

WORLDPORT LA

AGREEMENT BETWEEN

RECEIVED THE
CITY OF LOS ANGELES
HARBOR DEPARTMENT
AND

FEDERAL MARITIME
COMMISSION
OFFICE OF THE SECRETAR

NIPPON YUSEN KAISHA

AGREEMENT NO. 692

PROJECT 224 200420



NIPPON YUSEN KAISHA ("NYK")
STANDARD FORM REVENUE SHARING AGREEMENT

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PERMIT NO. 692

REVENUE SHARING AGREEMENT
GRANTED BY THE CITY OF LOS ANGELES
TO NIPPON YUSEN KAISHA (NYK)

THIS PERMIT (hereinafter called "Agreement"), is entered into this _____ day of _____, 1990, by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board"), and Nippon Yusen Kaisha, 400 Oceangate, Suite 1330, Long Beach, California 90802 ("Tenant").

Section 1. Agreement.

(a) Premises Subject to Tariff. City nonexclusively assigns and Tenant accepts the premises described below, subject to the terms and conditions provided herein and to the rates, terms and conditions of Port of Los Angeles Tariff No. 4 as it now exists or may be amended or superseded ("Tariff"). Tenant acknowledges it has received, read and understands the rates, terms and conditions of Tariff and agrees to be contractually bound by these rates, terms and conditions as if these terms were set forth in full herein except as may be modified by this Agreement. Tenant understands it is responsible for maintaining a complete and current Tariff and assumes responsibility for doing so.

(b) Reference to City's Tariff in Tenant's Tariffs and Contracts.

Tenant agrees to insert into all of its contracts with its vessel owning and vessel operating customers the following provision:

"Every vessel owner and operator understands and agrees that vessels, their owners and operators using pilots offered by the City of Los Angeles agree to be contractually bound to the terms and conditions of Port of Los Angeles Tariff No. 4 or its successor. Vessel owners' and operators' attention is particularly directed to Item 305 of this tariff which provides that any pilot provided by the City of Los Angeles to assist the vessel is the borrowed servant of the vessel and that neither the City nor the pilot is liable for any accident except as provided in Tariff Item 305. Vessel owners and operators agree that the vessel master at all times remains in control of the vessel and the pilot's assistance is advisory only. Such owners and operators are aware that pilotage trip insurance may be purchased from the City if they wish to cover pilotage associated risks."

Tenant agrees to provide City such proof of its compliance with this subsection 1(b) as the Executive Director may reasonably request.

(c) Tenant's Rights Nonexclusive. By approving this Agreement, City does not grant to Tenant the sole or exclusive right to use the premises. Tenant's right to use the premises shall only be preferential or secondary to other users thereof as set forth in Section 2. City has and reserves the right to grant to other users upon twenty-four (24) hours telephonic notice the right to use the premises, including the improvements on the premises and any cranes as long as such use by others will not unreasonably interfere with Tenant's use of the premises. Tenant may charge such users for the use of non-Port of Los Angeles cranes provided such charges may not without prior consent of the City exceed the rates provided in Tariff for use of City cranes. For the use of non-Port of Los Angeles cranes, Tenant may require such user to use its crane operators. Tenant may also require such user to agree in writing to indemnify Tenant for any liability arising from use of such crane or damage to the crane caused by such user's negligence. Tenant shall permit other stevedores to serve other users of the premises if another user designated by City so requests. All tariff charges which accrue from such other user's use of the premises shall accrue solely for City's benefit and shall not count toward the compensation provisions of this Agreement. To assist City in determining the availability of the premises for use by other users, Tenant shall upon request from City immediately provide City a written summary showing vessels scheduled to call at the premises in the next thirty (30) day period, anticipated tonnages and such other information as City needs to determine the availability of the premises.

Section 2. Premises.

(a) Description. The premises subject to this Agreement comprise Parcel No. 1 including Berths 211-215 (approximately 2146 lineal feet \pm 50 feet) and approximately 100.11 acres of backlands (+ or - 1/4 acre including wharves). Those parcels are delineated and more particularly described on Drawing No. 1-1820. This drawing is on file in the office of the Chief Harbor Engineer of the Harbor Department of City ("Harbor Engineer"). A copy of said drawing is attached as Exhibit "A" and incorporated by reference into this Agreement. Tenant shall have the "preferential" right to use Berths 211-215 and the backlands granted. The berths shall have a depth of minus forty-five (-45) feet (MLLW).

The "preferential" right to use a berth means that if two ships arrive at berth simultaneously, one invited by a preferential user and one invited by a secondary user, the holder of the preferential right may bring its vessel to berth first and unload it so long as such unloading is carried out continuously in accordance with the practice in the trade in Southern California. A right to use a berth "secondarily" means that the secondary user has priority over tertiary and temporary users. If a vessel invited by a preferential user arrives at berth while a vessel invited by the secondary user is being unloaded, the secondary user must immediately vacate the berth provided, however, the preferential and secondary user shall cooperate to permit conclusion of the cargo operations in progress if such operations can be concluded shortly.

The term "premises" as used in this Agreement, shall include all structures owned by or under the control of Board within said parcels including all improvements erected by Tenant's predecessors which are made available for

Tenant's use whether on or below the surface and such structures as City may construct for Tenant. The structures City will construct on the premises are described in Section 7. No other structure shall be considered to be a part of the premises except to the extent that Tenant's maintenance, restoration, and indemnity and insurance obligations shall extend in addition to all buildings or improvements Tenant owns or subject to its control on the premises.

(b) Tenant to Supply Necessary Labor and Equipment. Tenant shall at its own cost and expense, provide all tackle, gear and labor for the berthing and mooring of vessels at the berths and shall provide at its own expense, such appliances and employ such persons as it may require for the handling of goods, wares and merchandise; provided, however, that nothing contained herein shall prevent Tenant from using such appliances as may be installed by City at the berths upon the payment to City of all applicable charges.

(c) Operations to Maximize Use. Tenant understands that City has limited terminal space for cargo, chassis, and equipment and that the demand for such space may exceed the supply. Tenant understands that unless the use of space devoted to the handling of cargo, chassis and equipment is maximized, City may not be able to accommodate new or incremental business and that it will lose the wharfage and dockage revenue associated with such business. Therefore, Tenant agrees to conduct its operations at the premises in a fashion which will allow the City to maximize the use of the premises for other users of the facility. Therefore, Tenant agrees to conduct its operations at the premises, if reasonably possible and consistent with Tenant's right to preferentially use the premises, in a fashion which will allow the City to use the premises for other users of the facility. Where in the opinion of the City Tenant is not maximizing the use of the premises, City shall have the right to require Tenant, at Tenant's expense, to consolidate its operations into a smaller area provided this section shall require only temporary accommodations by Tenant and shall not be construed to permit the permanent reduction of the premises. City shall not unreasonably interfere with Tenant's right to preferentially use the entire premises nor shall Tenant interfere with City's right to secondarily assign use of the premises. Any secondary or temporary assignee shall be responsible for reimbursing Tenant for expenses reasonably incurred by Tenant for such assignees in the manner set forth in Tariff Item 1030 (or its successor).

