establish and expand efforts to reduce and eliminate water and sediment-related pollution in the port environment. One of the control measures in the WRAP is to develop a discharge guidance manual for vessel operators whose vessels call at the Ports, including both U.S. and foreign flagged vessels.

Water quality in the Ports has shown significant improvement over the past three decades. Dissolved oxygen concentrations in most of the harbor approach those of the nearby ocean; with the exception of copper, concentrations of dissolved metals do not exceed any regulatory criteria; dissolved organics such as pesticides and polychlorinated biphenyls (PCB) are rarely detected and, with the exception of tributyltin (TBT), do not exceed regulatory criteria, and a 2002-2003 Los Angeles Regional Water Quality Control Board (LA-RWQCB) study found no instances of toxicity from Port waters (Lyons and Birosk, SWRCB, 2007). The listings under Section 303(d) of the Clean Water Act (CWA) for the Ports are not based on concentrations of dissolved pollutants, but rather on localized areas of sediment contamination and on the presence of sediment toxicity, benthic community effects, and elevated concentrations of pollutants in fish tissue (for a detailed discussion on the current condition of water in the Ports, see the WRAP, available at [www.polb.com/environment/water\\_quality/wrap.asp](http://www.polb.com/environment/water_quality/wrap.asp) or [www.portoflosangeles.org/environment/wrap.asp](http://www.portoflosangeles.org/environment/wrap.asp)).

Currently, several types of on-water operational and maintenance activities occur regularly in the Ports, often required for the safety of the vessel and crew, which can result in discharges to Port waters. Federal and state regulations prohibit discharges of pollutants and contaminated water in the Ports, and the Ports' tariff provisions prohibit discharge of any potentially polluting material into the Ports without approval of the respective Executive Directors. On January 1, 2006, the California Clean Coast Act of 2005 became effective which imposed prohibitions on five types of discharges (sewage, hazardous waste, oily bilgewater, graywater, and other waste which includes medical waste and photography and dry cleaning chemicals) from two specific types of vessels, oceangoing ships with sufficient holding tank capacity and large passenger vessels including cruise ships. In 2009, the Vessel General Permit (VGP) came into force which regulates 26 sources of discharge.

The VGP, signed into law by the Environmental Protection Agency (EPA) on December 18, 2008 (effective February 6, 2009), regulates discharges incidental to the normal operation of vessels operating in a capacity as a means of transportation within waters of the United States. The VGP includes general effluent limits applicable to all discharges; general effluent limits applicable to 26 specific discharge streams; narrative water-quality based effluent limits; inspection, monitoring, recordkeeping, and reporting requirements; and additional requirements

applicable to certain vessel types. The VGP applies to all vessels that operate within Federal waters, including U.S. and foreign flagged vessels, with some exceptions. Recreational vessels as defined in section 502(25) of the CWA as well as a vessels of the Armed Forces as defined in section 312 (a) (14) of the CWA are not subject to the VGP. In addition, with the exception of ballast water discharges, non-recreational vessels less than 79 feet (24.08 meters) in length, and all commercial fishing vessels, regardless of length, are not subject to the VGP. For additional information on the VGP, see the EPA's VGP website ([http://cfpub.epa.gov/npdes/home.cfm?program\\_id=350](http://cfpub.epa.gov/npdes/home.cfm?program_id=350)).

## **1.1 Purpose**

The purpose of this vessel guidance manual is to provide a quick reference guide informing interested parties on allowable and prohibited maintenance activities and discharges within the Ports. This manual applies to large commercial vessels generally over 79 feet in length and will be available to vessel operators, vessel pilots, facility managers, harbor patrol and port police officers, terminal services representatives, and the public to identify allowable discharges within the Ports. For each discharge category identified in Section 3.3, allowable procedures and recommended best management practices (BMPs) are identified. The BMPs recommended in this manual are not assumed to be the only available BMPs for that discharge. Further, following the BMPs recommended in this manual does not authorize vessel operators to discharge within the Ports or state or federal waters. Vessel owners/operators must apply for and obtain all required permits and approvals for allowable discharges. It is the responsibility of the vessel operators, not Port staff, to ensure compliance with all applicable discharge and maintenance regulations.

For discharge guidance related to recreational vessels, see the Clean Marinas Program. Further, the EPA is in development of a draft report for Congress on discharge for small commercial vessels.

## **1.2 Allowable and Prohibited Discharges and Maintenance Activities**

The following table outlines general discharges and vessel-based maintenance activities that may occur in the Ports with appropriate permits and approvals. Each discharge is identified as allowable or prohibited within the POLB and POLA, with reference to the discussion identifying BMPs that must be put in place for each discharge.

Table 1 – Discharges and Activities

Discharge/Activity	Allowable?	Discharge Restriction Summary	Regulation	Restrictions/BMP Section
<b>Deck Washdown, Maintenance, Firefighting, Hull Cleaning, and Related Discharges</b>				
Deck washdown/runoff	Restrictions	Deck washdown is allowed in the Ports as long as the runoff does not contain any pollutants, including trash, oils, metals, paint, or other debris.	POLB Tariff No. 4; POLA Tariff No. 4; VGP Section 2.2.1	3.3.1
Above water hull cleaning and painting	Restrictions	Above water hull cleaning and painting is allowed in the Ports but must follow specific BMPs. Spray equipment is not allowed for any on-water painting.	VGP Section 2.2.1; CCR Title 2, Division 3, Chapter 1, Article 4.8; PRC 71200 et seq.; POLB Painting BMPs; POLB Tariff No. 4	3.3.2
Sandblasting	No	Sandblasting is not allowed on vessels that are in-water.	POLB Tariff No. 4; POLA	3.3.3
Propeller polishing and other in-water maintenance	Restrictions	In-water hull cleaning of vessels with biocide-based antifouling paint is prohibited. Propeller polishing and other in-water maintenance is not recommended or preferred in the Ports, but is allowed assuming all required rules, regulations, BMPs and the best available technologies, as determined by both the SLC and the SWRCB, are used.	SWRCB VGP Certification - FAQ; VGP 2.2.9; POLB Tariff No. 4	3.3.4
Aqueous film forming foam (firefighting)	Emergency Only	The discharge of AFFF within the Ports is allowable only during an emergency.	VGP 2.2.5	3.3.5
Firemain system	Emergency and Testing Only	Discharges from the firemain system are allowed in cases of emergency, when necessary to ensure the safety of the vessel and crew, as well as for testing purposes to ensure the system will be operational in an emergency.	VGP 2.2.12; (see also VGP 2.2.1 for deck washdown restrictions).	3.3.6
Cathodic protection	Yes	There are no regulations pertaining to specific types of cathodic protection devices. The VGP includes recommended BMPs.	VGP 2.2.7	3.3.7
<b>Aquatic Nuisance Species</b>				
Ballast water	Restrictions	Ballast water shall not be discharged without treatment or exchange (unless for safety purposes) into Port waters unless said ballast water originated in the POLB, POLA,	CGR Title 2, Division 3, Chapter 1, Article 4.6/4.7; VGP Section 2.2.3; CFR Title 33, Part 151 (USCG);	3.3.8



Discharge/Activity	Allowable?	Discharge Restriction Summary	Regulation	Restrictions/BMP Section
		or the El Segundo marine oil terminal.	PRC 71200 et seq.; SWRCB VGP Certification; POLB Tariff No. 4; POLA Tariff No. 4	
Chain locker effluent discharge	Restrictions	For vessels that leave U.S. waters (i.e. Ports) at least once per month, chain lockers may not be rinsed or pumped out within the Port or any other U.S. water unless required for safety. For all other vessels that remain in the Ports and do not leave waters subject to the VGP, chain locker effluent with visible pollutants must not be discharged into Port waters.	POLB Tariff No. 4; POLA Tariff No. 4; VGP 2.2.8	3.3.9
Seawater piping biofoul prevention	Restrictions	No pesticides or chemicals banned for use in the United States may be discharged into the Ports. This includes any substance or material harmful to fish, plant life, mammals, or bird life. Removal of fouling organisms must not occur in the Ports.	VGP 2.2.20; Fish and Game Code 5650	3.3.10
Anti-fouling hull coating	Restrictions	The application of anti-fouling paint containing TBT or other organotins is prohibited within U.S. and international waters. If a vessel has previous hull coatings containing TBT, this coating must be covered by a non-organotin based product prior to entering the Ports.	VGP 2.2.4; IMO Resolution A.928(22)	3.3.11
Underwater hull cleaning	Restrictions	Underwater hull cleaning, including fouling removal, is prohibited on vessels with biocide-based antifouling paint. In-water hull cleaning on vessels with non-biocide based antifouling paint is not recommended or preferred, but is allowed in the Ports assuming all required rules, regulations, and BMPs, as identified by the EPA, SWRCB and the SLC, are followed.	CCR Title 2, Division 3, Chapter 1, Article 4.8; VGP 2.2.23; SWRCB VGP Certification - FAQ; POLB Tariff No. 4	3.3.12
<b>Engine Room and Contact Discharges</b>				
Bilgewater	No	Bilgewater is prohibited from being discharged into Port waters.	POLB Tariff No. 4; POLA Tariff No. 4	3.3.13
Boiler/	Restrictions	Vessels greater than 400 gross	VGP 2.2.6	3.3.14

Discharge/Activity	Allowable?	Discharge Restriction Summary	Regulation	Restrictions/BMP Section
economizer blowdown		tons that leave the Ports at least once per week cannot discharge within 3 nm of the shore, unless: the vessel remains in the Ports for longer than the necessary duration between blowdowns; the vessel needs to conduct blowdown immediately before entering drydock, or; for safety purposes.		
Elevator pit effluent	Emergency Only	Discharges of untreated elevator pit effluent are prohibited within Port waters, unless during an emergency.	POLB Tariff No. 4; POLA Tariff No. 4; VGP 2.2.11	3.3.15
Gas turbine wash water	No	Gas turbine washwater must not be directly discharged within the Ports. Washwater should be collected and properly disposed of onshore.	Fish and Game Code 5650; POLB Tariff No. 4; POLA Tariff No. 4; VGP 2.2.14	3.3.16
Motor gasoline and compensating discharge	Restrictions	The discharge of motor gasoline and compensating effluent that comes into contact with oil is prohibited in the Ports.	POLB Tariff No. 4; POLA Tariff No. 4; VGP 2.2.16	3.3.17
Welldeck discharges	Restrictions	Welldeck discharges that contain graywater from smaller vessels shall not be discharged within Port waters except in cases of emergency. Welldeck discharges from washdown of gas turbine engines may not be discharged within the Ports. Welldeck discharges from equipment and vehicle washdowns must be free from garbage and must not contain oil.	POLB Tariff No. 4; POLA Tariff No. 4; Fish and Game Code 5650; VGP 2.2.24	3.3.18
Exhaust gas scrubber washwater discharges	Restrictions	Exhaust gas scrubber washwater discharge must not contain oil. Sludge generated from exhaust gas scrubber washwater discharge must not be discharged in the Ports.	POLB Tariff No. 4; POLA Tariff No. 4; VGP 2.2.26; 40 CFR Part 110	3.3.19
Boat engine wet exhaust	Yes	Vessel operators are asked to minimize the use of small vessels generating wet exhaust while in the Ports to those activities required for the safety of the vessel and/or crew. Vessel operators are encouraged to consider the use of 4-stroke engines as opposed to 2-stroke engines to reduce wet exhaust.	VGP 2.2.21	3.3.20

Discharge/Activity	Allowable?	Discharge Restriction Summary	Regulation	Restrictions/BMP Section
<b>Non-Contact Discharges</b>				
Distillation and reverse osmosis	Restrictions	Brine from the distillation system and reverse osmosis water that comes in contact with machinery or industrial equipment, toxic or hazardous materials, or wastes shall not be discharged in the Ports.	<u>VGP 2.2.10</u>	3.3.21
Freshwater layup	Restrictions	Vessel operators shall minimize the amount of disinfection agents used in freshwater layup to the minimum required to prevent aquatic growth.	<u>VGP 2.2.13</u>	3.3.22
Non-oily machinery wastewater	Restrictions	Non-oily machinery wastewater shall not be discharged in the Ports if it becomes contaminated by oil or any additives that are toxic or bioaccumulative in nature.	<u>VGP 2.2.17</u> ; <u>POLB Tariff No. 4</u> ; <u>POLA Tariff No. 4</u>	3.3.23
Refrigeration and air condensate discharge	Yes	Clean condensation discharge is allowed in the Ports.	<u>VGP 2.2.18</u>	3.3.24
Cooling sea water	Restrictions	When possible, seawater cooling water should be discharged when the vessel is underway so that any thermal impacts are dispersed. If it must be discharged in the Ports, the discharge rate shall be reduced to minimize thermal impacts to the Port waters and ensure that the discharge does not contain trace metals or oils. If oils or metals are present, the discharge is prohibited in the Ports.	<u>VGP 2.2.19</u>	3.3.25
Sonar dome discharge	No	The water inside the sonar dome shall not be discharged into the Ports.	<u>VGP 2.2.22</u>	3.3.26
<b>Graywater and Sewage (Blackwater) Discharge</b>				
Graywater	Restrictions	Discharge of graywater is prohibited within the Ports from large passenger vessels (i.e. cruise ships) and from those oceangoing vessels 300 gross tons or larger with adequate holding capacity. All other vessels must minimize the discharge of graywater while in port.	California Clean Coast Act ( <u>PRC 72400</u> ); <u>VGP 2.2.15</u>	3.3.27
Sewage	No	The discharge of sewage (treated or untreated) is	<u>POLB Tariff No. 4</u> ; <u>POLA Tariff No. 4</u> ;	3.3.28

Discharge/Activity	Allowable?	Discharge Restriction Summary	Regulation	Restrictions/BMP Section
		prohibited within the Ports and California waters.	CWA Sec. 312; MARPOL Annex IV; California Clean Coast Act (PRC 72400); California No Discharge Zone Rule	
Graywater mixed with sewage from vessels	No	The discharge of graywater mixed with sewage (treated or untreated) is prohibited within the Ports and California waters..	VGP Sec. 2.2.25; California No Discharge Zone Rule	3.3.27; 3.3.28

Many of the regulations above can be found at [www.calregs.com](http://www.calregs.com) or [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html).

### 1.3 Contact Information

For more information on vessel discharge regulations and allowable on-water maintenance, please contact the appropriate agency or department, below:

Table 2 – Agency Contact Information

Agency	Issue	Contact
Environmental Protection Agency	Vessel General Permit	Ryan Alpert – (202) 564-0763 <a href="mailto:commercialvesselpermit@epa.gov">commercialvesselpermit@epa.gov</a>
U.S. Coast Guard	Federal Requirements	(310) 521-3801 (562) 577-0334 (24 hours)
State Water Resources Control Board	State Requirements	Vicky Whitney – (916) 341-5455; or Dominic Gregorio – (916) 341-5488
California State Lands Commission	State Requirements	(562) 499-6312
Port of Long Beach	Harbor Patrol	(562) 590-4185
	Terminal Services	(562) 590-4180
	Environmental Planning	(562) 283-7100
Port of Los Angeles	Port Police	(310) 732-3500
	Wharfingers	(310) 732-3810
	Environmental Management	(310) 732-3675

## SECTION 2: Regulations

Water-related activities in the Port complex are controlled by an overlapping network of local, state, federal, and international laws and regulations. Because maritime commerce involves interstate and international commerce, the various elements of the goods movement chain fall under a number of jurisdictions. As a result, the authority to address a given discharge or activity is not always clear.

