Harbor Department
Agreement 18-2722-C
City of Los Angeles

THIRD AMENDMENT TO FOREIGN-TRADE ZONE OPERATING AGREEMENT NO. 08-2722 BETWEEN THE CITY OF LOS ANGELES AND CEVA FREIGHT LLC.

THIS THIRD AMENDMENT to Foreign-Trade Zone Operating Agreement No. 08-2722 ("Agreement") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board"), and CEVA FREIGHT LLC. ("Operator") as follows:

1. Subsection A of ARTICLE II - AUTHORITY GRANTED/ACCEPTED, TERM AND AGREEMENT, is amended a third time by extending the term of Agreement No. 08-2722 an additional five (5) years beginning on February 1, 2019 and ending January 31, 2024.

2. ARTICLE XIV – INDEMNIFICATION AND INSURANCE is deleted in its entirety and replaced with the following:

"14.01 Indemnification

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

14.02 Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Operator's insurance documents. Operator's insurance broker or agent shall register with the City's online insurance compliance system **KwikComply** at https://kwikcomply.org/ and submit the appropriate proof of insurance on Operator's behalf.

14.03 General Liability Insurance

Operator shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the City, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Operator's normal limits of liability but not less than One Million Dollars ($1,000,000.00) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Operator. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Operator's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10 days notice of cancellation for nonpayment of premium, and a 30 days notice of cancellation for any other reasons.

14.04 Automobile Liability Insurance

Operator shall procure and maintain at its expense and keep in force at all times during the term of this Agreement, automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Operator's normal limits of liability but not less than One Million Dollars ($1,000,000.00) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

14.05 Workers' Compensation and Employer's Liability

Operator shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance

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

14.06 Back-to-Back Bond

Operator shall, if requested to do so by the Grantee, furnish and pay the premium for a bond in a sum equal to the amount of the Customs Form 301 Foreign-Trade Zone Operator's bond required by Customs pursuant to the Regulations, conditioned upon the full, faithful and prompt performance of and compliance with, on the part of the Operator, all the covenants, terms and conditions of this Agreement on its part to be fulfilled, kept, performed and observed. The bond so furnished shall be in a form acceptable to the Grantee, and shall be effective throughout the term of this Agreement and shall be made either by a surety company or companies qualified to carry on a surety business in the State of California and satisfactory to the Grantee.

14.07 Carrier Requirements

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

14.08 Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

14.09 Modification of Coverage

Executive Director, at his or her discretion, based upon recommendation of independent insurance consultants to City, may increase or decrease amounts

and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Operator.

14.10 Renewal of Policies

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

14.11 Right to Self-Insure

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

1. Operator has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Operator must have a formal resolution of its board of directors authorizing self-insurance.

2. Operator agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.

3. Operator agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.

4. Operator agrees that any insurance carried by Department is excess of Operator's self-insurance and will not contribute to it.

5. Operator provides the name and address of its claims administrator.

6. Operator submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to Executive Director's consideration of approval of self-insurance and annually thereafter.

7. Operator agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.

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

14.12 Accident Reports

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

Except as amended herein, all remaining terms and conditions of Agreement No. 08-2722 shall remain in full force and effect.

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//// (Signature page follows)

IN WITNESS THEREOF, the parties hereto have executed this Third Amendment to Agreement No. 08-2722 on the date to the left of their signatures.

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

Dated: _____, 2018

By: _____
Executive Director

Attest: _____
Board Secretary

CEVA FREIGHT LLC

Dated: 11/15/18, 2018

By: _____

Tina Hollawood - FTZ Manager
(Print/type name and title)

Attest: _____

DANIEL A. SKLIMAN
(Print/type name and title)
DIRECTOR OF OPERATIONS

APPROVED AS TO FORM AND LEGALITY

November 26, 2018
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By: _____
HELEN J. SOK, Deputy City Attorney

HJS/jpr
10/30/18