(d) Reservations. This Agreement and the premises delivered are and shall be at all times subject to the reservations below provided, however, that if City exercises such reservation so as to effectively deny Tenant's use of the premises of greater than five percent (5%) of the total acreage granted hereunder for a period exceeding thirty (30) days, then Tenant shall be provided a replacement area similar in size to the area Tenant is unable to use. If City is unable to provide a contiguous or other mutually agreed replacement area, compensation shall be reduced in accordance with Section 4 based on the acres the use of which Tenant is denied. By Office Memorandum dated May 10, 1990, City has provided Tenant with a general description of the reservations applicable to the premises within the meaning of subsection (1), Utility Rights-of-Way, and subsection (2), Streets and Highways, below. City agrees that except as disclosed in the above-referenced Office Memorandum there are no additional reservations applicable to the premises within the meaning of subsection (1),

Utility Rights-of-Way, and subsection (2), Streets and Highways, below as of the date this Agreement becomes effective.

The reservations are:

(1) Utility Rights-of-Way. Rights-of-way for sewers, pipelines, conduits and for telephone, telegraph, light, heat and power lines as may from time to time be determined 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, provided the surface shall be restored as much as possible to the condition previously existing. Tenant is aware the City Department of Water and Power or other utilities providing service to the terminal both periodically and in an emergency need to service or repair facilities on the premises. Tenant agrees to relocate at its expense, its cargo, chassis and equipment to provide Department of Water and Power or any other utility adequate access for periodic and emergency maintenance. In an emergency, Tenant agrees to complete such relocation within six (6) hours of receiving notice from City.

(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) Prior Exceptions. All prior exceptions, reservations, grants, easements, leases or licenses of any kind whatsoever as the same 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.

(4) Oil Drilling. The right of City to occupy portions of the premises as may be necessary for drilling purposes and to use and grant others the right to use the same to drill for and produce oil or other hydrocarbon substances therefrom; provided, that such uses do not materially interfere with the operation of Tenant hereunder and, provided further, that the rental herein designated shall be adjusted proportionately to compensate for the surface areas to be used.

(e) Inspection. Tenant and City acknowledge that a new terminal is being constructed for Tenant's benefit and that Tenant shall inspect the terminal for its suitability in the following manner:

(1) Tenant's Approval of Design. Before construction commences NYK shall review the design of all terminal buildings and layout of the terminal and notify City that it approves the design. Contracts for construction will not be awarded until Tenant has notified City of its approval of the design. Both parties recognize that their responsibilities regarding any hazardous materials later discovered to be on the premises which did not result from Tenant's operations are set forth in Section 8(b), 8(c) and 9(f) below.

(2) Terminal Acceptance: After construction of the terminal is completed, Tenant agrees to accept the terminal provided the construction substantially conforms to the previously approved construction documents provided Tenant's acceptance shall not waive the City's or Tenant's rights against the architect or contractor for their failure to comply with their contracts or for latent defects in the construction. City shall correct or cause the contractor(s) to correct construction defects in the terminal, if any, which City is constructing pursuant to Section 7(a)(4). Tenant agrees its decision to operate at the terminal prior to the time the contractor(s) complete(s) work (assuming the permission of the City has been obtained) constitutes acceptance under this subsection.

(3) Changes to Terminals. City shall not be obligated to make any changes in the terminal at the request of Tenant during construction. If City does make any changes at Tenant's request, any delays associated with such changes shall be the responsibility of Tenant and will extend the terminal delivery date. The parties recognize that if changes are made at Tenant's request such changes will not necessarily require additional construction time.

(4) Additions and Improvements of Terminal After Construction at Tenant's Expense. Any modification, improvement, or addition to the premises and any equipment installation required by the Fire Department, Department of Building and Safety, Air Quality Management District, Regional Water Quality Control Board, Coast Guard, Environmental Protection Agency, or any other local, regional, state or federal agency in connection with Tenant's operations which is required after construction of the terminal is complete shall be constructed or installed at Tenant's sole expense.

(f) Amendment of Provisions. If this Agreement requires the approval of the Council of City to become effective, then by mutual agreement land and water not exceeding ten percent (10%) of the area granted or 20,000 square feet, whichever is greater, may be permanently added to or deleted from the premises granted herein without further approval of the Council of City subject to the following conditions: (1) So long as such change in area is not temporary within the meaning of Tariff Item 1035 (or its successor), the minimum annual guarantee and revenue sharing breakpoint set forth in Section 4 shall be increased or decreased pro rata to reflect any such addition or deletion; (2) if the change involves the addition or deletion of any improvement, the adjustment to the minimum annual guarantee and revenue sharing breakpoint(s) shall also take into account this change in the same manner in which the compensation was originally calculated; and (3) if permanent changes in area 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. The Board is authorized to execute amendments to this Agreement to effect the foregoing adjustments to area and compensation without further action of the Council, provided, however, copies of any Amendments made pursuant to this provision shall be filed with the FMC for review. The provisions above shall not limit the Board's right to adjust the size of the premises or compensation in other ways so long as Council approval and Shipping Act requirements are satisfied.

(g) Delivery.

(1) The terminal delivery date shall be August 20, 1991. By this date, the terminal shall be substantially complete in accordance with the plans and specifications for the terminal as described in Section 7(a)(4), meaning that (1) the City has made the wharf available for vessel cargo operations, and (2) the City has made sufficient backlands and improvements available to handle NYK's cargo volume at that time. Certain minor deficiency items (commonly called "punch list" items) need not be completed by the delivery date, so long as the work to be completed does not materially interfere with Tenant's use of the premises. Notwithstanding the above, the parties agree that the nine and one-half (9.5) acres of the proposed terminal which Tenant presently occupies within the Indies Terminal will be completed ninety (90) days after the above specified terminal delivery date in order to minimize disruption to Tenant's ongoing operations. In consideration of City's delay in improving the referenced 9.5 acres and of Tenant expediting the delivery of its four container gantry cranes which are described in Section 2(g)(2) below and of the term of this Agreement, Tenant is entitled to a credit in the amount of Three Million Five Hundred Thousand Dollars (\$3,500,000) which shall be used during the first compensation year of this Agreement to reduce the compensation otherwise due City. This credit may be adjusted as provided in Section 7(a)(2).

The terminal delivery date may be extended by delays resulting from (a) unforeseeable circumstances experienced during design or construction, (b) events of force majeure including prevention or impairment by governmental authority (including any delays in receiving all governmental permits whether Federal, state, county, city or regional) civil commotion, acts of God, reason of war, warlike operations, strikes or other labor disputes, so long as such events are beyond the control of either party and (c) the acts or omissions of Vickerman Zachary Miller ("VZM") the architect designing the buildings including any delays associated with VZM's redesign of improvements (or delays of other architects retained by NYK to redesign improvements) to stay within the construction budget (which extension is without prejudice to the right of either or both parties to recover any damages from VZM). In addition to the foregoing bases for extension, City may extend the terminal delivery date for up to a thirty (30) day grace period. The parties shall use their best efforts to avoid delay and to cure any delays. The amount of time that the terminal delivery date shall be extended by a delay shall be determined by the parties in good faith negotiation or, failing agreement, by arbitration by a neutral arbitrator. If possible, the arbitrator shall be a retired judge of the Superior Court. The arbitrator's decision shall be based on the principles of California law, including the laws of evidence. Extensions for unforeseeable design or construction delays, which the parties have been unable to avoid, shall be based on customary industry standards for the design and construction of a marine terminal.