The principle federal law governing vessel discharge and maintenance activities is the EPA's VGP. In addition, the California State Lands Commission (SLC) and the State Water Resources Control Board (SWRCB) have identified discharge regulations, including the California Clean Coast Act of 2005, as has the POLB and POLA.

Federal regulations pertaining to ballast water management are currently being developed by the U.S. Coast Guard, with assistance from other federal and state agencies, including the SLC. As such, there is the potential that new or updated ballast water management regulations will be identified. Refer to the SLC for updates.

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### 2.1 Federal Laws and Regulations

**Clean Water Act:** The CWA (92-500), which is administered primarily by the EPA, governs the discharge of pollutants to waters of the United States through the National Pollutant Discharge Elimination System (NPDES) permit system.

**Vessel General Permit:** Under the authority of the CWA Section 402, the EPA recently issued a nationwide NPDES permit related to vessel discharges within U.S. waters (see [http://cfpub.epa.gov/npdes/home.cfm?program\\_id=350](http://cfpub.epa.gov/npdes/home.cfm?program_id=350) for more detail). The permit's requirements include narrative effluent discharge limits to be achieved through operational control measures and the use of best available technology and inspection, monitoring, recordkeeping, and reporting requirements. Additional requirements are applicable to certain vessel types. The VGP is applicable to specific vessel types and lengths, including cruise ships, oil tankers, bulk carriers, container ships, and emergency response vessels, that operate within the Ports. All recreational and military vessels are exempt from coverage under this permit. All other vessels less than 79 feet in length and all commercial fishing vessels (regardless of size) are excluded from this permit, except for discharges of ballast water. The VGP is administered and enforced by the EPA. The EPA is currently in discussions with the U.S. Coast Guard regarding a possible enforcement role for some aspects of the VGP.

The VGP's requirements overlap with a number of existing laws and regulations. Vessel operators must also comply with those provisions of the following laws and regulations applicable to specific vessels (not intended to be an exhaustive list).

33 CFR parts 151 and 401: Coast Guard ballast water management, discharge, and exchange requirements.

33 CFR part 155 Subparts B and C: Coast Guard oil pollution prevention requirements.

33 CFR part 159: Coast Guard sewage discharge requirements.

40 CFR part 110, 117, and 302: EPA oil or hazardous substance discharge reporting requirements.

40 CFR 122.44(p): Coast Guard requirements for safe storage and transportation of pollutants.

40 CFR part 140: EPA sewage discharge requirements.

16 USC 1431 and 15 CFR part 922 and 50 CFR part 404: National Marine Sanctuaries Act and implementing regulations.

33 USC 190-1915: Act to prevent pollution from ships.

33 USC 2701-2720: Oil pollution act of 1990.

## 2.2 State Laws and Regulations

**California State Lands Commission:** The SLC was established in 1938 with authority detailed in Division 6 of the California Public Resources Code (PRC). The staff of the SLC serves the people of California by providing stewardship of the lands, waterways, and resources entrusted to its care through economic development, protection, preservation, and restoration. The following PRC articles were established by the SLC to facilitate the discharging of ballast water and hull maintenance in California waters.

*Article 4.6 – Ballast Water Regulations for Vessels Arriving at California Ports or Places after Departing from Ports or Places within the Pacific Coast Region:* The purpose of Article 4.6(CCR Title 2, Division 3, Chapter 1) is to move the state toward elimination of the discharge of non-indigenous species into the waters of the state. Under Article 4.6, the operator in charge of a vessel that arrives at a California port (i.e. POLB, POLA) shall employ at least one of the following ballast water management practices:

- Exchange the vessel's ballast water in near-coastal waters, before entering the waters of the state, if that ballast water has been taken on in a port or place within the Pacific Coast region.
- Retain all ballast water on board the vessel.
- Use an alternative, environmentally sound method of ballast water management that, before the vessel begins the voyage, has been approved by the commission or the United States Coast Guard as being at least as effective as exchange, using mid-ocean waters, in removing or killing non-indigenous species.
- Discharge the ballast water to a reception facility approved by the commission.
- Under extraordinary circumstances where compliance with subsections (a)(1) through (a)(4) of this section is not practicable, perform a ballast water exchange within an area agreed to by the commission in consultation with the United States Coast Guard at or before the time of the request.

*Article 4.7 – Performance Standards for the Discharge of Ballast Water for Vessels Operating in California Waters:* The purpose of Article 4.7 (CCR Title 2, Division 3, Chapter 1) is to move the state toward elimination of the discharge of non-indigenous species into the waters of the state. Subject to the implementation schedules identified in Section 2294 of Article 4.7, before discharging ballast water in waters subject to the jurisdiction of California, the operator, or person in charge of a vessel to which this section applies, shall conduct ballast water treatment so that ballast water discharged will contain:

- No detectable living organisms that are greater than 50 micrometers in minimum dimension;
- Less than 0.01 living organisms per milliliter that are less than 50 micrometers in minimum dimension and more than 10 micrometers in minimum dimension;
- For living organisms that are less than 10 micrometers in minimum dimension:
  - a. less than 1,000 bacteria per 100 milliliters;
  - b. less than 10,000 viruses per 100 milliliters;
  - c. concentrations of microbes that are less than:
    - i. 126 colony forming units per 100 milliliters of *Escherichia coli*;
    - ii. 33 colony forming units per 100 milliliters of Intestinal enterococci; and
    - iii. 1 colony forming unit per 100 milliliters or 1 colony forming unit per gram of wet weight of zoological samples of Toxicogenic *Vibrio cholerae* (serotypes 01 and 0139);

Implementation schedule as follows:

- Beginning January 1, 2010, for vessels constructed on or after that date with a ballast water capacity of less than or equal to 5,000 metric tons.
- Beginning January 1, 2012, for vessels constructed on or after that date with a ballast water capacity greater than 5,000 metric tons.
- Beginning January 1, 2014, for vessels constructed before January 1, 2010, with a ballast water capacity of 1,500 metric tons or more but not more than 5,000 metric tons.
- Beginning January 1, 2016, for vessels constructed before January 1, 2010, with a ballast water capacity of less than 1,500 metric tons, and for vessels constructed before January 1, 2012, with a ballast water capacity greater than 5,000 metric tons.

*Article 4.8 – The Collection of Information Relating to Hull Husbandry Practices of Vessels for Control of Marine Invasive Species in Waters of California:* Article 4.8 (CCR Title 2, Division 3, Chapter 1) requires the owner or person in charge of a vessel carrying, or capable of carrying, ballast water into the coastal waters of the state to file the “Hull Husbandry Reporting Form” developed by the SLC, providing information regarding the hull husbandry practices relating to the vessel, within 60 days of receiving a written or electronic request from the SLC.

**State Water Resources Control Board:** The SWRCB was created by the Legislature in 1967. The joint authority of water allocation and water quality protection enables the SWRCB to provide comprehensive protection for California’s waters. Upon approval of the EPA’s VGP, the SWRCB adopted additional regulations pertaining to vessel discharge, as allowed by Section

401 of the CWA. This certification can be found in Section 6.2 of the VGP. By certifying the VGP, the SWRCB identified that the following shall be prohibited from entering California waters:

- Hazardous waste or contaminated materials
- Sewage sludge
- Used or spent oil
- Garbage or trash (including plastic)
- Photo-developing waste
- Dry cleaning wastes
- Noxious liquid substance residues
- Medical waste

Further, the State of California requires all ballast water discharges follow the requirements established by the SLC and prohibits hull cleaning of vessels with biocide-based antifouling paints in California impaired waters, per the States FAQ response available on the SWRCBs website.

**California Clean Coast Act of 2005:** This statute (PRC 72400) authorizes the SWRCB and the SLC to regulate the release of graywater, sewage treated or untreated, sewage sludge, oily bilgewater, hazardous waste, or other waste by oceangoing ships of 300 gross tons or more, as defined, and by large passenger vessels including cruise ships into the marine waters of the state and marine sanctuaries. Beginning in 2006, large passenger vessels such as cruise ships are prohibited from discharging oily bilgewater, hazardous waste, graywater, other waste like medical, photography and dry cleaning chemicals, and sewage sludge and sewage (treated or untreated) within 3 miles of coastal state marine waters and marine sanctuaries. Oceangoing vessels of 300 gross tons or more are also prohibited from discharging oily bilge water, other waste, hazardous waste, and graywater. For graywater the prohibition only applies if the ship has sufficient holding tank capacity.

**California Department of Fish and Game Code 5650:** Under Fish and Game Code 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of California any of the following:

- Any petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum, or carbonaceous material or substance.
- Any refuse, liquid or solid, from any refinery, gas house, tannery, distillery, chemical works, mill, or factory of any kind.
- Any sawdust, shavings, slabs, or edgings.
- Any factory refuse, lime, or slag.
- Any cocculus indicus.
- Any substance or material deleterious to fish, plant life, mammals, or bird life.

**California No Discharge Zone:** On February 9, 2012, the U.S. EPA signed and approved a State of California proposal to ban the discharge of sewage (both treated and untreated) within California waters. This ban creates the largest no discharge zone in the United States. The rule established a no discharge zone (NDZ) for the following vessels within the State of California: all large passenger vessels of 300 gross tons or greater and large oceangoing vessels of 300 gross tons or greater with available holding tank capacity or containing sewage generated while the



vessel was outside of the marine waters of the State of California, pursuant to Section 312(f)(4)(A) of the Clean Water Act (CWA), 33 U.S.C. 1322(f)(4)(A). This rule covers all California waters within 3 miles of the coastline.

### 2.3 Local Laws and Regulations

**Port Tariff:** Port Tariffs govern a variety of activities in the port, including vessel operating procedures, fees, wharf and dock usage, and the use of hazardous or polluting substances on or near the water. The tariff contains prohibitions on discharging oil, wastes, waste and bilgewaters, and rubbish into or near Port waters. Because they are enforceable and can set penalties similar to municipal codes, the tariffs give the Port broad powers to regulate activities within its boundaries.

**Port of Long Beach – Tariff No. 4:** The POLB Tariff No. 4 governs a variety of activities that occur within the Long Beach Harbor District. Section 7 identifies the general rules and regulations that apply to activities within the POLB. The following table identifies the rules related to discharges that are allowed and prohibited by the POLB tariff.

**Table 3 – POLB Tariff No. 4**

Item/Rule	Summary
748 / Discharge of Clean Ballast Water	<p>No ballast water shall be discharged from a vessel within the Harbor District unless the discharge complies with all applicable federal, state, and local rules and regulations.</p> <p>In the event that the discharged ballast water does not follow all applicable rules and regulations, the vessel owner/operator shall be liable for any damage and shall pay all costs of cleanup and remediation imposed by any agency with jurisdiction.</p>
750 / Discharging Bilge or Foul Ballast Water and Refuse Prohibited	<p>No person shall discharge any treated or untreated bilge or refuse into the waters of the Long Beach Harbor District. If such an activity does occur, it shall be stopped immediately and reported.</p> <p>In the event that the bilge water or refuse is discharged, the vessel owner/operator shall be liable for any damage and shall pay all costs of cleanup and remediation imposed by any agency with jurisdiction.</p>
751 / On-Water Vessel Maintenance	<p>Any person wishing to conduct on-water vessel maintenance activities, including but not limited to hull maintenance, cleaning (of vessels with non-biocide based paints), and painting, must obtain prior written approval from the Port of Long Beach Tenant Services Section. Any in-water maintenance, cleaning, or painting shall be done in strict compliance with BMPs and shall follow all applicable federal, state, and local regulations.</p> <p>In the event that on-water maintenance results in the discharge of pollutants to the Harbor, the Responsible Parties</p>

	shall be liable for any damage and shall pay all costs of cleanup and remediation imposed by any agency with jurisdiction.
754 / Discharging Oil into Water Prohibited	No person shall pump or discharge any of the following materials or substances into the Long Beach Harbor District: oil, hydrocarbon, or other material or substance defined as hazardous.

*Port of Los Angeles – Tariff No. 4:* The POLA Tariff No. 4 governs a variety of activities that occur within the Los Angeles Harbor District. Section 18 identifies the general rules and regulations that apply to activities within the POLA. The following table identifies the rules related to discharges that are allowed and prohibited by the POLA tariff.

**Table 4 – POLA Tariff No. 4**

Item/Rule	Summary
1870 / Dumping into Navigable Waters	It shall be unlawful to throw or discharge any refuse matter or other substance of any kind or description whatever into the navigable waters of Los Angeles Harbor; and it is also unlawful to put such material on the bank of navigable waters where it shall be liable to be washed in the harbor by flood, high tide, stormwater runoff or otherwise.
1871 / Rubbish and Waste Material	It shall be unlawful to throw or discharge upon any wharf, landing, thoroughfare, or other premise under the jurisdiction of the Board, any decayed or decaying fruits, fish or vegetables, or the carcass of any dead animal or putrefying matter, or any rubbish or refuse matter of any kind.
1873 / Discharging Oil into Water Prohibited	<p>It shall be unlawful for any person to pump or discharge into the waters of Los Angeles Harbor any of the following materials or substances: oil, spirits, combustible liquids, coal, tar, refuse, residuary products of coal, petroleum, asphalt, bitumen, or other carbonaceous materials or substances, or any products or compound of, or any bilgewater containing any of said materials or substances. Anyone having knowledge of the pumping, discharging, depositing, passage or escapement of such materials or substances shall report the same immediately to the Harbor Department; and upon discovering such pumping, discharging passage or escapement, clean up and remove the same from the waters of Los Angeles Harbor.</p> <p>It shall be unlawful for any person in charge of a marine oil terminal to load, discharge, handle or store any petroleum or petroleum products unless not less than 305 lineal meters of workable oil spill booms are available on the premises; provided, however, that the City reserves the right to grant permission to the person in charge of a marine oil terminal to install an air barrier system of controlling spilled petroleum or petroleum products in lieu of the aforesaid requirement of oil spill booms if such is first approved by the Executive Director.</p>

1880 / Regulation of Ballast, Discharge, etc.	It shall be unlawful for any person to pump or discharge into the waters of Los Angeles Harbor any foul bilgewater, ballast, slops or refuse without having first obtained written permission so to do from the Executive Director, and the Executive Director may grant such permission subject to such terms and conditions as in his sole discretion may be necessary for the prevention of water pollution, such as, but not limited to, pumping or discharging above the water line so that a visible outfall may be constantly inspected.
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## 2.4 International Regulations

**International Convention for the Prevention of Marine Pollution from Ships (MARPOL):** The International Maritime Organization (IMO), a United Nations group established in 1948 to promote maritime safety, adopted the MARPOL treaty as a reaction to oil spills in international waters. Eventually it was recognized that further measures needed to be addressed regarding pollution of the marine environment by ships from operational or accidental causes. After the addition of several amendments called "annexes," as well as the Protocol of 1978 related to oil pollution, the convention now covers pollution by oil, chemicals, packaged harmful substances, sewage, garbage, and air emissions. MARPOL contains requirements for managing the various classes of pollutants onboard vessels. As an example, Annex I (Oil Pollution) specifies how oily ballast and bilgewaters must be contained and managed and establishes specifications for new construction that include ballast water and oily waste tanks that are separate from the cargo tanks, as well as double-hulled construction for oil tankers. See [http://www.imo.org/Conventions/contents.asp?doc\\_id=678&topic\\_id=258](http://www.imo.org/Conventions/contents.asp?doc_id=678&topic_id=258) for more detail.