Time is of the essence in this Permit. There would be delays, expenses and difficulties involved in proving the actual damages if the

premises are not substantially completed and delivered by the terminal delivery date, as defined above. Accordingly, instead of requiring any such proof, the parties agree to the following as reasonable estimates of actual damages for delays (and not as a penalty). In the event that the terminal is not substantially completed and delivered by the delivery date due to the failure of the City to perform the City's obligations under the Permit, the amount of Fourteen Thousand Dollars (\$14,000) for each day of delay so caused by the City shall be payable to Tenant until the terminal is substantially completed and delivered provided that City's liquidated damage obligation shall not begin to accrue until Tenant has met its obligation to provide two (2) cranes as set forth in Section 2(g)(2) and Section 4(a). Notwithstanding the provisions above, the parties agree the liquidated damages payable by City shall not exceed Five Hundred Thousand Dollars (\$500,000). The parties also agree that if the terminal delivery date is extended as a result of acts or omissions of the contractor(s) or consultant(s), both City and NYK reserve their right to recover any damages they may sustain from such contractor(s) or consultant(s). Notwithstanding the foregoing, City shall use reasonable efforts to complete the improvements as early as possible and will keep Tenant timely informed of the progress. In any event, City shall advise Tenant of the expected date of completion of all improvements constructed or provided by City in writing both sixty (60) and thirty (30) days prior to such expected date, so that Tenant may schedule the first vessel to dock at the premises and beneficially occupy the premises.

(2) Fifteen (15) days before the terminal delivery date following notice from City thereof pursuant to Section 2(g)(1) above, to the extent that such does not interfere with contractor(s), Tenant shall have the right to enter upon and use the premises for the purpose of receiving and assembling cargo and other activities associated with Tenant's first vessel to dock at the premises. In such event, Tenant shall pay to City all applicable tariff charges (without reduction), provided, however, Tenant shall be entitled to credit such charges to the first annual compensation year for any payments made under this Section 2(g)(2). In addition, City shall permit Tenant, at a time mutually acceptable to City and Tenant, to the extent that such does not interfere with contractor(s), to go upon the premises to make same ready for occupancy by installing telephone, computer and other communication lines, and similar activities. So long as Tenant's erection of cranes at the premises does not interfere with the work of contractor(s) at the site, Tenant may land, test and make operable two (2) container cranes on the premises as follows: (aa) Tenant may land cranes on the wharf at a location designated by City within one hundred twenty (120) days prior to the terminal delivery date and (bb) Tenant may use backland parcel not exceeding 600 feet by 100 feet adjacent to the wharf designated to make the cranes operable ninety (90) days prior to the terminal delivery date. City will attempt to make power available to the site when Tenant is provided the backland area but Tenant may be required to provide its own power. Therefore, if the presently scheduled terminal delivery date of August 20, 1991, is not extended, City will use its best efforts to provide Tenant wharf access by April 23, 1991, and backland access by May 23, 1991. If the scheduled terminal delivery date is extended for any reason set forth in subsection (g) of this Section 2, then

the wharf access and backland access dates will be extended by an equivalent number of days. The effect on compensation of the crane access area being delayed is set forth in Section 4(a).

(3) City and Tenant jointly shall carefully visually inspect the premises and improvements (including water area by soundings of the water area to verify adequate depth) at the time of delivery or commencement of Tenant's beneficial occupancy for the purpose of determining the condition of the premises (including all improvements) provided by City and within fifteen (15) working days thereafter, Tenant shall notify City with respect to those construction defects observed. City shall make every reasonable effort to have such defects corrected by its contractor(s). Any defects noted thereafter by Tenant shall be brought to the attention of the City immediately so that City may request the contractor to take appropriate remedial action.

Section 3. Term.

(a) Length. This Agreement shall commence as provided in the following paragraph and shall terminate, subject to Tenant's option right as provided in Section 3(c) below, twenty-five (25) years after the terminal delivery date as defined in Section 2(g) above. This Agreement shall be submitted to the Federal Maritime Commission of the United States of America for review pursuant to Section 5 of the Shipping act of 1984 ("Act").

The term of this Agreement shall commence on the first day after the Agreement becomes effective under the Act or is determined not subject to the Act or thirty-one (31) days after publication of the order or ordinance approving this Agreement, whichever is later (hereafter "Act effective date"). If this Agreement is subject to the Act and it has not become effective within six (6) months from the date of its transmittal to the Federal Maritime Commission, then both parties agree to withdraw it from consideration and it shall be null and void and of no further force or effect. Tenant understands that City may seek other operators or other uses for the premises for the period following the term of this Agreement. The entry by City into this Agreement with Tenant shall not be interpreted as an assurance that Tenant will be granted the use of the premises or any other lands within the Harbor District for any period beyond the term hereof.

(b) Holdover. Tenant shall not hold over any part of the premises after termination or expiration of this Agreement without first obtaining the Executive Director's written approval. Any such holdover shall be deemed an extension of this Agreement on a month-to-month basis and upon the same terms and conditions as set forth in this Agreement except that the minimum annual guarantee and revenue sharing breakpoint(s) during the holdover period shall be one hundred fifty percent (150%) of the minimum annual guarantee and one hundred fifty percent (150%) of the revenue sharing breakpoint(s) for the immediately preceding compensation period unless the Board at its sole discretion with written notice to Tenant increases the compensation by some lesser percentage provided, however, if a new agreement is reached, then the monies paid during the holdover period shall count against the new compensation which shall accrue from the date the

holdover commenced. If the new compensation is more than the compensation paid during the holdover, Tenant shall immediately pay City the difference due for the holdover period. If the new compensation is less than the amount due and paid for the holdover period, Tenant shall be entitled to a credit against future sums owed to City under the 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 270 of Tariff, currently one-thirtieth (1/30) of two percent (2%) for each day an invoice amount remains unpaid. If no new Agreement is entered into and the holdover is for a period less than twelve (12) months the minimum annual guarantee but not revenue sharing breakpoint(s) shall be prorated by multiplying it by the fraction $X/360$ where X is the number of days in the holdover period provided however Tenant shall not be entitled to any refund if the tariff charges counting toward the minimum annual guarantee which have accrued exceed the prorated minimum.

(c) Option to Extend Term. City hereby grants to Tenant an option (the "Option") to extend the initial 25-year term of this Agreement for a period of 10 years. The Option must be exercised, if at all, by written notice delivered to City by Tenant not later than twenty-four (24) months prior to the end of the initial term of this Agreement. Provided Tenant has properly and timely exercised the Option, the term of this Agreement shall be extended by 10 years, and all terms, covenants and conditions of this Agreement shall remain unmodified and in full force and effect, except that compensation for each five-year period of the extended term shall be renegotiated in accordance with Section 4(i) below. Tenant's exercise of the Option shall be irrevocable unless Tenant and Board mutually agree otherwise. If Tenant elects not to exercise the Option, Tenant shall so advise City by written notice delivered to City by Tenant not later than twenty-four (24) months prior to the end of the initial term of this Agreement.

Section 4. Compensation.

(a) Payment of Tariff Charges. Tenant's obligation to pay compensation shall begin on the terminal delivery date. The scheduled delivery date as set forth in Section 2(g)(1) is August 20, 1991, provided that City may make the terminal available sooner upon the mutual agreement of the parties. Tenant also warrants that by the terminal delivery date it will have delivered and have operational two (2) gantry container cranes at the terminal, all of its yard operating equipment and its computerized cargo management and billing system so that the terminal will be operational. Tenant's failure to fulfill its obligations shall not excuse its compensation obligation nor entitle City to any monies in excess of its compensation obligations under the Agreement except as set forth in the next sentence. If Tenant has not delivered to the terminal and made operational two container cranes by the above defined terminal delivery date, then Tenant's compensation obligations under this Section 4 shall be adjusted as follows: (1) the minimum annual guarantee [see subsection (b) of this Section 4] shall be reduced by fifty percent (50%) for the first thirty (30) days after terminal delivery date, (2) the described adjustment shall not affect the revenue sharing breakpoint for the first compensation year. If City has not provided Tenant a crane access area as described in Section 2(g)(2), then Tenant's obligation to pay compensation shall be extended by the number of days

that tender of the crane access area is delayed by City provided (1) there shall be no extension for any time period during which Tenant is unable to land, test or make operable the cranes so long as such Tenant inability is not caused by City, and (2) the number of days of extension shall not exceed the number of days it actually takes for Tenant to make its cranes operational. Tenant shall be responsible for: (1) collecting Tariff charges accruing at the premises established and required by Tariff less that portion of Tariff charges in excess of the amount Tenant is required to pay City which Tenant elects not to collect from its customers, as stated in its terminal services agreements with its customers, copies of which may be viewed upon request at the offices of Tenant by the Executive Director or his designee which information is to be held in confidence by City so long as permitted under California law and for (2) remitting to City the amounts of such charges, whether or not collected, in accordance with the provisions of subdivision (b) of this section and Exhibit "B." The Tariff and this Agreement do not require Tenant to collect Tariff charges from its customers which are in excess of the amount Tenant is required to pay City under this Agreement, so long as Tenant is not delinquent in its payment obligations under this Agreement and so long as any sharing by Tenant is in accordance with any requirements of the Shipping Act of 1984 or its successor. Tenant shall pay City one hundred percent (100%) of all tariff charges which are not shared pursuant to Section (b). Notwithstanding any other provision of this Agreement, Tenant's obligation to pay all compensation payable hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, any set-off, counterclaim, recoupment, defense or other right which Tenant may have against City. Because the City must construct improvements on the premises before an operating terminal will be available, the parties recognize the "annual compensation periods" ("years") will commence sometime after this Agreement becomes effective. The compensation years for this Agreement shall commence upon the delivery date of the terminal as defined in Section 3(a).

(b) Minimum Annual Guarantee and Revenue Sharing. For each annual period commencing on the terminal delivery date and for the term of this Agreement, Tenant guarantees to City for use of the premises a minimum annual payment. (In this Section 4, the term "annual compensation period" is referred to as "year" and the "minimum annual payment" is referred to as "minimum annual guarantee" or "MAG.") The minimum annual guarantee for the first five (5) years of the term of this Agreement shall be as set forth in Exhibit "B" subject to any adjustments as provided below. The minimum annual guarantee shall accrue the first day of each annual compensation period and shall be paid as provided in Exhibit "B" based on Port accounting records of verified billed amounts. Payment of the MAG shall entitle Tenant to use the office space designated in Exhibit "B" without additional charge. Tenant shall pay for any office space used in excess of that specified in Exhibit "B" at the tariff rate. Tenant shall be entitled to share tariff charges accruing at the premises with City as provided in Exhibit "B" based on Port accounting records of verified billed amounts.

(c) Adjustment of Compensation - Tariff Charges. On the effective date of an increase or decrease in the Tariff wharfage rate for Merchandise Not Otherwise Specified (N.O.S.), the minimum annual guarantee and revenue sharing breakpoint(s) specified in Exhibit "B" shall be increased or decreased

proportionately by multiplying them by the factor: X divided by Y, where X represents the increased or decreased tariff wharfage rate for cargo Not Otherwise Specified (N.O.S.) and Y represents the N.O.S. wharfage rate being superseded. Tenant thereafter shall pay City a minimum annual guarantee based on the revised rate and shall share revenues based on the revised breakpoint(s). The minimum annual guarantee and revenue sharing breakpoints for each year shall be the average of those in effect during the year. All tariff increases occurring after the day Tenant signs this Agreement shall result in the described adjustment.

(d) Adjustments Resulting from Terminal Construction. The parties have agreed upon the cost for constructing the Tenant Designed Improvements on the premises as set forth in Section 7(a)(2).

(e) Filing of Statements and Payments of Charges. Tenant agrees to furnish all statements, manifests, reports and other supporting documents to pay the total amount of all charges accruing at the premises pursuant to and at or before the time provided in Tariff, except as otherwise provided in this Agreement.

Tenant shall file with the Executive Director, on forms provided by the Los Angeles Harbor Department, a statement verified by the oath of Tenant, its manager or duly authorized representative, showing all tariff charges counting toward the minimum annual guarantee or revenue sharing breakpoint(s) as described in Exhibit "B" which accrue at the premises for each vessel berthing or mooring at the premises. Such statement shall be filed on or before the tenth (10th) day following the departure of each vessel.

(f) Payment Procedure. The parties recognize that existing agreements with City, if any, remain in effect until superseded. Accordingly, Tenant shall continue to make payments as provided in such agreements until this Agreement becomes effective. After this Agreement becomes effective, Tenant shall cause each of its customers to file with City on forms provided by City as provided in Tariff, a statement verified by oath of one of the customer's officers or other duly authorized representative showing all tariff charges accrued during each port call of the customer's vessels. Based upon this information, City shall invoice Tenant for tariff charges due City as provided by the Tariff and this Agreement and Tenant shall remit such tariff charges to City. If Tenant at the end of each compensation year has not remitted sufficient tariff charges to cover the minimum annual guarantee for that period, Tenant shall submit within thirty (30) days all additional monies to assure the minimum annual guarantee is paid. If this Agreement terminates through no fault of Tenant, Tenant shall, on or before thirty (30) days thereafter, with or without notice from City, pay all monies due City. Any compensation due and unpaid shall incur a delinquent charge as set forth in Item 270 (or its successor) of the Tariff, currently one-thirtieth (1/30) of two percent (2%) for each day an invoice amount remains unpaid.

(g) 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 available locally, and shall be subject to examination, audit and transcription by Executive Director or any person designated by him.