**IMO Resolution A.928(22):** The International Convention on the Control of Harmful Anti-fouling Systems on Ships prohibited the use of harmful organotins in anti-fouling paints used on ships. Beginning on January 1, 2008 (effective date), ships either:

- A. shall not bear such compounds on their hulls or external parts or surfaces; or
- B. shall bear a coating that forms a barrier to such compounds leaching from the underlying non-compliant anti-fouling systems.

This IMO resolution called for a global prohibition on the application of organotin compounds that act as biocides in anti-fouling systems on ships, including TBT.

## SECTION 3: Vessel Discharge, Maintenance, and Best Management Practices

Discharges from ships, harbor craft, recreational vessels, and in-water structures contribute to the Ports' water pollution. Modern maritime operations involve large vessels that use a variety of potentially toxic materials such as petroleum products, metallic and organic anti-fouling and anti-corrosion substances, and paints; they discharge particulates into the air; and they produce human wastes and refuse. Discharges from ships, whether allowed or prohibited, impact water quality in the Ports. Deck washdown and runoff may contain oil, grease, cleaner or detergent residue, paint chips, paint droplets, and general debris; while bilgewater can include oil, grease, volatile and semi-volatile organic compounds, inorganic salts, and metals.

### 3.1 Best Management Practices

BMPs are environmentally friendly alternatives to common activities that may cause pollution or contamination to the environment. BMPs can be alternative operating methods that prevent pollution or alternative products that can be used to reduce the source of pollution. Along with alternative operating methods and products, BMPs may consist of structural changes that can assist an area or operation in reducing the amount of pollution.

In the case of everyday vessel operations and discharges, there is no one BMP that can be followed that has the ability to significantly reduce or eliminate polluted discharge. Often, a combination of many BMPs can provide the best defense against polluted discharge from vessels. While BMP implementation can reduce the potential for polluted discharge to leave the vessel, it does not give a vessel the authority to discharge and does not guarantee compliance with required discharge permits.

### 3.2 Prohibited Discharges

Section 3.3 identifies some of the discharges that may occur in the Ports. While the discussion of each discharge identifies specific regulations and BMPs, it is important to note that any discharge that contains pollutants or materials that can be harmful to water quality, fish, plant life, mammals, or bird life is a violation and must be terminated immediately (POLB Tariff No. 4, POLA Tariff No. 4, CWA, VGP, Fish and Game Code 5650). Harbor Patrol/Port Police and U.S. Coast Guard must be notified immediately if illicit discharges have occurred.

### 3.3 Discharge Status and BMPs

#### 3.3.1 Deck Washdown and Runoff

Deck washdown is allowed in the Ports as long as the runoff does not contain any pollutants, including trash, oils, metals, paint, or other debris (POLB Tariff No. 4, POLA Tariff No. 4, VGP Sec. 2.2.1).

**Overview:** Deck runoff occurs from all vessels as a result of precipitation and/or deck cleaning. Constituents of deck runoff may include oil, grease, cleaner or detergent residue, paint chips, and general debris (e.g., paper, wire). Discharge rates for deck runoff vary from vessel to vessel and depend on weather, deck machinery, deck operations, and frequency of deck washdowns. Due to the nature of vessel operations, design, and safety, it is not always feasible to hold or treat all deck runoff.

**Required Action:** Deck runoff must not contain any visible pollutants or rust. If deck runoff is not clear, the activity must immediately be terminated and reported to Harbor Patrol/Port Police and the U.S. Coast Guard (POLB Tariff No. 4, POLA Tariff No. 4). The following are prohibited from entering Port waters as a result of deck washdown and runoff:

- Refuse, including garbage, deck debris, etc.
- Chemicals, including grease, fuel, hydraulic fluid, caustics, detergents, etc.
- Metals
- Paint droplets or other debris occurring as a result of deck and/or hull cleaning.

**Required BMPs:** Under general circumstances, the Ports request that vessel crews not engage in deck washdowns while in port. In the event that such activities are necessary for the safety of the vessel and/or crew, the following BMPs have been identified to minimize the potential for pollutants to reach Port waters (VGP Sec. 2.2.1).

- Clear decks of debris, garbage, cargo residue and spills before:
  - Deck washdowns
  - Entering and leaving port
- When required by the class societies, vessels must be fitted with and use perimeter spill rails and scuppers
- Drip pans used to collect oily water from machinery must be drained to a waste container for proper disposal or periodically wiped and cleaned
- When washing down the deck, use cleaners and detergents that are:
  - Non-toxic
  - Phosphate free
  - Biodegradable
  - Minimally caustic or non-caustic

### 3.3.2 Above Water Line Hull Cleaning and Painting

Above water hull cleaning and painting is allowed in the Ports but must follow specific BMPs (VGP Sec. 2.2.1, POLB Painting BMPs/Tariff No. 4, POLA). Spray equipment is not allowed for any on-water painting.

**Overview:** Above water line hull cleaning and associated discharges occur when areas of the hull or other exterior portions of the vessel undergo regular cleaning. Constituents of above water line hull cleaning may include grease, paint chips, paint droplets, and other associated materials.

**Required Action:** Under general circumstances, the Ports request that vessel crews not engage in above water hull cleaning (those areas above the antifouling coating boundary) or painting while in the Port. In the event that such activities are necessary, the following BMPs must be followed (VGP Sec. 2.2.1, POLB Painting BMPs, POLA). When painting within the Ports, the vessel operator must first contact Terminal Services/Wharfingers. Further, the Ports do not allow the use of spray equipment of any kind for on-water painting. As always, if a spill occurs, immediately stop all activities and contact Harbor Patrol/Port Police and the U.S. Coast Guard.

The POLB shall be notified prior to any above water cleaning or painting to ensure that appropriate BMPs will be used (POLB Tariff No. 4).

**Required BMPs:** The following BMPs must be followed for maintenance and painting activities. For maintenance cleaning of the hull above the water line (above the antifouling coating boundary), only use soft brushes and ensure that any debris is captured and discarded on-land. Cleaning materials must be non-toxic, biodegradable, and phosphate-free. Pressure washing is not permitted. Discarded material that contains any potentially hazardous materials must be handled appropriately.

The following BMPs must be followed by vessels performing painting activities in the POLB and POLA:

- No spray equipment is to be used.
- Painting shall occur in dry conditions only.
- Perform paint and solvent mixing in a contained location either onshore or on the vessel so that nothing can spill directly into the water or storm drains.
- Store materials such as paints, tools, and ground cloths indoors or in a covered area when not in use.
- Painting to be performed from a proper raft, suspended from the deck of the vessel, designed for the purpose of vessel painting.
- Raft shall be held as tight as possible against the side of the Ship.
- There must be protective canvas overhanging the sides of the raft should any drops fall from the rollers.
- If painting from the wharf, ensure protective canvas is properly installed to contain drips.
- Only one half-full paint drum (10 liters max) will be allowed on the suspended raft.
- Task shall be carried out by fully qualified, experienced, able seamen only.
- Raft personnel shall be in VHF Radio contact with Duty Watchman.

- Spill equipment shall be ready at Ship's bunker station.

Any spillage must be reported immediately to the U.S. Coast Guard on VHF Ch16.  
Any spillage must also be reported to Harbor Patrol (POLB, 562-590-4180) and Port Police (POLA, 310-732-3515).

### 3.3.3 Sandblasting

**Sandblasting is not allowed on vessels that are in-water (POLB, POLA).**

**Overview:** Sandblasting is the operation of forcibly propelling a stream of abrasive material against a surface under high pressure to make it smoother, remove surface contaminants, or roughen it. When the activity occurs on vessels, sandblasting can remove paints, oil, metals, or other pollutants that are prohibited from entering Port waters. Due to the nature of sandblasting, it can be difficult to fully contain the spray and materials being cleaned.

**Required Action:** Sandblasting is not allowed on vessels that are in-water. If sandblasting is required, it must be done in drydock under proper conditions, ensuring that runoff does not enter Port waters.



### 3.3.4 Propeller Polishing and Other In-water Maintenance

Non-essential propeller polishing or other in-water maintenance should not occur in the Ports (VGP Sec. 2.2.9). Propeller polishing and other in-water maintenance is not recommended or preferred in the Ports, but is allowed assuming all required rules, regulations, BMPs and best available technology, as determined by both the SLC and the SWRCB, are used (SWRCB VGP Certification). For underwater hull cleaning, see section 3.3.12.

**Overview:** Oil to sea interfaces include any mechanical or other equipment where seals or surfaces may release small quantities of oil to the sea. Examples include controllable pitch propellers (CPPs). CPPs are variably-pitched propeller blades used to change the speed or direction of a vessel and are used in addition to the main propulsion system. Hydraulic oil can leak from CPPs if the protective seals are worn or defective, and large amounts may be discharged during maintenance and repair. Another example includes rudder bearings, which allow a vessel's rudder to turn freely and can be either grease-, oil-, or water-lubricated.

**Required Action:** For those vessels in the Ports, non-essential (maintenance not required for the safety of the vessel and/or crew) propeller or in-water maintenance should not occur (VGP Sec. 2.2.9). As adopted by the SWRCB (SWRCB VGP Certification), propeller polishing and maintenance is allowed in the State of California until the biofouling management regulations for vessels are adopted by the SLC and become effective. After the SLC biofouling management regulations become effective, propeller polishing is allowed as specified in that regulation. All other in-water maintenance is not recommended or preferred, but is allowed when the best available technologies, as determined by both the SLC and the SWRCB, are used. For in-water hull cleaning, see section 3.3.12.

The POLB shall be notified prior to any in-water maintenance to ensure that appropriate BMPs will be used (POLB Tariff No. 4).

**Recommended BMPs:** Regular maintenance is recommended to ensure all parts are in good working order to reduce the potential for leaks. Significant vessel maintenance relating to the propeller and related parts should occur in drydock, where oils cannot be released into the environment. In the event that crew and/or vessel safety is of concern, the following BMPs should be followed to minimize the potential for the release of pollutants.

- Vessel owner/operators must apply lubricants and maintain all seals so that discharges do not result in a visible sheen or are otherwise harmful.
- Before being placed in service, and after periodic lubrication, wire ropes or cables and other equipment must be thoroughly wiped down to remove excess lubricant.
- If maintenance or emergency repair must occur on stern tubes or other oil-to-sea interfaces that have a potential to release oil in quantities that may be harmful as defined in 40 CFR Part 110, appropriate spill response resources (e.g. oil booms) must be used to contain any oil leakage.
  - Operators of the vessel must have ready access to any spill response resources to clean any potential oil spills. If a spill occurs, the responsible party must inform Harbor Patrol/Port Police.

- Use of an environmentally preferable lubricant, including vegetable oil, synthetic ester, or polyalkylene glycol as a base for these applications is recommended, when feasible.
  - Use of an environmentally preferable lubricant does not authorize the discharge of any lubricant in a quantity that may be harmful as defined in 40 CFR Part 110 or cause a visible sheen as these oils still cause many undesirable environmental impacts, though these impacts are potentially less severe than those caused from petroleum-based oils.

### 3.3.5 Aqueous Film Forming Foam (AFFF)

The discharge of AFFF within the Ports is allowable only during an emergency (VGP Sec. 2.2.5).

**Overview:** AFFF is a synthetic firefighting agent consisting of fluorosurfactants and/or fluoroproteins. It serves as an effective firefighting agent by forming an oxygen-excluding barrier over an area. In order to produce AFFF, a concentrated solution of the foam-forming agent is injected into the water stream of a fire hose. Vessels equipped with AFFF equipment must periodically (annually or semi-annually) test the equipment for maintenance, certification, or training purposes resulting in discharge overboard or onto the deck. The constituents of AFFF can vary by manufacturer but can include ingredients that are persistent, bioaccumulative, and nonbiodegradable.

**Required Action:** Discharges of AFFF within the Ports are allowable only during an emergency (VGP Sec. 2.2.5). If such an emergency discharge occurs, vessel operators shall notify the U.S. Coast Guard, as well as the local fire department and Port Police/Harbor Patrol. An explanation of the emergency and the need to discharge AFFF must be written in the ship's log or other recordkeeping documentation.

For all vessels that sail outside of the U.S. territorial sea more than once per month, maintenance and training discharges of fluorinated AFFF are not authorized within the Ports. Discharge volumes associated with regulatory certification and inspection must be minimized and a substitute foaming agent (i.e. non-fluorinated) must be used if possible within waters subject to the VGP. If training occurs within the Ports, a substitute foam (non-fluorinated) must be used.

For vessels that do not leave the territorial sea more than once per month, if maintenance and training discharges are required, AFFF must be collected and stored for onshore disposal if technologically feasible. If not feasible, a non-fluorinated substitute shall be used.

### 3.3.6 Firemain Systems

Discharges from the firemain system are allowed in cases of emergency, when necessary to ensure the safety of the vessel and crew, as well as for testing purposes to ensure the system will be operational in an emergency (VGP Sec. 2.2.12).

**Overview:** Firemain systems draw in water through the sea chest or potable supplies to supply water for fire hose stations, sprinkler systems, or AFFF distribution stations. Firemain stations can be pressurized or non-pressurized and are often used for secondary purposes onboard vessels (e.g., deck and equipment washdowns, machinery cooling water, ballast tank filling). Firemain water can contain a variety of constituents, including copper, zinc, nickel, aluminum, tin, silver, iron, titanium, and chromium. Many of these constituents can be traced to the corrosion and erosion of the firemain piping system, valves, or pumps.

**Required Action:** Discharges from the firemain system are allowed in cases of emergency only, when necessary to ensure the safety of the vessel and crew, as well as for testing purposes to ensure the system will be operational in an emergency. However, when feasible, the maintenance and training discharges of the firemain should occur outside the Ports or other shallow waters and outside waters subject to the VGP (VGP Sec. 2.2.12).

Firemain systems may also be used for deck washdowns and other secondary uses if the intake comes directly from the Ports or potable water supplies. In such an instance, this activity must comply with the requirements identified for the specific activity (See Table 1).

### 3.3.7 Cathodic Protection

There are no regulations pertaining to specific types of cathodic protection devices.

**Overview:** Vessels use cathodic protection systems to prevent steel hull or metal structure corrosion. The two types of cathodic protection are sacrificial anodes and impressed current cathodic protection (ICCP). Using the first method, anodes of zinc, magnesium, or aluminum are "sacrificed" to the corrosive forces of the seawater, which creates a flow of electrons to the cathode, thereby preventing the cathode from corroding. These sacrificial metals are then released to the aquatic environment. Using ICCP, a DC electrical current is passed through the hull such that the electrochemical potential of the hull is sufficiently high enough to prevent corrosion. The discharge from either method of cathodic protection is continuous whenever the vessel is waterborne.

**Recommended Action:** The Ports recommend the use of the ICCP systems as the environmentally preferable method because these systems eliminate or reduce the need for sacrificial anodes. Due to elevated levels of zinc in the Port waters, the elimination of zinc anodes is preferred. However, the use of ICCP may be technologically and economically infeasible (See VGP Sec. 2.2.7).

**Recommended BMPs:** For sacrificial anode systems, it is recommended that vessel operators select the least toxic anode material that is practicable, in the order of preference of magnesium, then aluminum, then zinc. Sacrificial anodes should be used in conjunction with corrosion control coatings to minimize the release of dissolved metals. Furthermore, sacrificial anodes must not be used more than is necessary to adequately prevent corrosion of the vessel's hull, sea chest, rudder, and other exposed vessel areas. Vessel operators must appropriately clean and/or replace these anodes in periods of maintenance (such as drydocking), so that release of these metals to waters is minimized.