If 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. After this Agreement terminates, City shall conduct any audits deemed necessary within two (2) years provided this provision shall not waive any rights City may otherwise have under law. 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. If at any time during this Agreement City becomes concerned about Tenant's ability to carry out its obligations under this Agreement such as Tenant's compensation, maintenance, indemnity, or restoration obligation, Tenant shall produce at City's written request its annual audited financial statements including its balance sheet, income statement and statement of changes in financial position, statement of changes in retained earnings and the Section 10K filing statement required by U.S. security laws. The records of Tenant's parent company shall also be produced if requested by City. Records produced for City are subject to the Public Records Act of Government Code Sections 6250 et seq. If City receives a request for production of such records and Tenant objects to such production City shall provide Tenant an opportunity to file a court action to protect such records before it produces such records.

(h) Use of Port of Los Angeles Facilities. In consideration of the revenue sharing provisions of this Agreement, Tenant agrees to exclusively move all of Tenant's Southern California container cargo on cellularized ships (or any ship used principally for containers) through the Port of Los Angeles except those cases as otherwise approved by the Executive Director.

(i) Renegotiation of Compensation. The compensation due under this Agreement shall be readjusted as described below for each five (5) year period or portion thereof following the terminal delivery date as defined in Section 2(g). 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 and shall be established by order of Board. In determining such compensation, the parties shall consider the uses permitted under this Agreement and all of its terms, conditions and restrictions. The parties shall also consider all factors and data relating to the fair rental value of the premises which may properly be considered in determining the fair value of leaseholds under the laws of eminent domain in the State of California.

If compensation has not been determined by the beginning of the new compensation period, the minimum annual guarantee and revenue sharing breakpoint(s) for the new period, subject to the final compensation being negotiated, shall be one hundred fifty percent (150%) of the minimum annual guarantee and one hundred fifty percent (150%) of the revenue sharing breakpoint(s) of the former period which shall be paid in the same manner as provided in Section 4(f) 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. 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. 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. Based upon such 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.

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 270 of Tariff (or its successor), currently one-thirtieth (1/30) of two percent (2%) per day each invoice amount remains unpaid. Before the newly negotiated rate becomes effective, the Board order or amendment approving the specially negotiated rate shall be filed with the FMC and become effective under the Shipping Acts of 1984 and 1916.

(j) Deposits to Secure Compensation Obligations. Upon the written request of the Executive Director at his sole discretion, Tenant shall provide a cash deposit, certificate of deposit, surety bond, letter of credit, letter of guarantee or other form of security acceptable to the Executive Director in the amount of -NONE AT THIS TIME- payable to the City of Los Angeles and/or in the name of the City of Los Angeles unless the parties otherwise agree to guarantee its compensation obligations to City. Any security posted shall be in a form satisfactory to the Executive Director and the City Attorney and subject to the approval of the City Attorney. Tenant agrees to execute any and all documents necessary to create a secured interest in City if the form of security provided, in City's opinion, requires such security agreement. City shall have the right to draw upon the security at any time after City has provided Tenant a written notice of delinquency and Tenant has failed to cure the delinquency within thirty (30) calendar days of the date the notice is postmarked or personally delivered to Tenant. If City uses all or any part of the deposit, Tenant shall immediately make another deposit in the form above as directed by City 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. If the Executive Director becomes aware of facts which lead him to believe that the financial condition of Tenant suggests to the Executive Director, in his sole discretion, that Tenant may not be able to meet its compensation obligation or any other obligation under this Agreement the Executive Director may increase the amount of the security deposit and where no security deposit was initially required, the Executive Director may require such a deposit. Tenant shall provide such security in satisfactory form within thirty (30) calendar days of the date City's notice is postmarked.

(k) Disputed Payments. Tenant recognizes that disputes may arise over monies due the 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 the 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 the City's favor, City shall receive the money and all accumulated interest. If the dispute is resolved in the 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. Failure to provide a deposit shall require Tenant to make all payments in accordance with Item 265 of the Tariff (or its successor) and Tenant shall be removed from the Credit List authorized by Item 260 of the Tariff (or its successor). For any disputed amount exceeding One Hundred Thousand Dollars (\$100,000), Tenant shall be required to deposit only 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), City shall keep the deposit and accumulated interest and Tenant shall pay the difference due within fifteen (15) days with interest at the rate set forth in Section 4(f) from the date of City's initial billing to Tenant. If Tenant prevails in the dispute Tenant shall be refunded its deposit with interest as provided above.

(1) Terminal Operating System for Financial Reporting and Auditing. Tenant agrees that the terminal operating system which Tenant will implement pursuant to Section 7(a)(6) for purposes of financial reporting and auditing will be provided in coordination with the City.

Section 5. Uses.

(a) Permitted Uses. Tenant shall use the premises for the docking and mooring of vessels owned, operated, or chartered by Tenant or vessels of Tenant's customers and for the assembling, distributing, loading and unloading of goods, wares and merchandise on and from such vessels over, through and upon such premises and from and upon other vessels. Tenant shall not use or permit the premises or any part thereof to be used for any other purpose without the prior written approval of Board, and subject to such restrictions, limitations and conditions as may be imposed by Board.

(b) Solicitation and Service of Customers. Tenant may solicit and serve customers at the premises provided Tenant agrees not to serve any customer which is a Tenant of the City at other premises in the Port of Los Angeles or which is regularly served by Tenant of the Port of Los Angeles without the prior written approval of Executive Director.

(c) Increased Insurance Rates. Tenant agrees not to use the premises in any manner, even if its use is for the purposes enumerated herein, that will result in the cancellation of any insurance that City has on the premises, or other parties may have on adjacent premises. If Tenant's use does cause cancellation of City's coverage, Tenant agrees to immediately cease such use upon seven (7) calendar days' written notice from City calculated from the date of postmark or date of delivery of City's letter. Tenant further agrees not to keep on the premises or permit to be kept, used, or sold thereon, anything prohibited by any policy of fire insurance covering the premises.

(d) State Tidelands Grant. This Agreement, and the premises granted hereby, 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 XI of the Charter of the City of Los Angeles relating to such lands. Tenant agrees not to use the premises in any manner, even in its use for the purposes enumerated herein, which will be inconsistent with such limitations, conditions, restrictions and reservations.

(e) Shipping Act. Notwithstanding any other provision contained herein, except to the extent Tenant already has an Agreement with City for portions of the premises described herein, Tenant shall not use the premises hereby granted or furnish any facilities or services thereon for or in connection with a common carrier by water as that term is defined in the Shipping Act, 1984, as amended, unless and until this Agreement has been submitted to the Federal Maritime Commission pursuant to the Shipping Act of 1984, and has either become effective under or has been determined not to be subject to said Act.

(f) Load Limit. Tenant shall not bring any cargo handling equipment onto the premises without first: (i) providing to Harbor Engineer a list showing the name, type, weight, and wheel loading of the equipment and the area of the terminal in which it is to be used; and (ii) receiving Harbor Engineer's written permission to use said equipment. Equipment listed on the attached schedule (if any) and other equipment having similar weight and wheel loading characteristics shall be deemed to satisfy the terms of the preceding sentence. No loading in excess of that listed in the Harbor Engineer's permit shall be allowed on any wharf apron, which is that portion of the assigned premises extending inboard from the face of the wharf to the bulkhead wall (the wall separating the land from the water). No railroad loading shall exceed the amount specified in the Engineer's permit. No loading in the remainder of the assigned premises shall be such as to damage paving or underground utilities. If City discovers that overloading by Tenant exists, upon receipt of notice thereof from City, Tenant shall immediately correct the condition and shall be responsible for and shall indemnify the City for any damage arising therefrom.