### 3.3.8 Ballast Water

Ballast water shall not be discharged without treatment or exchange (unless for safety purposes) into Port waters unless said ballast water originated in the POLB, POLA, or the El Segundo marine oil terminal (CCR Article 4.6/4.7 of Title 2, Division 3, Chapter 1, PRC 71200, CFR Title 33 Part 151, POLB Tariff No. 4, POLA Tariff No. 4). Discharged ballast water must meet SLC performance standards.

**Overview:** Vessels may take on, discharge, or redistribute ballast water during cargo loading and unloading, as they encounter rough seas, or as they transit through shallow waterways. As ballast is transferred from one distant location to another, so are thousands of organisms that are taken into the tanks along with the water. This process transfers organisms in ways that regular ocean currents would not. These organisms can establish themselves in new locations that have lower interspecies competition or predation and can have severe ecological, economic, and human health impacts in the receiving environment.

In California, ballast water discharge is regulated at the state level by the SLC and at the federal level by the U.S. Coast Guard. In general, the state regulations are stricter than the federal regulations. Regulations in force currently require open ocean exchange of ballast water for vessels that originate beyond the Exclusive Economic Zone or are transiting between west coast ports. The requirement for exchange is waived if the ship has an approved onboard treatment system or does not plan to discharge ballast water. Most ships do not need to discharge ballast water in the Ports because the net weight of cargo is greater on incoming ships than on outgoing ships. Because of this, they are more likely to take on ballast water. Ships are required to maintain a ballast water management plan and log ballast water intake and discharge.

The Ports, in cooperation with the SLC and the U.S. Coast Guard, are participating in a ballast water pilot program looking at the performance of specific treatment systems. There are a handful of experimental treatment systems that have been approved for full scale testing, but no system has been certified for general use.

**Required Action:** While in the Ports, vessels shall retain all ballast water onboard (POLB Tariff No. 4, POLA Tariff No. 4, SLC). The discharge of ballast water in the Ports is prohibited unless required for the safety of the vessel/crew (safety claim must be documented), or the vessel operator can provide documentation stating that the ballast water is clean and complies with all requirements of the SLC and the appropriate federal regulations.

Although the VGP and U.S. Coast Guard have identified ballast water requirements, the SLC has identified specific ballast water performance standards and management requirements that must be followed within California waters, including the Ports.

For more information, please refer to the SLC's Marine Invasive Species Program.

**Required BMPs:** The following BMPs are required by the SLC (PRC Sec. 71204).

- Discharge only the minimal amount of ballast water essential to operations.

- Minimize discharge and uptake in marine sanctuaries, marine preserves, marine parks, or coral reefs.
- Minimize or avoid uptake of ballast water in:
  - Areas with known infestations of nonindigenous organisms.
  - Areas near a sewage outfall.
  - Areas for which the master has been informed of the presence of a toxic algal bloom.
  - Areas of poor tidal flushing or high turbidity.
  - Periods of darkness when bottom dwelling organisms may rise up in the water column.
  - Areas where sediments have been disturbed (e.g., near dredging operations).
- Clean ballast tanks regularly in mid-ocean waters or in port or drydock.

In addition, the VGP requires the following ballast water BMPs (see VGP Sec. 2.2.3):

- Avoid the discharge of ballast water into waters subject to this permit that are within or that may directly affect marine sanctuaries, marine preserves, marine parks, shellfish beds, or coral reefs or other waters listed in Part 12.1 of the VGP.
- Minimize or avoid uptake of ballast water in the following areas and situations:
  - Areas known to have infestations or populations of harmful organisms and pathogens (e.g., algal blooms).
  - Areas near sewage outfalls.
  - Areas near dredging operations.
  - Areas where tidal flushing is poor or when a tidal stream is known to be more turbid.
  - In darkness when bottom dwelling organisms may rise up in the water column.
  - In shallow water or where propellers may stir up the sediment.
  - Areas with pods of whales, convergence zones, and boundaries of major currents.
- Clean ballast tanks regularly to remove sediments in mid-ocean or under controlled arrangements in port, or at drydock.
- No discharge of sediments from cleaning of ballast tanks is authorized in waters subject to this permit.
- Discharge only the minimal amount of ballast water essential for vessel operations while in the waters subject to this permit.

Suggested VGP measures to minimize the discharge of ballast water include, but are not limited to, transferring ballast water between tanks within the vessel in lieu of ballast water discharge. Another option is to use potable water for ballast.

### 3.3.9 Chain Locker Effluent

For vessels that leave U.S. waters (i.e. Ports) at least once per month, chain lockers may not be rinsed or pumped out within the Port or any other U.S. water unless required for safety (VGP Sec. 2.2.8). For all other vessels that remain in the Ports and do not leave waters subject to the VGP, chain locker effluent with visible pollutants must not be discharged into Port waters (POLA Tariff No. 4, POLB Tariff No. 4).

**Overview:** Chain locker effluent is water that collects in the below-deck storage area during anchor retrieval. A sump collects the liquids and materials that enter the chain locker and discharges it overboard or into the bilge tank. Chain locker effluent can contain marine organisms and residue such as rust, paint chips, grease, and zinc. When an anchor is onboard and not in use, the anchor chain is stored in the chain locker, which is often equipped with a sump that can accumulate marine organisms, as well as residue from the inside of the locker itself, such as rust, paint chips, grease, and zinc. The chain locker sump is emptied either directly overboard or is drained into the bilge tank for later disposal.

**Required Action:** The anchor chain must be carefully and thoroughly washed down (i.e., more than a cursory rinse) as it is being hauled out of the water to remove sediment and marine organisms at their place of origin. In addition, chain lockers must be cleaned thoroughly during drydocking to eliminate accumulated sediments and any potential accompanying pollutants. For vessels that regularly sail outside Port waters (waters subject to the VGP): If technically feasible, periodically clean, rinse, and/or pump out the space beneath the chain locker prior to entering the Ports (preferably mid-ocean) if the anchor has been lowered into any nearshore waters. Furthermore, for vessels that leave Port waters (waters subject to the VGP) at least once per month, chain lockers may not be rinsed or pumped out in the Ports, unless not emptying them would compromise safety. Such a safety claim must be documented in the vessel's recordkeeping documentation consistent with Part 4.2 of the VGP (VGP Sec. 2.2.8). For all other vessels that remain within the Ports and do not leave U.S. waters subject to the VGP, discharge of chain locker effluent must not contain any oil or other pollutants (POLB Tariff No. 4, POLA Tariff No. 4).



### 3.3.10 Seawater Piping Biofoul Prevention

No pesticides or chemicals banned for use in the United States may be discharged into the Ports. This includes any substance or material harmful to fish, plant life, mammals, or bird life (Fish and Game Code 5650). Removal of fouling organisms must not occur in the Ports (VGP Sec. 2.2.20).

**Overview:** Vessels that utilize seawater cooling systems introduce anti-fouling compounds (e.g., sodium hypochlorite) in their interior piping and component surfaces to inhibit the growth of fouling organisms. These anti-fouling compounds are then typically discharged overboard. To prevent biofouling of seawater cooling systems, small amounts of biocidal substances are sometimes injected near the seawater intakes to prevent biofouling by any organisms that may have been drawn in along with the cooling water. Seawater that has been discharged after being treated with chlorinating substances will contain free chlorine and reaction products (halamines, free bromine, and halogenated organics).

**Required Action:** Seawater piping biofouling chemicals subject to Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) registration (see 40 CFR 152.15) must be used in accordance with their FIFRA label. No pesticides or chemicals banned for use in the United States may be discharged into the Ports (VGP Sec. 2.2.20). Vessel owner/operators must use the minimum amount of biofouling chemicals needed to keep fouling under control. Discharges within the Ports must not contain any substance or material harmful to fish, plant life, mammals, or birds.

Removal of fouling organisms must not occur in the Ports (VGP Sec. 2.2.20). Vessel owner/operators must remove fouling organisms from seawater piping on a regular basis and dispose of removed substances in accordance with local, state, and federal regulations. Removed fouling organisms shall not be discharged in the Ports, and the EPA recommends that if discharged into waters, they should be discharged more than 50 nm from shore.

### 3.3.11 Anti-Fouling Leachate from Anti-Fouling Hull Coatings

The application of anti-fouling paint containing TBT or other organotins is prohibited within U.S. and international waters (IMO Resolution A.928(22)). If a vessel has previous hull coatings containing TBT, this coating must be covered by a non-organotin based product prior to entering the Ports (VGP Sec. 2.2.4).

**Overview:** Vessel hulls are often coated with anti-fouling compounds to prohibit the attachment and growth of aquatic life. Coatings are formulated for different conditions and purposes, and many contain biocides. Those that contain biocides prevent the attachment of aquatic organisms to the hull by continuously leaching substances that are toxic to aquatic life into the surrounding water. While a variety of different ingredients may be used in these compounds, the one most commonly used is copper. Copper can inhibit photosynthesis in plants and interfere with enzyme function in both plants and animals in concentrations as low as 4 µg/l. The Ports are currently impaired due to high levels of copper. Additional releases of these substances are caused by hull cleaning activities, particularly if hulls are cleaned within the first 90 days following application. A second metal-based biocide is organotin-based, typically tributyltin (TBT), which was historically applied to vessel hulls but is now prohibited in U.S. and international waters (IMO Resolution A.928(22)). TBT and other organotins cause deformities in aquatic life, including deformities that disrupt or prevent reproduction. TBT and other organotins are also stable and persistent and resist natural degradation in water bodies.

**Required Action:** The application of anti-fouling paint containing TBT or other organotins is prohibited. If a vessel has previous hull coatings containing TBT, this coating must be covered by a non-organotin-based product prior to entering the Port (VGP Sec. 2.2.4). This standard is consistent with the 1988 Organotin Anti-fouling Paint Control Act (33 U.S.C. 2403(a)) and the IMO Convention on the Control of Harmful Anti-fouling Systems on Ships, which became active on September 17, 2008.

While the Ports have not identified any specific restrictions on the type of anti-fouling coatings acceptable for use (other than prohibiting organotin based coatings), the VGP has specific requirements for vessels entering port waters due to impairments for copper. When vessels covered by the VGP spend considerable time in the Ports (defined as spending more than 30 days per year), or use either Port as their home port, vessel owner/operators shall consider using anti-fouling coatings that rely on a rapidly biodegradable biocide or another alternative rather than copper-based coatings (VGP Sec. 2.2.4). If after consideration of alternative biocides, vessel operators continue to use copper-based anti-foulant paints, they must document in their recordkeeping documentation how this decision was reached (VGP Sec. 2.2.4).

**Required BMPs:** The following BMPs are recommended to limit the amount of anti-fouling leachate.

- All anti-fouling hull coatings subject to registration under FIFRA (see 40 CFR 152.15) must be registered, sold or distributed, applied, maintained, and removed in a manner consistent with applicable requirements on the coatings' FIFRA label.
- For anti-fouling hull coatings not subject to FIFRA registration (i.e., not produced for sale and distribution in the United States), hull coatings must not contain any biocides or

toxic materials banned for use in the United States (including those on EPA's List of Banned or Severely Restricted Pesticides).

- At the time of initial application or scheduled reapplication of anti-fouling coatings, vessel operators must give consideration, as appropriate for vessel class and vessel operations, to the use of hull coatings with the lowest effective biocide release rates, rapidly biodegradable components (once separated from the hull surface), or non-biocidal alternatives, such as silicone coatings.

### 3.3.12 Underwater Hull Cleaning/Ship Husbandry Discharges

Underwater hull cleaning, including fouling removal, is prohibited on vessels with biocide-based antifouling coatings and is not recommended or preferred by the Ports on other vessels (SWRCB VGP Certification). Underwater ship husbandry/hull cleaning is allowed on vessels with non-biocide based antifouling coatings assuming all required rules, regulations, and BMPs, as identified by the EPA and the SLC, are followed (CCR Title 2, Division 3, Chapter 1, Article 4.8, SWRCB VGP Certification, VGP Sec. 2.2.23):

**Overview:** Underwater ship husbandry is grooming, maintenance, and repair activities of hulls or hull appendages completed while the vessel is located in the water, including hull cleaning, hull repair, fiberglass repair, welding, sonar dome repair, non-destructive testing, masker belt repairs, and painting operations. Underwater ship husbandry discharges are considered incidental to the normal operation of a vessel when ships are maintained in proper operating order and the cleaning is done on a reasonable schedule.

Fouling consists of organisms that attach or associate with the submerged portions of hard structures, including ships. These include physically attaching species, as well as mobile organisms that take shelter among attached organisms, such as worms, juvenile crabs, and amphipods (shrimp-like animals). When vessels move from port to port, fouling communities are transported along with their "host" structure. They may be introduced to new environments when they release eggs or young, or when they drop off the vessel. In certifying the VGP, the SWRCB identified a condition that prohibits underwater hull cleaning of vessels with biocide-based antifouling coatings in impaired waters of the state, due to the risk of copper or other pollutant loadings into such waters. Therefore, underwater hull cleaning of vessels with biocide-based antifouling paint is prohibited in the Ports. For more information refer to the State Water Boards website at [http://www.waterboards.ca.gov/water\\_issues/programs/beaches/](http://www.waterboards.ca.gov/water_issues/programs/beaches/).

**Required Action:** Underwater hull cleaning is prohibited on vessels with biocide-based antifouling coatings (SWRCB VGP Certification). The Ports recommend that underwater hull cleaning on vessels with non-biocide based antifouling coatings not occur while in Port waters. If such activities do occur, the following BMPs, as required by the SLC and the VGP, must be in place (SLC: Title 2, Division 3, Chapter 1, Article 4.8, VGP Sec. 2.2.23).

The POLB shall be notified prior to any in-water maintenance to ensure that appropriate BMPs will be used (POLB Tariff No. 4).

**Required BMPs:** The following requirements apply to underwater hull cleaning actions on non-biocide based vessels (VGP Sec. 2.2.23). Vessel owner/operators who remove fouling organisms from hulls while the vessel is waterborne must employ methods that minimize the discharge of fouling organisms and anti-fouling hull coatings. These shall include:

- Selection of appropriate cleaning brush or sponge rigidity to minimize removal of anti-fouling coatings and biocide releases into the water column.
- Limiting the use of hard brushes and surfaces to remove hard growth.

- When available and feasible, vacuum control technologies must be used to minimize the release or dispersion of anti-fouling hull coatings and fouling organisms into the water column.

The SLC also has specific rules and standards that must be followed when hull cleaning is permitted. These regulations can be found on the SLCs website under the Marine Invasive Species program ([http://www.slc.ca.gov/Regulations/Regulations\\_Home\\_Page.html#MarineInvasiveSpecies](http://www.slc.ca.gov/Regulations/Regulations_Home_Page.html#MarineInvasiveSpecies)).

### 3.3.13 Bilgewater

Bilgewater is prohibited from being discharged into Port waters (POLB Tariff No. 4, POLA Tariff No. 4, MARPOL).

**Overview:** Bilgewater consists of water and other residue that accumulates in a compartment of the vessel's hull. The source of bilgewater is typically drainage from interior machinery, engine rooms, and deck drainage. Constituents of bilgewater include seawater, oil, grease, volatile and semi-volatile organic compounds, inorganic salts, and metals.

**Required Action:** The POLA's Tariff No. 4 prohibits the discharge of any foul bilgewater or bilgewater containing: oil, spirits, combustible liquids, coal tar, refuse, residuary products of coal, petroleum, asphalt, bitumen, or other carbonaceous materials or substances. If such discharge occurs, it must be reported to the POLA, Port Police, and the U.S. Coast Guard and contained, cleaned up, and removed from the waters of the POLA.

Under POLB's Tariff No. 4, bilgewater is prohibited from being discharged into the POLB under all circumstances. If bilgewater is found to be discharging into the Port, the action must terminate immediately, and the responsible party must notify Harbor Patrol/Port Police and the U.S. Coast Guard. Under Tariff No. 4, the responsible party must immediately remove, or cause to be removed, the bilgewater to the satisfaction of the Executive Director. If the responsible party does not perform these actions, it will be invoiced for the removal.

In addition, large passenger vessels and oceangoing ships of 300 gross tons or larger found to be discharging bilgewater within waters of the State will be subject to administrative civil liabilities imposed by the SWRCB.

**Recommended BMPs:** Vessel operators can minimize bilgewater generation by practicing proper maintenance of vessel and equipment. Routine cleaning and maintenance activities associated with vessel equipment and structures are considered to be the normal operation of a vessel. Oily waste from the bilge (after running through an oily-water separator) must be disposed of onshore. Further, all overboard discharges of clean bilgewater (outside of the Ports) must be recorded in an oil record book, a required log that is regularly inspected by the U.S. Coast Guard.

### 3.3.14 Boiler/Economizer Blowdown

Vessels greater than 400 gross tons that leave the Ports at least once per week cannot discharge within 3 nm of the shore, unless:

- the vessel remains in the Ports for longer than the necessary duration between blowdowns,
- the vessel needs to conduct blowdown immediately before entering drydock, or
- for safety purposes (VGP Sec. 2.2.6).

**Overview:** Boiler blowdown occurs on vessels with steam propulsion or a steam generator to control anti-corrosion and anti-scaling treatment concentrations and to remove sludge from boiler systems. The blowdown involves releasing a volume of 1 percent – 10 percent of water from the boiler system, usually below the waterline. The constituents of boiler blowdown discharge vary according to the types of feedwater treatment used but may include priority pollutants such as antimony, arsenic, cadmium, copper, chromium, lead, nickel, selenium, thallium, zinc, and bis (2-ethylhexyl) phthalate. Discharge volumes are typically less than 300 gallons, but the discharge, which consists of steam, water, and sludge, occurs under high pressure ( $\leq 1200$  psi) and at a high temperature ( $> 325^\circ$  F) below the water line.

**Required Action:** The EPA has specified that vessels greater than 400 gross tons that leave the territorial seas (including the Ports) at least once per week cannot discharge within 3 nm of shore, except when the vessel remains in waters subject to this permit for longer than the necessary duration between blowdowns, the vessel needs to conduct blowdown immediately before entering drydock, or for safety purposes (VGP Sec. 2.2.6).

### 3.3.15 Elevator Pit Effluent

**Discharges of untreated elevator pit effluent are prohibited within Port waters (VGP Sec. 2.2.11, POLA Tariff No. 4, POLB Tariff No. 4).**

**Overview:** Large vessels with multiple decks are often equipped with elevators to facilitate the transportation of maintenance equipment, people, and cargo between decks. A pit at the bottom of the elevator shaft collects liquids and debris from elevator operations and may include oil and hydraulic fluid. Pits can be emptied by gravity draining, discharge using the firemain, transfer to bilgewater systems, or containerized for onshore disposal.

**Required Action:** Discharges of untreated elevator pit effluent are prohibited within the Ports except in cases of emergency due to its potential to contain oil and other prohibited materials. If discharge does occur during an emergency, Harbor Patrol/Port Police and the U.S. Coast Guard must be notified to determine whether oil was released, and the situation must be documented in the ship's log or other recordkeeping documentation consistent with Part 4.2 of the VGP.



### 3.3.16 Gas Turbine Wash Water

Gas turbine washwater must not be directly discharged within the Ports (Fish and Game Code 5650). Washwater should be collected and properly disposed of onshore (VGP Sec. 2.2.14).

**Overview:** Gas turbines are used for propulsion and electricity generation. Occasionally, they must be cleaned to remove byproducts that can accumulate and affect their operation. These byproducts include salts, lubricants, and combustion residuals. The wastewater from the cleaning process may include cleaning compounds as well. Due to the nature of the materials being cleaned, there is a higher probability of heavy metal concentrations.

**Required Action:** Gas turbine washwater must not be directly discharged within the Ports. Where feasible, such washwater should be collected separately and properly disposed of onshore. Under no circumstances may oils, including oily mixtures, from gas turbine washwater be discharged in the Ports (POLA Tariff No. 4, POLB Tariff No. 4).

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### 3.3.17 Motor Gasoline and Compensating Discharge

The discharge of motor gasoline and compensating effluent that comes into contact with oil is prohibited in the Ports (POLA Tariff No. 4, POLB Tariff No. 4).

**Overview:** Motor gasoline is transported on vessels to operate vehicles and other machinery. As the fuel is used, ambient water can be added to the fuel tanks to replace the weight. This ambient water is discharged when the vessel refills the tanks with gasoline or when maintenance is performed and can contain residual oils. Most vessels are designed not to have motor gasoline and compensating discharge.

**Required Action:** Motor gasoline and compensating effluent that comes into contact with oil is prohibited from discharge in the Ports (POLA Tariff No. 4, POLB Tariff No. 4). Clean effluent that is free of oil and other pollutants may be discharged in the Ports; however, the Ports and EPA request that vessels minimize the discharge of motor gasoline and compensating effluent while in Port (VGP Sec. 2.2.16). Determination of oil concentration may be measured by EPA Method 1664 or other appropriate method for determination of oil content as accepted by the IMO (e.g. ISO Method 9377) or U.S. Coast Guard. Visual monitoring for an oily sheen can also be used to determine if the discharge may contain oil. If the discharge does contain oil but must be removed from the vessel, the effluent may be discharged to a mobile carrier for proper onshore disposal.

In the event that illicit discharge does occur, Harbor Patrol/Port Police and the U.S. Coast Guard must be contacted immediately.

### 3.3.18 Welldeck Discharges

Welldeck discharges that contain graywater from smaller vessels shall not be discharged within Port waters except in cases of emergency. Welldeck discharges from washdown of gas turbine engines may not be discharged within the Ports. Welldeck discharges from equipment and vehicle washdowns must be free from garbage and must not contain oil (VGP Sec. 2.2.24, POLB Tariff No. 4, POLA Tariff No. 4, Fish and Game Code 5650).

**Overview:** The welldeck is a floodable platform used for launching or loading small satellite vessels, vehicles, and cargo. Welldeck discharges may include water from precipitation, welldeck and storage area washdowns, equipment and engine washdowns, and leaks and spills from stored machinery. Potential constituents of welldeck discharges include fresh water, distilled water, firemain water, graywater, air-conditioning condensate, sea-salt residues, paint chips, wood splinters, dirt, sand, organic debris and marine organisms, oil, grease, fuel, detergents, combustion by-products, and lumber treatment chemicals.

**Required Action:** Welldeck discharges that contain graywater from smaller vessels shall not be discharged within Port waters except in cases of emergency. Welldeck discharges from washdown of gas turbine engines may not be discharged within the Ports. Welldeck discharges from equipment and vehicle washdowns must be free from garbage and must not contain oil (VGP Sec. 2.2.24, POLA Tariff No. 4, POLB Tariff No. 4, Fish and Game Rule 5650).

**Required BMPs:** Vessel operators shall practice good housekeeping to ensure that no garbage or wastes that can cause a visible sheen are discharged from welldecks. Should these wastes be present, the vessel operator must retain the discharge for onshore disposal.

### 3.3.19 Exhaust Gas Scrubber Washwater Discharges

Exhaust gas scrubber washwater discharge must not contain oil (POLA Tariff No. 4, POLB Tariff No. 4). Sludge generated from exhaust gas scrubber washwater discharge must not be discharged in the Ports (VGP Sec. 2.2.26, 40 CFR Part 110).

**Overview:** Exhaust gas scrubber washwater discharge (EGS washwater discharge) occurs as a result of operating or cleaning the exhaust gas cleaning systems (e.g. scrubbers) for marine diesel engines. After the washing solution is returned from the scrubber, the washwater can be treated and discharged overboard, or alternatively, it can be piped to a clean bilgewater tank or other suitable holding tanks. While many of the captured contaminants (sludge) are transferred to the vessel's sludge tank, the constituents of EGS washwater discharge can include residues of nitrogen oxides, sulfur oxides, and particulate matter emissions captured by the scrubbers. EGS washwater discharge can also contain traces of oil, polycyclic aromatic hydrocarbons, heavy metals, and nitrogen. Depending on the geographic location of the EGS washwater discharge, the pH level and turbidity of the receiving water may be altered.

**Required Action:** EGS washwater discharge must not contain oil (POLA Tariff No. 4; POLB Tariff No. 4). Sludge generated from exhaust gas scrubber washwater discharge must not be discharged in the Ports (VGP Sec. 2.2.26).

**Recommended BMPs:** In addition, it is recommended that owner/operators of vessels with exhaust gas cleaning systems that result in washwater discharges follow the guidelines set out in Section 10 of the Marine Environmental Protection Committee's (MEPC) guidelines for exhaust gas cleaning systems, which includes recommended limits for pH, polycyclic aromatic hydrocarbons, turbidity, nitrates, and washwater additives (IMO Resolution MEPC.170 (57)).

### 3.3.20 Boat Engine Wet Exhaust

Vessel operators are asked to minimize the use of small vessels generating wet exhaust while in the Ports to those activities required for the safety of the vessel and/or crew. Vessel operators are encouraged to consider the use of 4-stroke engines as opposed to 2-stroke engines to reduce wet exhaust (VGP Sec. 2.2.21).

**Overview:** Wet exhaust can contain nitrogen oxides, sulfur dioxide, hydrocarbons and other organic compounds, carbon monoxide, and particulates.

**Required Action:** Vessels generating wet exhaust must be maintained in good operating order, well-tuned, and functioning according to manufacturer specifications if available to decrease pollutant contributions to wet exhaust (VGP Sec. 2.2.21). Vessel owner/operators should use low sulfur or alternative fuels for their vessels to reduce the concentration of pollutants in their discharge, if possible.

Vessel operators are encouraged to consider 4-stroke versus 2-stroke engines for vessels generating wet exhaust that are covered under the VGP. Some harbor craft will also be required to follow the California Air Resources Board (CARB) Executive Order R-08-007 to reduce emissions related to harbor craft. This regulation will require the gradual phasing out of specific engine tiers. Refer to the CARB for more information.

### 3.3.21 Distillation and Reverse Osmosis Brine

Brine from the distillation system and reverse osmosis water that comes in contact with machinery or industrial equipment, toxic or hazardous materials, or wastes shall not be discharged in the Ports (VGP Sec. 2.2.10).

**Overview:** Discharges of brine can occur from onboard plants that distill seawater or utilize reverse osmosis to generate fresh water. Distillation effluent may be at elevated temperatures and may contain anti-scaling treatment, acidic cleaning compounds, or metals. Reverse osmosis effluent is concentrated brine. Onboard distillation and reverse osmosis systems discharge is essentially concentrated seawater with the same constituents of seawater, including dissolved and suspended solids and metals. Anti-scaling treatments and anti-foaming and acidic cleaning compounds may be injected into the distillation system.

**Required Action:** Distillation and reverse osmosis brine that has not come in contact with machinery or industrial equipment, toxic or hazardous materials, or wastes may be discharged in the Ports in quantities small enough to allow appropriate dilution. It is recommended that general release should occur where the brine can be appropriately diluted by the receiving water (VGP Sec. 2.2.10). Brine from the distillation and reverse osmosis processes must not contain or come in contact with machinery or industrial equipment, toxic or hazardous materials, or wastes. If brine does become contaminated by such materials, the brine must be pumped out and disposed of properly onshore.

### 3.3.22 Freshwater Layup

Vessel operators shall minimize the amount of disinfection agents used in freshwater layup to the minimum required to prevent aquatic growth (VGP Sec. 2.2.13).

**Overview:** Seawater cooling systems condense low-pressure steam from propulsion plant or generator turbines on some vessels. When a vessel is pierside or in port for more than a few days, the main steam plant is shut down, and the condensers do not circulate. This can cause an accumulation of biological growth within the system; consequently, a freshwater layup is carried out by replacing the seawater in the system with potable (in the case of the Ports) waters. The freshwater remains stagnant for two hours before being blown overboard using pressurized air. After this, the condensers are considered flushed and are then refilled for the actual layup. After 21 days, this fillwater is discharged and replaced. This is done on a 30-day cycle thereafter. Freshwater layup discharges residual saltwater, freshwater, tap water, and metals leached from the pipes or machinery into the environment.

**Required BMPs:** Minimize the amount of disinfection agents used in freshwater layup to the minimum required to prevent aquatic growth (VGP Sec. 2.2.13).

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### 3.3.23 Non-Oily Machinery Wastewater

Non-oily machinery wastewater shall not be discharged in the Ports if it becomes contaminated by oil or any additives that are toxic or bioaccumulative in nature (POLB Tariff No. 4, POLA Tariff No. 4, VGP Sec. 2.2.17).

**Overview:** Non-oily machinery wastewater systems are intended to keep wastewater from machinery that contains no oil separate from wastewater that has oil content. Vessels can have numerous sources of non-oily machinery wastewater, including distilling plants' start-up discharge, chilled water condensate drains, fresh and saltwater pump drains, potable water tank overflows, and leaks from propulsion shaft seals. Constituents of non-oily machinery wastewater discharge include a suite of conventional pollutants, metals, and organics. Many of the specific constituents in the discharge can exceed water quality criteria, including copper, nickel, silver, zinc and a collection of nutrients. Mercury also may be present.

**Required Action:** Non-oily machinery wastewater shall not be discharged in the Ports if it becomes contaminated by oil or any additives that are toxic or bioaccumulative in nature (POLB Tariff No. 4, POLA Tariff No. 4, VGP Sec. 2.2.17). Non-oily machinery wastewater may also be drained to the bilge and treated as such.



### 3.3.24 Refrigeration and Air Condensate Discharge

Clean condensation discharge is allowed in the Ports (VGP Sec. 2.2.18).

**Overview:** Condensation from cold refrigeration or evaporator coils of air-conditioning systems drips from the coils and collects in drip troughs that typically channel to a drainage system. Condensate discharge may contain detergents, seawater, food residue, and trace metals.

**Required Action:** Clean condensation discharge, free of oil or other toxins, is allowed in the Ports. If condensate is discharged, it must not come into contact with oily or toxic materials. To ensure this does not occur, vessel crews must follow good housekeeping procedures on the deck and properly remove any oil or toxic substance on the deck following any spill or leak. Condensation discharge cannot contain any pollutants that could be harmful to water quality (Fish and Game Code 5650).

### 3.3.25 Seawater Cooling Discharge

When possible, seawater cooling water should be discharged when the vessel is underway so that any thermal impacts are dispersed (VGP Sec. 2.2.19). If it must be discharged in the Ports, the discharge rate shall be reduced to minimize thermal impacts to the Port waters and ensure that the discharge does not contain trace metals or oils. If oils or metals are present, the discharge is prohibited in the Ports (POLB Tariff No. 4, POLA Tariff No. 4).

**Overview:** Seawater cooling systems use ambient water to absorb the heat from heat exchangers, propulsion systems, and mechanical auxiliary systems. The water is typically circulated through an enclosed system that does not come in direct contact with machinery but still may contain sediment from water intake, traces of hydraulic or lubricating oils, and trace metals leached or eroded from the pipes within the system. Cooling water also can reach high temperatures, with the thermal difference between seawater intake and discharge typically ranging from 5°C to 25°C, with maximum temperatures reaching 140°C.