(g) Clearing of Wharf. Upon the departure of a vessel which has been berthed at the premises, Tenant at its cost, shall forthwith clear the wharf for its entire length inboard to the bulkhead wall so that such area shall be available for use in connection with cargo to be loaded or discharged from other appropriately scheduled vessels when necessary to reasonably accommodate the operational needs of secondary, tertiary and other users permitted in accordance with the terms of this Agreement and the Tariff.

(h) Wilmington Truck Route. It is recognized by both parties that Tenant does not directly control the trucks serving the terminal. However, Tenant will make all reasonable efforts to notify truck drivers, truck brokers and trucking companies, that trucks serving the terminal must confine their route to the designated Wilmington Truck Route of Alameda Street and "B" Street; Figueroa Street from "B" Street to "C" Street; and Anaheim Street east of Alameda Street. A copy of the Wilmington Truck Route is attached hereto and marked Exhibit "C," which may be modified from time to time at the sole discretion of the Executive Director with written notice to Tenant.

Section 6. Default and Termination.

(a) Default and Right to Terminate.

(1) Upon the neglect, failure or refusal by Tenant to comply with any of the terms or conditions of this Agreement, Executive Director shall give Tenant a notice to cure any defect. If the defect can be reasonably cured within thirty (30) days, Tenant shall do so. If the defect cannot reasonably be cured within thirty (30) days, Tenant shall nevertheless immediately commence cure of the defect and simultaneously and within this thirty (30) day period provide Executive Director in writing a plan for correcting the defect and a schedule of completion. Tenant thereafter shall proceed diligently with the work and complete the work within the time authorized by Executive Director. If the work is not completed within the time designated by the Executive Director in writing, the Executive Director may terminate the Agreement upon providing Tenant a fifteen (15) day written notice. Thereafter Board may recover possession of the premises as provided by law. However, if there is any default in the payment by Tenant of the compensation or other consideration required by this Agreement, Executive Director may give to Tenant a ten (10) calendar day notice to pay all sums then due, owing and unpaid. If such payment is not made within such ten (10) calendar day period, at the election of City, stated in such notice, this Agreement and Tenant's rights hereunder are forfeited and City has the rights above set forth.

(2) Upon any forfeiture of this Agreement, Tenant shall immediately surrender all rights in and to the premises and all improvements. Tenant expressly agrees to indemnify City for any loss City may suffer if the Agreement is terminated and Tenant fails to vacate the premises. These losses include, but are not limited to, increased costs to City's contractors, if their work is delayed by Tenant's failure to vacate the premises and City's loss of increased revenues resulting from the delay in re-renting the premises at the then current rate. Upon any such forfeiture of this Agreement, Tenant shall immediately remove any and all buildings, structures and improvements of any character whatsoever, erected, installed or made by Tenant or by a predecessor with whom Tenant has been affiliated or has dealt directly under, through, or because of, or pursuant to the terms of this Agreement, or any prior Agreement provided that Tenant shall repair all damage caused by such removal and shall comply with all applicable laws regarding removal of fixtures including but not limited to California Civil Code Section 1019. Notwithstanding the above, if Tenant is indebted to City at the time of any forfeiture, City shall be entitled to assert a landlord's lien in any and all of Tenant's fixtures on the premises. For the purposes of this provision, City and Tenant agree that container cranes owned by Tenant remain the personal property of Tenant and are not forfeited to City in the event of Tenant's default.

(3) If this Agreement is forfeited as set forth above, Board may enforce all of its rights and remedies under this Agreement. The damages that City may recover include the worth at the time of the award of the amount by which the unpaid compensation for the balance of the term of this Agreement exceeds the amount of such compensation loss for the same period

Tenant proves could have been reasonably avoided. The parties specifically agree the compensation to which City is entitled includes:

(i) The worth at the time of the award of future guaranteed minimums payable under this Agreement from the date of forfeiture to the end of the term of this Agreement; and

(ii) The worth at the time of the award of all rent pursuant to the revenue sharing provision of this Agreement from the date of forfeiture to the end of the term of this Agreement. If a dispute arises as to the amount owed by Tenant under the revenue sharing provision of this Agreement, the parties agree that the factors to be considered in the calculation of said amount are:

- a. Tenant's past history of revenue sharing payments to City under this Agreement, and
- b. if the information in (a) is not available for a twelve months period, then the amounts of cargo handled by Tenant at other facilities it may operate and the amounts of revenues generated by similar tenants under revenue sharing agreements with the City.

For purposes of this provision, the minimum annual guarantee shall be deemed to accrue at the beginning of each compensation period. Tenant specifically recognizes the right of City to collect the damages permitted by Civil Code Section 1951.2 which Tenant acknowledges it has read.

(4) Any default in Tenant's obligations to make payments to City under the terms of any berth assignment, lease, permit or other agreements, when such default involves the sum of One Hundred Thousand Dollars (\$100,000) or more, shall constitute a material default on the part of Tenant with respect to this Agreement. At any time Tenant has defaulted in payments due under other agreements, City may give Tenant a thirty (30) day default notice for this Agreement as provided above and this Agreement may be forfeited if the default in rental payments of other agreements, including but not limited to berth assignments, leases and permits, is not current within this thirty (30) day period.

(b) Thirty-Day Nonuse. If Tenant fails or ceases to use the premises or any substantial portion thereof for the purposes and in the manner herein prescribed for a period of more than thirty (30) consecutive days without the consent of Board, Board may declare this Agreement forfeited in accordance with the provisions of subsection (a) of this Section 6. Thereupon all the right, title and interest of Tenant hereunder shall cease and terminate. However, if cessation of or failure to use as herein prescribed is caused by reason of war, bona fide strikes, not caused by Tenant and to which Tenant is not a party or riots, civil commotion, acts of public enemies, earthquake, other natural disaster or action of the elements, and Tenant so notifies the Board within ten (10) days from the date said period of cessation or failure to use began, such period of nonuse shall be excluded in computing the thirty (30) day period set forth herein.

(c) Termination by Court Decree. If a United States Court, State or Federal, having jurisdiction, renders a decision which has become final and which will prevent the performance by City of any of its obligations under this Agreement, then either party hereto may terminate this Agreement by written notice. Thereafter all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall terminate.

(d) Termination by Destruction of Premises. If all of the major structures owned by or under control of Board are totally destroyed by fire not resulting from Tenant's neglect or fault, or by earthquake, other natural disaster or action of the elements, or are so nearly destroyed as to require rebuilding, then the rent shall be paid to the time of such destruction and this Agreement shall thereupon terminate. Neither party hereto shall have any further rights or be under any further obligations on account of this Agreement, except that City shall be entitled to receive all rent accrued to the date of destruction. For the purposes hereof, damage or injury to the extent of fifty percent (50%) of the replacement value of all of the major structures owned by or under the control of Board shall constitute a total destruction thereof. If such structures are partially destroyed by fire not resulting from Tenant's neglect or fault, earthquake, or other natural disaster or action of the elements, City with reasonable promptness and dispatch shall repair and rebuild the same, providing the same can be repaired and rebuilt within one hundred eighty (180) working days. Tenant shall pay compensation during such period of repair or rebuilding in the proportion that the portion of the premises available to Tenant for occupancy bears to the entire premises. This provision however shall not be construed to entitle Tenant to a refund of charges counting toward the minimum annual guarantee which have accrued if these charges, at the end of the year, exceed any prorated minimum. For the purposes hereof, damage or injury that amounts to less than fifty percent (50%) of the replacement value of all the major structures owned by or under the control of Board shall be considered as a partial destruction. This provision does not apply to structures constructed by Tenant. If a destruction of a particular portion of the premises significantly impedes cargo operations to a degree materially greater than the percent of the terminal affected, the proration of rental due shall also take into account the feasible cargo throughput after the destruction of the premises compared to the feasible cargo throughput before the destruction.

(e) Bankruptcy, Credit Arrangements, Attachments, Tax Liens. The occurrence of any one of more of the following events shall constitute a material default and breach of this Agreement by Tenant:

(1) The making by Tenant of any general assignment, or general arrangement for the benefit of creditors;

(2) The filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy;

(3) The appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the premises or of Tenant's interest in this Agreement;

(4) Any attachment where such seizure is not discharged within sixty (60) days; or

(5) The filing of any tax lien against Tenant not discharged within thirty (30) days provided that Tenant shall notify City of any tax liens filed of a value greater than One Hundred Thousand Dollars (\$100,000) and Tenant may contest such tax lien without defaulting this Agreement so long as Tenant can satisfy City in City's sole discretion, that Tenant has sufficient funds to satisfy such tax lien if it fails to prevail in the contest action. City may at its sole option require Tenant to place into escrow a letter of credit, letter of guarantee, or other form of security satisfactory to City to assure monies are available to pay any tax lien if Tenant does not prevail in its contest of the lien.

The seizure of the premises by the Internal Revenue Service shall automatically terminate this Agreement without any notice by City to Tenant.

(f) Reduction in Minimum Annual Guarantee. Tenant's obligation to pay the minimum annual guarantee and additional sums shall not be reduced or excused when this Agreement is terminated except when this Agreement is terminated pursuant to the terms of subsections (c) and (d) of this Section 6 [Termination by Court Decree, Termination by Destruction of the Premises]. If a termination occurs under Section 6(c) or (d), and if the minimum annual guarantee has not been achieved by the end of the year, Tenant shall be liable for only the pro rata portion of the minimum annual guarantee for that period the premises were actually available for use by Tenant provided however, if tariff charges for the prorated year have accrued in excess of the prorated minimum annual guarantee, Tenant shall remit all these tariff charges to City except to the extent Tenant is entitled to share revenues as provided by Section 4. The revenue sharing breakpoint(s) shall not be prorated.

(g) City as Agent to Store Property. If Tenant fails or refuses to remove its property from the premises at the expiration or termination of this Agreement, Tenant hereby irrevocably appoints City as the agent of Tenant to enter upon the assigned premises and remove any and all persons and/or property whatsoever situated upon the assigned premises and to place all or any portion of said property (except such property as may be forfeited to City) in storage for the account of and at the expense of Tenant provided however this provision shall not prevent City from taking possession and disposing of Tenant's property in anyway permitted by law and provided that this provision shall not obligate City to move or dispose of Tenant's property. It is agreed this provision is intended to assure City it may maintain complete control over the premises granted to Tenant and is not to be construed as creating any duties of City to third persons interested in Tenant's personal property.

(h) Relocation Assistance. It is understood and agreed that nothing contained in this Agreement shall create any right in Tenant for relocation assistance or payment from City upon the expiration or termination of this

Agreement or upon termination of any holdover period. Tenant acknowledges and agrees that it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) or any other California code or federal code with respect to any relocation of its business or activities upon the expiration or termination of this Agreement or upon the termination of any holdover period. In consideration of the level of compensation set under this Agreement, Tenant expressly waives any relocation assistance which such statutes or any future statutes may allow.

(i) Termination and Abatement of Compensation as a Result of Force Majeure. If the operation of the premises (including any structures or facilities constructed thereon, or the container crane(s), or any parts thereof) is suspended or abated or utilization thereof prevented or impaired by governmental authority (provided the governmental action is not a result of Tenant's neglect or fault), civil commotion, acts of God, reason of war, the public enemy, warlike operations, strikes or other labor disputes, lockouts (other than those caused by Tenant), or other work stoppages (provided such are bona fide labor-management disputes), so as to render the premises wholly or in substantial part untenable or unfit for use thereof, the Minimum Annual Guarantee and compensation for container cranes payable by Tenant (if any) and the Revenue Sharing Breakpoints, for the year in which the force majeure incident occurs shall be reduced, commencing the thirtieth (30th) day after Tenant notifies City in writing of the commencement of any of the foregoing occurrences. Such reduction shall be applicable until such condition or conditions cease. The amount of such reduction shall be determined by multiplying the Minimum Annual Guarantee and Revenue Sharing Breakpoints and crane compensation (if any) otherwise due by a fraction of which the numerator is the number of days (less thirty (30) days) during which the premises are untenable or unfit for use or incapable of use, and the denominator is three hundred sixty-five (365).

If, despite the above force majeure incident the premises are partially available for use, the Minimum Annual Guarantee and Revenue Sharing Breakpoints shall be reduced as above during the period of such force majeure incident but only in proportion to the adverse affect on Tenant's operation of the premises caused by such force majeure incident. Such adverse affect shall be measured by objective factors (such as historical operations as reflected in Tenant's books and records) and in the event of an unresolved dispute between City and Tenant thereon, each party shall be entitled to present to the appropriate trier of fact what it considers relevant evidence on such matter. If there is a dispute as to whether a force majeure event has occurred, the issue of the occurrence of the force majeure event shall also be presented to the appropriate trier of fact for resolution.

Section 7. Improvements.

City and Tenant recognize that paragraph (a) of this Section 7 describes the improvements to be constructed by City for Tenant's use and paragraph (b) of this Section 7 describes conditions applicable to improvements made on the premises by Tenant at any time during the term of this permit.

(a) Improvements to Be Constructed by City Prior to Tenant's Use.

(1) Regulatory Requirements. The terminal will be constructed in accordance with all regulatory requirements.

(2) General Description of Improvements and Project Budget.

(aa) The parties agree, subject to the conditions set forth below in this Section 7(a)(2), that the NYK Terminal will include the following improvements: (i) a marine building approximately four thousand five hundred (4,500) square feet in area; (ii) a maintenance and repair facility approximately twenty-nine thousand (29,000) square feet in area; (iii) a gate complex including an administration building approximately twenty-four thousand (24,000) square feet consisting of a maximum of ten (10) entry lanes for trucks; (iv) a container freight station ("CFS") approximately forty-five thousand (45,000) square feet in area, (v) various other improvements as agreed by the parties. (The improvements listed above in items (i) through (v) are referred to as the "Tenant Designed Improvements.") In addition to the Tenant Designed Improvements the NYK Terminal will include one hundred and 11/100 (100.11) acres (subject to the qualification noted below and including the wharf area) of paved heavy duty, lighted and security fenced land and a total of two (2) berths of a combined length of approximately two thousand one hundred forty (2,140) linear feet. Tenant agrees to provide and maintain four (4) gantry container cranes for the terminal. The parties agree the above description is general only. The Tenant Designed Improvements are described in more detail in the attached Exhibit "D."