**Required Action:** To reduce the production and discharge of seawater cooling overboard discharge, it is recommended that vessel owner/operators use shore-based power when the vessel is in port. Under the Clean Air Action Plan (CAAP), the Ports are working with terminal operators to install shore-side power. Currently, both Ports offer shore-side power at select berths.

### 3.3.26 Sonar Dome Discharge

The water inside the sonar dome shall not be discharged into the Ports (VGP Sec. 2.2.22).

**Overview:** Sonar domes are generally found on research vessels. As such, this discharge prohibition applies to a select group of vessels. Water is used to maintain the shape and pressure of domes that house sonar detection, navigation, and ranging equipment. Discharges occur when the water must be drained for maintenance or repair or from the exterior of the sonar dome. Maintenance on the sonar dome, while typically done while a vessel is in drydock, can involve the release of the inner sonar dome water.

**Required Action:** The water inside the sonar dome shall not be discharged into Port waters (VGP Sec. 2.2.22). Vessel operators should not use biofouling chemicals that are bioaccumulative for the exterior of sonar domes when other viable alternatives are available (VGP Sec. 2.2.22, please see 3.3.11 of this document).

### 3.3.27 Graywater

Discharge of graywater is prohibited within the Ports from large passenger vessels (i.e. cruise ships) and from those oceangoing vessels 300 gross tons or larger with adequate holding capacity (California Clean Coast Act of 2005 PRC 72400, VGP Sec. 2.2.15).

**Overview:** Graywater means drainage from dishwasher, showers, baths, sinks, and laundry facilities, but does not include drainage from toilets, urinals, hospitals, or cargo spaces. Graywater can contain high levels of pathogens, nutrients, soaps and detergents, and organics. Untreated graywater is much more likely to cause environmental impact when it is generated in large volumes (i.e., from cruise ships). Some vessels have the capacity to collect and store graywater for later treatment and disposal. Those that do not have graywater holding capacity continuously discharge it. Releasing large volumes of untreated graywater in nearshore environments, such as within the Port, is likely to cause negative environmental impacts. This is because these environments are likely to have higher vessel traffic and, therefore, greater graywater generation and discharge; are more likely to be stressed by other anthropogenic forces; and are likely to have less ability for dilution and assimilative capacity.

**Required Action:** Discharge of graywater is prohibited within the Ports for those vessels (excluding cruise ships) with sufficient onboard holding capacity. Graywater must remain onboard until such vessels are at least 3 nm from the California coast (California Clean Coast Act, PRC 72400, VGP Sec 2.2.15). Vessels that do not travel more than 3 nm from shore shall minimize the discharge of graywater and, provided the vessel has available graywater storage capacity, must dispose of graywater on shore if appropriate facilities are available and such disposal is economically practicable and achievable (VGP Sec. 2.2.15).

For those vessels (excluding cruise ships) that do not have adequate graywater holding capacity, discharge within the Ports must be minimized.

Cruise ships are prohibited from discharging graywater in the Ports, regardless of the vessels holding capacity. Graywater discharge from cruise ships are prohibited within 3 nautical miles of the coast (California Clean Coast Act of 2005, PRC 72400(b)).

Further, the VGP has identified graywater management requirements for large ferries (VGP Sec. 5). These requirements (see below) apply to ferries (without overnight berths) that do not travel more than 3 nm from the California coast or do not have holding capacity (California Clean Coast Act of 2005, VGP Sec. 5).

**Required BMPs:** The following BMPs apply to all vessels capable of generating graywater (VGP Sec. 2.2.15). These BMPs are designed to reduce the impact graywater has on the marine environment.

- The introduction of kitchen oils must be minimized to the graywater system. When cleaning dishes, you must remove as much food and oil residue as practicable before rinsing dishes. Oils used in cooking shall not be added to the graywater system. Oil from the galley and scullery shall not be discharged in quantities that may be harmful as defined in 40 CFR Part 110.

- Vessel owner/operators must use phosphate-free and non-toxic soaps and detergents for any purpose if they will be discharged into the Ports. These detergents must be free from toxic or bioaccumulative compounds and not lead to extreme shifts in receiving water pH.
- With the exception of cruise ships and oceangoing ships 300 gross tons or larger that have adequate holding tank capacity which are already prohibited from discharging graywater, all other vessels must minimize the discharge of graywater while in port.
  - For those vessels that cannot store graywater, the owner or operator and their crews should minimize the production of graywater in port.

**Large Ferries**

Large Ferry means a ferry that: a) has a capacity greater than or equal to 100 tons of cargo, e.g., for cars, trucks, trains, or other land-based transportation, or b) is authorized by the U.S. Coast Guard to carry 250 or more people (without overnight berths). Large ferries authorized by the U.S. Coast Guard to carry 250 or more people must meet the requirements of section 5.3.2.2 of the VGP (Graywater management). The following applies to large ferries that do not have adequate graywater holding capacity.

**Pierside Limits:** While pierside, appropriate reception facilities for graywater must be used, if reasonably available. If such facilities are not reasonably available, graywater must be held if the vessel has the holding capacity, and the effluent must be discharged while the vessel is underway. Appropriate reception facilities are those authorized for use by the port authority or municipality and that treat the discharge in accordance with its NPDES permit.

**Operational Limits:**

If operating within 3 nm from shore, discharges of graywater must be released while the ferry is sailing at a speed of at least 6 knots, if feasible.

### 3.3.28 Sewage

**The discharge of sewage (treated or untreated) is prohibited within the Ports (California No Discharge Zone).**

**Overview:** Human sewage (blackwater) discharged from vessels contains bacteria, chemicals and nutrients that can degrade local water and can overload confined, poorly flushed waterways. Vessel sewage carries microorganisms that can contaminate water and sediment, leading to unsafe levels of bacteria. Further, sewage can also contain chemical products used in onboard marine sanitation devices (MSDs), such as chlorine and formaldehyde. The State of California applied for and received approval to establish a statewide No Discharge Zone for sewage. As such, the discharge of sewage, whether treated or untreated, is prohibited within California waters (including the POLB and the POLA). This rule prohibits sewage discharge from the following vessels: all large passenger vessels of 300 gross tons or greater and large oceangoing vessels of 300 gross tons or greater with available holding tank capacity or containing sewage generated while the vessel was outside of the marine waters of the State of California.

**Required Action:** The discharge of sewage in the Ports is prohibited (California No Discharge Zone) for passenger vessels of 300 gross tons and oceangoing vessels of 300 gross tons with holding tank capacity or containing sewage generated while the vessel was outside of California marine waters.

## SECTION 4: References

Environmental Protection Agency. 2009. Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels.

Lyons, J.M. and S. Birosik. 2007. Water Quality in the Dominguez Channel and Los Angeles/Long Beach Harbor Watershed Management Area Under the Surface Water Ambient Monitoring Program Fiscal Year 2002-2003. California Regional Water Quality Control Board, Los Angeles Region.

EXHIBIT G-2

OPERATIONAL MITIGATION MEASURES

See attached document entitled,

“Mitigation Monitoring and Reporting Program  
USS IOWA PROJECT  
Environmental Impact Report”

Dated: May 2012



**MITIGATION MONITORING AND  
REPORTING PROGRAM**

**USS IOWA PROJECT**

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**ENVIRONMENTAL IMPACT REPORT (EIR)**

*Prepared by:*  
**ENVIRONMENTAL MANAGEMENT DIVISION  
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May 2012

*Also available online at:*

[http://www.portoflosangeles.org/environment/public\\_notices.asp](http://www.portoflosangeles.org/environment/public_notices.asp)

# Table of Contents

<b>Section 1</b>	<b>Mitigation Monitoring and Reporting Program</b>	<b>3</b>
	Introduction	3
	Project Overview	3
	Existing Conditions	4
	Proposed Project Description	8
	Relationship to Existing Plans	9
	Monitoring and Reporting Procedures	10
	Mitigation Monitoring and Reporting Implementation	10
<b>Section 2</b>	<b>Mitigation Monitoring and Reporting Program Summary</b>	<b>11</b>
<b>Table 1</b>	<b>Mitigation Monitoring and Reporting Program Summary</b>	<b>11</b>

## Section 1

# Mitigation Monitoring and Reporting Program

### Introduction

Assembly Bill 3180 (AB 3180) codified in Section 21081.6 of the California Public Resources Code, became effective January 1, 1989, and requires a Lead or Responsible Agency to adopt a mitigation monitoring and reporting program (MMRP) when approving or carrying out a project. The purpose of this program is to ensure that when an environmental document, either an EIR or a negative declaration, identifies measures to reduce potential adverse environmental impacts to less than significant levels that those measures are implemented as detailed in the environmental document. As lead agency for the Project, and pursuant to AB 3180, the Los Angeles Harbor Department (LAHD) is responsible for implementation of this MMRP.

An Environmental Impact Report (EIR) has been prepared for the proposed Project that addresses the potential environmental impacts, and where appropriate, recommends measures to mitigate these impacts. As such, this MMRP is required to ensure that adopted mitigation measures are successfully implemented and a monitoring strategy was prepared for each mitigation measure. Once the Board of Harbor Commissioners adopts the MMRP, the LAHD will incorporate the mitigation monitoring/reporting requirements in the appropriate permits (i.e., engineering specifications, engineering construction permits, real estate entitlements, and/or coastal development permits). Therefore, in accordance with the aforementioned requirements, this document lists each mitigation measure, describes the methods for implementation and verification, and identifies the responsible party or parties as detailed below in the MMRP Implementation section.

### Project Overview

The USS *Iowa* Project (project) includes the relocation of ex-USS *Iowa* (BB-61) battleship from San Francisco to the Port of Los Angeles, placing her at existing Berth 87 for use as a museum/educational facility. This exhibit would be for the public to learn and explore the history of US Navy battleships, the USS *Iowa*, the *Iowa*-class battleships and their characteristics, service history, and crew. The proposed project includes the transport of USS *Iowa* from San Francisco Bay to the selected hull cleaning location off the coast of Los Angeles, and into the Port of Los Angeles by tugboat; year-round mooring of the battleship at Berth 87 in the North Harbor area of the Port of Los Angeles; use of an existing parking lot in a shared arrangement with other Port attractions; placement of temporary structures to include the delivery and set up of a prefabricated 480 sq. ft. single-story Ticket Booth/Office, a prefabricated

480 sq. ft. single-story Restroom facility, and two prefabricated Entry Platforms to accommodate access and egress from the USS *Iowa*; construction of an approximately two-story 33,800 sq. ft. footprint landside Visitor Center (Education Center, Museum, Ticketing, Restrooms, Gift Shop, Offices) during Phase 2, and; ongoing operations and maintenance. Phase 2 would include the removal of all temporary structures to be replaced by the permanent Visitors Center when funding is available. Phase 2 is anticipated to occur within 6 to 8 years after the completion of Phase 1.

### Project Objectives

The Los Angeles Harbor Department operates the Port under legal mandates such as the Port of Los Angeles Tidelands Trust (Los Angeles City Charter, Article VI, Sec. 601) and the Coastal Act (PRC Div 20 Section 30700 et seq.), which identify the Port and its facilities as a primary economic/ coastal resource of the state and an essential element of the national maritime industry for promotion of commerce, navigation, fisheries and harbor operations. According to the Tidelands Trust, Port related activities should be water dependent and should give highest priority to navigation and shipping, as well as provide necessary support and access facilities for accommodating the demands of foreign and domestic waterborne commerce.

The overall purpose of the proposed Project is to provide a historic attraction at the LA waterfront for the public to enjoy which would in turn boost the local economy.

### CEQA Objectives

CEQA Guidelines (Section 15124[b]) require that the project description contain a statement of objectives, including the underlying purpose of the proposed Project. The proposed Project is intended to fulfill the overall project purpose of the Port. The CEQA project objectives are described below.

- Bring the USS *Iowa* to the Port, and place her at Berth 87 for year-round mooring; and,
- Prepare and fit the battleship as a tourist attraction, offering an interactive public experience that honors the historic contributions of USS *Iowa* and her crews. The history and technology of the battleship will provide the basis for educational programs teaching lessons in history, battleship design, mathematics, physics, science, leadership, team-building, character development, and community service.

## **Existing Conditions**

### Port of Los Angeles, Berth 87

The Port is located in San Pedro Bay near the San Pedro community of the City of Los Angeles. The Port is 20 miles south of downtown Los Angeles and encompasses 7,500 acres of land and water along 43 miles of waterfront. The Port has 270 berths, 75 container cranes, 17 marinas with 3,800 boat slips, and over 20 terminals. This gateway to international commerce is also

known as "America's Port" due to its reputation of moving more containers than any other port in the nation. The Port is deeply committed to promoting sustainability and known worldwide for their environmental leadership.

The Port was once used as a U.S. Navy Base from 1919 until after WWII. The Port became known as "Battleship Country" as the battleship fleet was stationed here in Los Angeles during most of the 20th century. The location at Berth 87 offers the best visibility within the Port as it is adjacent to the cruise ship terminal which supports over 1 million cruise passengers each year.

Last year, the Port approved the \$1.2 billion dollar San Pedro Waterfront (SPW) Development Plan which will bring more tourist and regional residents to the Port area. Nearby Berth 87 lies north of the destination of restaurants and shops known as Port's of Call (or Port's O'Call). Revitalization plans of this area include complete redevelopment of all buildings and the addition of a 60,000 sq. ft. conference hall. Several maritime and military museums including the Los Angeles Maritime Museum, the S.S. Lane Victory, and the Fort MacArthur Museum exist within the area. Berth 87 is easily reached from the 110 freeway at the west side of the Vincent Thomas Bridge.

Project activity will be focused at Berth 87 within an area encompassing approximately 4.5 acres; which is bordered by the Main Channel on the east and Harbor Boulevard on the west. Refer to Exhibit 4, Berth 87 and Proposed Site Plan. Berth 87 contains an existing parking lot and is currently used for temporary cargo and cruise ship docking. The Maritime Museum is located to the south and a cruise ship terminal and the S.S. Lane Victory to the north of Slip 93. Container ships and cranes are located across the water. No dredging will be necessary as water depths are adequate at this site ranging from 38 feet on the pier side to 55 feet on the channel side.

A Navy fuel surge line runs through the project site at Berth 87. It requires a setback of 8 feet on each side, for a total easement of 16 feet in width. No permanent structures, such as the Visitor Center, may be placed on the surface of the land above the surge line while it is active and in use. Thus, prior to the construction of the Visitor Center, the fuel line would have to be realigned or capped. Refer to Exhibit 4, Berth 87 and Proposed Site Plan, for the location of the existing surge lines and project setbacks.

### Project Background

The USS *Iowa* is the lead battleship of the *Iowa*-class battleships. The USS *Iowa* was built at the New York Navy Yard, Brooklyn, New York and commissioned in February 1943. The USS *Iowa* was the U.S. Navy's first new World War II era battleship whose design was not encumbered by treaty limits and is the namesake of the four *Iowa*-class battleships. She was a new, "fast battleship", intended to protect aircraft carriers against the threat of similar Japanese "big-gun" ships. She was known as President Franklin D. Roosevelt's "Big Stick".

The USS *Iowa* spent her initial service in the Atlantic and carried President Franklin D. Roosevelt to and from Casablanca, Morocco, in November 1943. Early in January 1944, the USS *Iowa* was sent to the Pacific where she took part in the Marshalls Campaign and campaigns to capture the Marianas, the Palaus, the Battles of the Philippine Sea and Leyte Gulf, Okinawa and the surrender of Japan in Tokyo Bay. The USS *Iowa* next served in the Korean War. The battleship was then modernized under the 1980s defense buildup and re-commissioned in April 1984. She went to European waters during the 1980s, with the latter cruise continuing into the Indian Ocean and Arabian Sea. The USS *Iowa* was decommissioned for the last time in October 1990.

The USS *Iowa* was one of approximately 50 ships (as of April 2011) docked in Suisun Bay in Benicia, California, in the United States Maritime Administration's (MARAD) National Defense Reserve Fleet (NDRF), also known as the "mothball fleet" or the "ghost fleet". The NDRF was established under Section 11 of the Merchant Ship Sales Act of 1946 to serve as a reserve of ships for national defense and national emergencies. In the 1950s, the NDRF held over 2,000 ships at eight locations in the US. Ships from the NDRF have been reactivated and used in recent emergencies such as Hurricane Katrina and the earthquakes in Haiti. The USS *Iowa* is the only battleship remaining in the NDRF, which mostly consists of navy supply ships. The USS *Iowa* is held under the "custody vessel" category where ships are held on a reimbursable basis for other agencies, such as the U.S. Navy and U.S. Coast Guard.

The USS *Iowa* is the last battleship of her kind available for donation. There are no battleships currently located on the West Coast of the United States available for public tours. The USS Midway open for public tours in San Diego is an aircraft carrier. Today, seven battleships are available to visit in the United States: four on the east coast, two on the Gulf coast, and one in Hawaii. Congress has stipulated that the USS *Iowa* must reside in the State of California as a resource to West Coast populations. This is also supported by Port of Los Angeles Resolutions: Determining the Availability of Berth 87 for the USS *Iowa* (November 16, 2010) and Staff Response to the Port of Los Angeles Community Advisory Committee Recommendation Nos. 104 and 105 Regarding Locating the USS *Iowa* at Berth 87 (March 30, 2011).

The USS *Iowa* offers a unique educational experience. This battleship has been a vital part of some of the Nation's most important historical events. It represents the pride and determination of a generation of Americans to meet the intense challenges of World War II, the Korean War and succeeding conflicts in Europe and the Middle East.

### Suisun Bay

Suisun Bay (Bay) is located in Benicia, California, northeast of San Francisco Bay through the Carquinez Strait and San Pablo Bay. Suisun Bay is approximately 26 miles northeast of downtown San Francisco. Since the 1940s, the Bay has been the home to decommissioned US

Navy ships known as the Suisun Bay Reserve Fleet (SBRF), part of the greater National Defense Reserve Fleet (NDRF).<sup>1</sup>

Environmentalists have been concerned about toxins leaching into the bay from the ships in the SBRF including paint chemicals and metals; however, a study conducted by the National Oceanic and Atmospheric Administration (NOAA) in February 2009 concluded that sediments have a low to moderately low potential for toxicity to benthic invertebrates (such as clams and mussels). In the project area, 18% of the surface sediment grab samples contained such debris or paint chips, which is expected when observing the paint wearing off of the ships. NOAA did not find polychlorinated biphenyls (PCBs) or polycyclic aromatic hydrocarbons (PAHs) in the project area at concentrations that exceeded sediment quality guidelines or ambient values. There were some instances where concentrations of arsenic, copper, lead, and chromium observed across the project area were elevated relative to ambient values reported for other parts of San Francisco Bay.<sup>2</sup>

### Port of Richmond

The USS *Iowa* was transported from Suisun Bay to the Port of Richmond. The traveling distance from the Suisun Bay to the Port of Richmond is approximately 30 miles. At this Port, work on the USS *Iowa* included painting of the exterior of the ship from the waterline to the top and replacement of the mast structure, radar arrays, and forward wood deck (from approximately mid-ship forward to the anchor/windlass).

### Pacific Battleship Center

PBC is a non-profit organization formed to acquire the USS *Iowa* through donation from the US Navy and operate the tourist attraction and landside visitor center in the Port of LA. PBC has support from numerous volunteers and veterans. At this time, the PBC is awaiting US Navy approval for donation of the battleship. The conditional award has been granted and is contingent upon the PBC Compliance Agreement from EPA Region 9 and Navy NEPA Compliance. The PBC would accept the battleship from the Navy under the condition that it could be called to duty and must remain "battle ready". PBC is also seeking a lease for the project from the Port. The initial lease will be for a term of 10 years with options for renewal to be determined in accordance with Port leasing policies. For analysis purposes, this EIR conservatively assumes operations for a duration of 30 years.

<sup>1</sup>U.S. Department of Transportation, Maritime Administration, National Defense Reserve Fleet.  
[http://www.marad.dot.gov/ships\\_shipping\\_landing\\_page/national\\_security/ship\\_operations/national\\_defense\\_reserve\\_fleet/national\\_defense\\_reserve\\_fleet.htm](http://www.marad.dot.gov/ships_shipping_landing_page/national_security/ship_operations/national_defense_reserve_fleet/national_defense_reserve_fleet.htm)

<sup>2</sup>National Oceanic and Atmospheric Administration (NOAA), *Assessment of Environmental Contaminants Associated with the National Defense Reserve Fleet in Suisun Bay, California* (February 2009).  
[http://response.restoration.noaa.gov/book\\_shelf/1845\\_ReportText\\_SuisunBayReportFinal.pdf](http://response.restoration.noaa.gov/book_shelf/1845_ReportText_SuisunBayReportFinal.pdf)

## Proposed Project Description

The USS *Iowa* project consists of the following elements:

- Preparation and transport of the USS *Iowa* from San Francisco Bay to the Port of LA;
- Off-shore hull cleaning;
- Mooring the battleship at Berth 87 in the North Harbor area of the Port of Los Angeles;
- Delivery and set up of a prefabricated 480 sq. ft., single-story Office/Ticket Booth;
- Delivery and set up of a prefabricated 480 sq. ft., single-story Restroom facility;
- Delivery and set up of two prefabricated Entry Platforms to accommodate access and egress from the USS *Iowa*;
- Construction of an approximately two-story 33,800 sq. ft. footprint landside Visitor Center during Phase 2, and;
- Ongoing operations and maintenance.

### Preparation and Transport

The USS *Iowa* would be transported from San Francisco Bay to the Port of Los Angeles by a single ocean-going tug boat, according to a Navy approved tow plan. The battleship will make a brief stop offshore for hull cleaning before entering the Port of Los Angeles to avoid the spread of invasive species residing on the hull of the battleship. In preparation to receive visitors, safety railing, directional markers, hazard identification, and some interior painting will occur.

Upon initial mooring at Berth 87, the USS *Iowa* will undergo refurbishment in preparation for visitors. Approval will be required from the Los Angeles Regional Water Quality Control Board (LARWQCB) that all work is done in accordance with standard requirements and stipulations to ensure the protection of water quality. The work will take approximately nine months to complete and includes general cleaning, painting of exposed surfaces, and upgrading onboard restroom facilities. Painting of the interior and exterior surfaces would utilize paints that meet the current standards to prevent corrosion.

### Berth 87 and Existing Parking Lot

Berth 87 is currently used periodically for cargo and cruise ship docking. The existing mooring facilities and dredge depth are suitable for the USS *Iowa*. Water, electric, sewer, and telephone utilities needed for operation of the project are located at, or near, the berth. Approximately 500 feet of trenching will be necessary to install the 8-inch sewer line and electrical lines. While the USS *Iowa* is moored at Berth 87, the battleship will be tugged out of the Main Channel annually and turned for even weathering.

The existing lot will accommodate parking in a shared arrangement with other Port attractions. The parking area will include ingress lanes that direct traffic to the parking area past a small entry gate and at least one egress lane to return traffic to a controlled intersection at Harbor



Boulevard. Parking to the north of the USS *Iowa* lot is designated as cruise ship parking and may be used as overflow parking when cruise ship operations are not occurring. Refer to Section 3.3, Traffic and Circulation, for a more detailed discussion regarding parking.

A Visitor's Center is planned for Phase 2 (6 to 8 years post Phase 1 completion). When constructed, the structure will reduce available shared parking within the existing lot. Additional offsite parking will be required at this time to accommodate the shared parking. Existing offsite parking sites have been identified across Harbor Boulevard along with various other sites identified in the Waterfront EIR.

### Visitor Center

Only when funding is identified, an approximately two-story 33,800 sq. ft. footprint landside Visitor Center may be constructed as Phase 2 of the project. The anticipated structure will be multi-story conventional building construction. The facility will house the educational exhibits, murals, models, artifacts, audio-visual presentations, food, concessions, gift shop, offices, ticketing, and restroom facilities.

An existing Navy fuel surge line transects the parking area (Exhibit 2.0-4). Currently, construction of permanent structures must not be closer than 8 feet from the pipeline. Future construction of the Visitors Center may require the surge line to be placed outside of the easement or may require the relocation of the surge line if still operative, in cooperation with the U.S. Navy. This will be subject to further CEQA review.

## Relationship to Existing Plans

### San Pedro Waterfront Project

Berth 87 is located within the San Pedro Waterfront (SPW) project area. The overall purpose of the SPW project is to create an active public waterfront in downtown San Pedro. The SPW project elements include the creation of three new harbors and a public pier at 7th Street; new development, redevelopment, and cultural assets; completion of eight miles of waterfront promenade and open space for public enjoyment and recreation; and a wide variety of transportation options and improvements. The SPW project proposed a North Harbor cut located at Berths 87-90, which would accommodate approximately 12 tugboat vessels and the historic naval ship, the S.S. Lane Victory. The North Harbor cut would displace the occasional, temporary cruise ship docking at these berths. The SPW project proposed surface parking, the docking of the S.S. Lane Victory, and the S.S. Lane Victory Office at Berth 87 (refer to SPW Figure 2-9, San Pedro Waterfront – North Harbor). The LAHD decided to delay the North Harbor Cut as originally proposed, to provide parking for cruise ships. Per LAHD staff recommendation, the final SPW project included an extension of surface parking to Berth 87, and restriping the lot to provide for more efficient use of space.

## **Monitoring and Reporting Procedures**

Mitigation measures will be implemented in accordance with the LAHD Environmental Management Division's (LAHD/EMD) Environmental Compliance Plan program. Prior to release of bid specifications, construction plans shall be provided to LAHD/EMD for review and approval. Operational mitigation measures will be monitored by LAHD/EMD and any specified responsible parties designated by LAHD/EMD.

This MMRP for the proposed Project will be in place through all phases of the project, including design, construction, and operation, and will help ensure that project objectives are achieved. The LAHD shall be responsible for administering the MMRP and ensuring that all parties comply with its provisions. The LAHD may delegate monitoring activities to staff, consultants, or contractors. All construction contractors shall submit an Environmental Compliance Plan for Construction Management and EMD approval prior to beginning construction activities. This plan shall document how the contractor intends to comply with all measures applicable to the contract including application of Best Management Practices (BMPs). All mitigation measures and leasing policy requirements will be included in leases and lease amendments. The LAHD also will ensure that monitoring is documented through periodic reports and that deficiencies are promptly corrected. The designated environmental monitor will track and document compliance with mitigation measures; note any problems that may result; and take appropriate action to rectify problems.

## **Mitigation Monitoring and Reporting Program Implementation**

Pursuant to AB 3180, this MMRP was prepared and is accompanied by the associated report forms utilized to verify compliance with individual mitigation measures. This MMRP identifies each mitigation measure by discipline, the entity (organization) responsible for its implementation, the report/ permit/ certification required for each measure, and an accompanying LAHD MMRP form used to certify completion. Certain inspections and reports may require preparation by qualified individuals, and these are specified as needed. The timing and method of verification for each measure is also specified.

## Section 2

# Mitigation Monitoring and Reporting Program Summary

Table 1: Mitigation Monitoring and Reporting Program Summary

<i>Mitigation Measure</i>	<i>Timing and Methods</i>	<i>Responsible Parties</i>
<p><b>Air Quality: Construction and Operation</b></p>		
<p><b>AQ-1:</b> All tugboats utilized for transporting the USS <i>Iowa</i> (within the Port of Los Angeles and for the ocean tug used for one-time transport of the battleship from San Francisco Bay to Los Angeles) shall comply with the Port's Clean Air Action Plan Control Measure HCl, <i>Performance Standards for Harbor Craft</i> (further reduces emissions from engines). Additionally, all tugboats with C1 or C2 marine engines utilized for transport of the USS <i>Iowa</i> within the Port of Los Angeles and for the one time transport of the battleship from San Francisco Bay to Los Angeles shall utilize an EPA Tier-3 engine or cleaner, if available, in accordance with the Los Angeles Harbor Department's Sustainable Construction Guidelines (revised 2009).</p>	<p><b>Timing:</b> During all construction phases and during maintenance turning of the battleship.</p> <p><b>Methods:</b> This measure shall be incorporated into the PBC contract specifications for all construction work to reduce the impacts of construction diesel emissions. The contractor(s) shall submit an Environmental Compliance Plan for review and approval by PBC prior to beginning any construction activity. The contractor shall adhere to these specifications and Compliance Plan throughout construction phases. Enforcement shall include oversight by the PBC project/construction manager or designated building inspectors to ensure compliance with contract specifications.</p> <p>The harbor craft measure shall be met unless one of the following circumstances exists and the contractor is able to provide proof that any one of these circumstances exists:</p> <ul style="list-style-type: none"> <li>• A piece of specialized</li> </ul>	<p><b>Implementation:</b> PBC through Construction Contractor</p> <p><b>Monitoring and Reporting:</b> Environmental Management Division, Construction Management Division</p>

<i>Mitigation Measure</i>	<i>Timing and Methods</i>	<i>Responsible Parties</i>
<p>equipment is unavailable in a controlled form within the state of California, including through a leasing agreement.</p> <ul style="list-style-type: none"> <li>A contractor has applied for necessary incentive funds to put controls on a piece of uncontrolled equipment planned for use on the project, but the application process is not yet approved, or the application has been approved, but funds are not yet available.</li> <li>A contractor has ordered a control device for a piece of equipment planned for use on the project, or the contractor has ordered a new piece of equipment to replace the uncontrolled equipment, but that order has not yet been completed by the manufacturer or dealer. In addition, for this exemption to apply, the contractor must attempt to lease controlled equipment to avoid using uncontrolled equipment, but no dealer within 200 miles of the project has the controlled equipment available for lease.</li> </ul>		
<p><b>AQ-2:</b> The project shall implement the following measures as required by the Los Angeles Harbor Department's Sustainable Construction Guidelines (revised 2009) during project construction activities. These requirements shall be stipulated in the construction contracts and bid documents.</p> <p><b>Best Management Practices</b></p> <ul style="list-style-type: none"> <li>Use of diesel oxidation catalysts and catalyzed diesel particulate traps.</li> </ul>	<p><b>Timing:</b> During all construction phases and during maintenance turning of the battleship.</p> <p><b>Methods:</b> This measure shall be incorporated into the PBC contract specifications for all construction work to reduce the impacts of construction diesel emissions. The contractor(s)</p>	<p><b>Implementation:</b> PBC through Construction Contractor</p> <p><b>Monitoring and Reporting:</b> Environmental Management Division, Construction</p>

Mitigation Measure	Timing and Methods	Responsible Parties
<ul style="list-style-type: none"> <li>• Maintain equipment according to manufacturers' specifications.</li> <li>• Restrict idling of construction equipment and on-road heavy-duty trucks to a maximum of 5 minutes when not in use.</li> <li>• Install high-pressure fuel injectors on construction equipment vehicles.</li> <li>• Maintain a minimum buffer zone of 300 meters between truck traffic and sensitive receptors.</li> <li>• Improve traffic flow by signal synchronization.</li> <li>• Enforce truck parking restrictions.</li> <li>• Provide on-site services to minimize truck traffic in or near residential areas, including, but not limited to, the following services: meal or cafeteria services; automated teller machines, etc.</li> </ul>	<p>shall submit an Environmental Compliance Plan for review and approval by PBC prior to beginning any construction activity. The contractor shall adhere to these specifications and Compliance Plan throughout construction phases. Enforcement shall include oversight by the PBC project/construction manager or designated building inspectors to ensure compliance with contract specifications.</p>	<p>Management Division</p>
<p><b>Fugitive Dust Control</b></p> <p>South Coast Air Quality Management District (SCAQMD) Rule 403 requires a Fugitive Dust Control Plan to be prepared and approved for construction sites. Construction contractors are required to obtain a 403 Permit from the SCAQMD prior to construction. The following measures, at minimum, to reduce dust shall be included in the contractor's Fugitive Dust Control Plan:</p> <ul style="list-style-type: none"> <li>• SCAQMD's Best Available Control Technology (BACT) measures shall be followed on all projects.</li> <li>• Active grading sites shall be watered three</li> </ul>	<p>The harbor craft measure shall be met unless one of the following circumstances exists and the contractor is able to provide proof that any one of these circumstances exists:</p> <ul style="list-style-type: none"> <li>• A piece of specialized equipment is unavailable in a controlled form within the state of California, including through a leasing agreement.</li> <li>• A contractor has applied for necessary incentive funds to put controls on a piece of uncontrolled equipment planned for use on the project, but the application process is not yet approved, or the application has been approved, but funds are not yet available.</li> </ul> <p>A contractor has ordered a control device for a piece of equipment planned for use on the project, or the contractor has ordered a new piece of equipment to replace the uncontrolled equipment, but that order has not yet been completed by the manufacturer</p>	

Mitigation Measure	Timing and Methods	Responsible Parties
<p>times per day.</p> <ul style="list-style-type: none"> <li>• Contractors shall apply approved non-toxic chemical soil stabilizers to all inactive construction areas or replace groundcover in disturbed areas.</li> <li>• Contractors shall provide temporary wind fencing around sites being graded or cleared.</li> <li>• Trucks hauling dirt, sand, or gravel shall be covered or shall maintain at least 2 feet of freeboard in accordance with Section 23114 of the California Vehicle Code. ("Spilling Loads on Highways").</li> <li>• Construction contractors shall install wheel washers where vehicles enter and exit unpaved roads onto paved roads, or wash off tires of vehicles and any equipment leaving the construction site.</li> <li>• The grading contractor shall suspend all soil disturbance activities when winds exceed 25 miles per hour or when visible dust plumes emanate from a site; disturbed areas shall be stabilized if construction is delayed.</li> <li>• Open storage piles (greater than 3 feet tall and a total surface area of 150 square feet) shall be covered with a plastic tarp or chemical dust suppressant.</li> <li>• Stabilize the materials while loading, unloading and transporting to reduce fugitive dust emissions.</li> <li>• Belly-dump truck seals should be checked regularly to remove trapped rocks to prevent possible spillage.</li> <li>• Comply with track-out regulations and provide water while loading and unloading to reduce visible dust plumes.</li> <li>• Waste materials shall be hauled off-site immediately.</li> <li>• Pave road and road shoulders where available.</li> <li>• Traffic speeds on all unpaved roads shall be reduced to 15 miles per hour or less.</li> <li>• Provide temporary traffic controls such as a flag person, during all phases of construction to maintain smooth traffic flow.</li> <li>• Schedule construction activities that affect</li> </ul>	<p>or dealer. In addition, for this exemption to apply, the contractor must attempt to lease controlled equipment to avoid using uncontrolled equipment, but no dealer within 200 miles of the project has the controlled equipment available for lease:</p>	

Mitigation Measure	Timing and Methods	Responsible Parties
<p>traffic flow on the arterial system to off-peak hours to the extent practicable.</p> <ul style="list-style-type: none"> <li>Require the use of clean-fueled sweepers pursuant to SCAQMD Rule 1186 and Rule 1186.1 certified street sweepers. Sweep streets at the end of each day if visible soil is carried onto paved roads on-site or roads adjacent to the site to reduce fugitive dust emissions.</li> <li>Appoint a construction relations officer to act as a community liaison concerning on-site construction activity including resolution of issues related to PM10 generation.</li> </ul> <p><b>On-Road Trucks</b></p>		
<p>The following EPA Standards shall be applicable to import haulers only:</p> <ul style="list-style-type: none"> <li>From January 1, 2012 on: All on-road heavy-duty diesel trucks with a GVWR of 19,500 pounds or greater used to move dirt to and from the construction site via public roadways at the Port of Los Angeles shall comply with EPA 2004 on-road emission standards for PM10 and NOX (0.10 g/bhp-hr and 2.0 g/bhp-hr, respectively).</li> </ul> <p>The following EPA Standards shall be applicable to earth movers only:</p> <ul style="list-style-type: none"> <li>From January 1, 2012 on: All heavy-duty diesel trucks with a GVWR of 19,500 pounds or greater used to move dirt within the construction site at the Port of Los Angeles shall comply with EPA 2004 on-road emission standards for PM10 and NOX (0.10 g/bhp-hr and 2.0 g/bhp-hr, respectively).</li> </ul> <p>A copy of each unit's certified EPA rating and each unit's CARB or SCAQMD operating permit shall be provided at the time of mobilization of each applicable unit of equipment.</p> <p><b>Off-Road Equipment</b></p> <p>The following Best Management Practices (BMPs) shall be applicable to Construction</p>		

<i>Mitigation Measure</i>	<i>Timing and Methods</i>	<i>Responsible Parties</i>
<p>Equipment (excluding Vessels, Harbor Craft, and On-Road Trucks):</p> <ul style="list-style-type: none"> <li>• Construction equipment shall incorporate, where feasible, emissions-savings technology such as hybrid drives and specific fuel economy standards.</li> <li>• Idling shall be restricted to a maximum of 5 minutes when not in use.</li> </ul> <p>Equipment Engine Specifications shall adhere to the following:</p> <ul style="list-style-type: none"> <li>• From January 1, 2012, to December 31, 2014: All off-road diesel-powered construction equipment greater than 50 hp, except marine vessels and harbor craft, shall meet Tier-3 off-road emission standards at a minimum. In addition, all construction equipment greater than 50 hp shall be retrofitted with a CARB-verified Level 3 DECS.</li> <li>• From January 1, 2015 on: All off-road diesel-powered construction equipment greater than 50 hp, except marine vessels and harbor craft, shall meet Tier-4 off-road emission standards at a minimum.</li> </ul> <p>The above "Equipment Engine Specifications" measures shall be met, unless one of the following circumstances exists, and the contractor is able to provide proof that any of these circumstances exists:</p> <ul style="list-style-type: none"> <li>• A piece of specialized equipment is unavailable within 200 miles of the Port of Los Angeles, including through a leasing agreement. If this circumstance exists, the equipment must comply with one of the options contained in the Step Down Schedule as shown in Table A in the Sustainable Construction Guidelines. At no time shall equipment meet less than a Tier 1 engine standard with a CARB-verified Level 2 DECS.</li> </ul> <p>The availability of construction equipment shall be reassessed in conjunction with the years listed in the above Tier Specifications (Prior to January 15, 2015) on an annual basis.</p>		



<i>Mitigation Measure</i>	<i>Timing and Methods</i>	<i>Responsible Parties</i>
<p><u>Sustainable Construction Guidelines</u></p>		
<p>The LAHD has developed <i>Sustainable Construction Guidelines</i> for reducing air emissions from all LAHD-sponsored construction projects (LAHD 2009). The Guidelines include the use of Best Management Practices (BMP) and control measures. Although no air quality impacts from construction activities would occur, the applicable BMPs and control measures for project construction include the following:</p> <ul style="list-style-type: none"> <li>• Construction equipment shall be properly tuned and maintained in accordance with manufacturer's specifications.</li> <li>• During construction, trucks and vehicles in loading and unloading queues must be kept with their engines off when not in use for more than 5 minutes to reduce vehicle emissions. Construction activities shall be phased and scheduled to avoid emissions peaks, where feasible, and discontinued during second-stage smog alerts.</li> <li>• Where available, use electricity from power poles rather than temporary diesel- or gasoline-powered generators.</li> </ul>		
<ul style="list-style-type: none"> <li>• Construction activities that affect traffic flow on the arterial roadways shall be scheduled to off-peak hours to the extent possible. Additionally, construction trucks shall be directed away from congested streets or sensitive receptor areas.</li> <li>• Where possible, enforce truck parking restrictions; provide on-site services to minimize truck traffic in or near residential areas, including services such as meal or cafeteria.</li> <li>• Apply water or dust palliative to the site and equipment as frequently as necessary to control fugitive dust emissions.</li> <li>• Use low-sulfur fuel in all construction equipment as provided in California Code of Regulations Title 17, Section 93114.</li> <li>• On-road heavy-duty trucks shall comply with EPA 2004 on-road emission standards for PM10 and NOx and shall be equipped with a CARB verified Level 3 device. Emission standards will increase to EPA 2007 on-road emission standards for PM10 and NOx by January 1, 2012.</li> <li>• Construction equipment (excluding on-road trucks, derrick barges, and harbor craft) shall meet U.S. EPA Tier-2 nonroad standards. The requirement will increase to Tier 3 by January 1, 2012, and Tier 4 by January 1, 2015.</li> </ul> <p>In addition, construction equipment shall be retrofitted with a CARB certified Level 3 diesel emissions control device.</p>		
<p>Traffic: Construction and Operation</p>		
<p><b>TRA-1:</b> Develop and implement a Traffic Management Plan (TMP) throughout proposed project construction.</p> <p>In accordance with the City's policy on street closures and traffic diversion for arterial and collector roadways, the construction contractor shall prepare a TMP to be approved by the city and county engineers before construction. The TMP shall include:</p>	<p><b>Timing:</b> Developed prior to construction activities, to be implemented during construction.</p> <p><b>Method:</b> This measure shall be completed by the PBC, with compliance reported to the LAHD.</p>	<p><b>Implementation:</b> PBC</p> <p><b>Monitoring and Reporting:</b> LAHD Environmental Management and Engineering</p>

<i>Mitigation Measure</i>	<i>Timing and Methods</i>	<i>Responsible Parties</i>
<ul style="list-style-type: none"> <li>• Street layout showing the location of construction activity and surrounding streets to be used as detour routes, including special signage;</li> <li>• Tentative start date and construction duration period for each phase of construction;</li> <li>• Name, address, and emergency contact number for those responsible for maintaining the traffic control devices during the course of construction; and</li> <li>• Written approval to implement traffic control from other agencies, as needed.</li> </ul> <p>Additionally, the traffic control plan will include the following stipulations:</p> <ul style="list-style-type: none"> <li>• Provide access for emergency vehicles at all times.</li> <li>• Avoid creating additional delay at intersections currently operating at congested conditions, either by choosing routes that avoid these locations, or constructing during nonpeak times of day.</li> <li>• Maintain access for driveways and private roads, except for brief periods of construction, in which case property owners will be notified.</li> <li>• Provide adequate off-street parking areas at designated staging areas for construction-related vehicles.</li> <li>• Maintain pedestrian and bicycle access and circulation during proposed project construction where safe to do so. If construction encroaches on a sidewalk, a safe detour will be provided for pedestrians at the nearest crosswalk. If construction encroaches on a bike lane, warning signs will be posted that indicate bicycles and vehicles are sharing the roadway.</li> <li>• Traffic controls may include flag persons wearing Occupational Safety and Health Administration–approved vests and using a “Stop/Slow” paddle to warn motorists of</li> </ul>		<p>Divisions</p>

<i>Mitigation Measure</i>	<i>Timing and Methods</i>	<i>Responsible Parties</i>
<p>construction activity.</p> <ul style="list-style-type: none"> <li>• Maintain access to Metro, LADOT, LAHD and MAX transit services and ensure that public transit vehicles are detoured.</li> <li>• Post standard construction warning signs in advance of the construction area and at any intersection that provides access to the construction area.</li> <li>• Construction warning signs will be posted, in accordance with local standards or those set forth in the <i>Manual on Uniform Traffic Control Devices (FHWA 2001)</i> in advance of the construction area and at any intersection that provides access to the construction area.</li> </ul>		
<ul style="list-style-type: none"> <li>• During lane closures, notify LAFD and LAPD, as well as the Los Angeles County Sheriff's and Fire Departments, of construction locations to ensure that alternative evacuation and emergency routes are designed to maintain response times during construction periods, if necessary.</li> <li>• Provide written notification to contractors regarding appropriate routes to and from construction sites, and weight and speed limits for local roads used to access construction sites. Submit a copy of all such written notifications to the City of Los Angeles Planning Department.</li> <li>• Repair or restore the road right-of-way to its original condition or better upon completion of the work.</li> </ul>		
<p><b>TRA-2: Implement Gaffey Street/1<sup>st</sup> Street intersection improvements.</b> Re-stripe the 1<sup>st</sup> Street eastbound approach and departure, to shift the shared through lane to the curb right-turn lane, yielding a dual left-turn lane and a shared through/right-turn lane; and modify the east-west phasing to lead/lag protected left-turn phases. This mitigation would be implemented only if the project year 2042 LOS is reached, if operations continue beyond the term of the</p>	<p><b>Timing:</b> Before completion of Phase 1 of the proposed project, prior to 2015.</p> <p><b>Method:</b> This measure shall be completed by the LAHD, with compliance reported to the Board of Harbor Commissioners.</p>	<p><b>Implementation:</b> LAHD</p> <p><b>Monitoring and Reporting:</b> LAHD Environmental Management and Engineering Divisions</p>

<i>Mitigation Measure</i>	<i>Timing and Methods</i>	<i>Responsible Parties</i>
lease, and only if LADOT accepts such an improvement at that time. This mitigation would reduce long-term operational impacts to V/C ratios and levels of service for this intersection.		

**EXHIBIT H**

**MAINTENANCE AND REPAIR**

**PACIFIC BATTLESHIP CENTER  
PERMIT NO. 899**

Tenant shall be responsible for the installation, repair and maintenance of ALL structures and improvements (City or Tenant owned) within the Premises granted to Tenant EXCEPT for the following:

**Maintenance to be Performed by Grantor**

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

- a. Wharf structure, meaning the beams, girders, subsurface support slabs, cones, decks, bulkheads and pre-stressed concrete piling, pile caps, mooring bollards, and any and all mooring dolphins, but not including paving or the fendering system.
- b. Rock slopes

MAINTENANCE & REPAIR PERFORMED BY CITY AT TENANT'S EXPENSE

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

## EXHIBIT I – AFFIRMATIVE ACTION PROGRAM PROVISIONS

### Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

- A. During the performance of City contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
  2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  3. The contractor shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify on an electronic or hard copy form to be supplied, that the contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- D. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.

## EXHIBIT I – AFFIRMATIVE ACTION PROGRAM PROVISIONS

- F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation for the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.
- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. The Contractor shall submit and Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and supplier to take part in a pre-registration, pre-bid, pre proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan, Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or

## EXHIBIT I – AFFIRMATIVE ACTION PROGRAM PROVISIONS

less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.

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



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**EXHIBIT I – AFFIRMATIVE ACTION PROGRAM PROVISIONS**

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

## EXHIBIT J

### BUSINESS TAX REGISTRATION CERTIFICATE (BTRC) NUMBER

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

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

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

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

#### MAIN OFFICE

LA City Hall

201 N. Main Street, Rm. 101 (213) 473-5901

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PBC PERMIT PREMISES