(bb) The parties agree that the Tenant Designed Improvements may be modified to permit construction within a final construction cost budget of Fifteen Million Two Hundred Thousand Dollars (\$15,200,000), exclusive of design costs and administrative costs incurred in connection with construction (the "Construction Budget"). The cost of the Tenant Designed Improvements shall include the total monies City is obligated to pay the contractor(s) to complete construction of the Tenant Designed Improvements as determined at the time the Board of Harbor Commissioners accepts such construction as complete.

(cc) Construction of the NYK Terminal shall take place in six phases referred to below. Each phase shall be completed at such time as shall permit City to meet its obligations under this Agreement, including the terminal delivery date set forth in Section 2(g) above. The Tenant Designed Improvements shall be constructed in conjunction with Phase IV and as Phases V and VI.

- (cc1) Phases I, II and III consist of site preparation and construction of the wharf facilities. These phases have been completed or are under construction on the effective date of this Agreement.
- (cc2) Phase IV consists of additional site improvements and construction of the terminal administration building/entrance gate complex.
- (cc3) Phase V consists of all remaining improvements required to be constructed by City, including the remaining Tenant Designed Improvements other than the CFS.
- (cc4) Phase VI consists of the CFS. Construction of the CFS is subject to the provisions of subsection (ff) below.
- (dd) In the event the bids for the Tenant Designed Improvements exceed Fourteen Million Four Hundred and Forty Thousand Dollars (\$14,440,000), Tenant authorizes City, subject to the provisions of subsection (ff) below, to take reasonable action subject to Tenant's consent, which consent may not be unreasonably withheld, to modify the Tenant Designed improvements to the extent necessary to allow the bids not to exceed \$14,440,000.
- (ee) The amount by which the actual construction cost of the Tenant Designed Improvements, including the CFS, is less than or greater than the Construction Budget, shall be treated as follows:
 - (ee1) If the actual construction cost of the Tenant Designed Improvements is less than the Construction Budget, the saving shall be added to the Credit referred to in Section 2(g)(1).
 - (ee2) If the actual construction cost of the Tenant Designed Improvements is greater than the Construction Budget, City shall be responsible for such excess except as provided in subsection (ee3).
 - (ee3) To the extent the actual construction cost of the Tenant Designed Improvements exceeds the Construction Budget and such excess is attributable to construction of Phase VI, Tenant shall have the option, in its sole discretion, (i) to reimburse City for such excess, (ii) to have the excess subtracted from the Credit referred to in Section 2(g)(1), (iii) to select a combination of (i) and (ii) above or (iv) to exercise the option set forth in subsection (ff3) below.

- (ff) In the event it is determined by Tenant that the Tenant Designed Improvements cannot be constructed within the Construction Budget, Tenant shall have the following options:
- (ff1) Tenant may cause the CFS to be redesigned (at Tenant's expense in accordance with the Agreement between Tenant and VZM as referred to in Section 7(a)(3) below) to permit construction by City within the Construction Budget; or
 - (ff2) Tenant may request City, and City shall comply, to construct the CFS in accordance with a mutually agreed design at City's sole cost and expense, subject to the provisions of subsection (ee) above; or
 - (ff3) Tenant may construct the CFS as a pre-engineered building or otherwise at its sole cost and expense at any time during the term of this Agreement, subject, however, to compliance with the provisions of Section 7(b) below; or
 - (ff4) Tenant may determine not to have the CFS constructed during the term of this Agreement.
- (gg) For purposes of determining City's liability for liquidated damages pursuant to Section 2(g)(1) above, City shall not be obligated to deliver the CFS by the terminal delivery date set forth in Section 2(g)(1) if Tenant exercises any right under subsection (ff) above which would delay substantial completion of the CFS to a date after substantial completion of the Phase V Tenant Designed Improvements.

(3) Terminal Design. City agrees to design the wharf and backland areas described above. Tenant agrees to design the facilities listed above in Section 7(a)(2), items (i) through (v). Tenant has entered into a contract with Vickerman-Zachary-Miller ("VZM") to design such facilities. City agrees to purchase the VZM plans from Tenant, within thirty (30) days after approval of this Agreement by the Federal Maritime Commission, in an amount not to exceed One Million Six Hundred Sixty Six Thousand Dollars (\$1,666,000). The cost of the plans shall be based on the cost of VZM services related to the terminal design exclusive of any costs associated with Tenant's operations such as Tenant's computer system for the terminal. Tenant's contract with VZM shall not alter the rights or obligations Tenant would otherwise have in the absence of such contract against any third party responsible for defects in the VZM designed structures except to the extent Tenant's acts or omissions contribute to the defects. City agrees to indemnify Tenant for claims or liability which may result to third parties from defects in the VZM plans unless such defects result from the acts or omissions of Tenant.

(4) Terminal Construction. Subject to the conditions below, City agrees to construct or provide improvements on the premises substantially in accordance with Tenant's requirements as reflected in the drawings referenced in Section

7(a)(2) and any change orders which may be implemented during construction. The design/engineering information to be included in the drawings referenced above includes but is not limited to building footprints, location and orientation, size and uses of all buildings, striping, gate location(s), refrigerator plug ("reefers"), vessel draft requirements, special requirements of NYK for the wharf (including crane rails), fendering systems, backlands, and other related substantive detailed information required in the design process. VZM will obtain all necessary permits to complete its design including but not limited to permits and agreements from the City's Cultural Affairs Board and the Department of Building and Safety. City shall have the obligation of obtaining any and all necessary permits or approvals for construction at its expense.

(aa) City agrees to consult with Tenant at all stages of the design and construction and to consider the requirements of Tenant. The parties shall use reasonable efforts to coordinate the design and construction activities and otherwise reasonably cooperate to facilitate the timely performance of their obligations under this Permit.

(bb) Tenant recognizes that City reserves final approval of the design of all facilities, the award of construction contracts, and the supervision of contractors. This approval authority shall not relieve Tenant or its consultants of any liability for errors either may cause except as may otherwise be provided by this Agreement. Tenant agrees that it will not interfere with construction activities when installing equipment associated with Tenant's terminal operating system ("TOS"). City will timely furnish Tenant with a schedule indicating critical dates and all changes thereof. Tenant shall provide City its comments within fifteen (15) working days of any request by City. Tenant's failure to respond within this time shall result in the delivery date for the terminal being extended by the number of days Tenant is late in responding. During construction of the improvements, Tenant shall give no orders to any contractors unless first requested in writing by Director of Construction Management to do so, and agrees to generally cooperate with the contractor(s).

(5) Delivery. City shall deliver the terminal wharf and backlands in accordance with the requirements of Sections 2(g) and 7(a)(4).

(6) Equipment. Tenant will purchase at its expense, subject to financing arrangements satisfactory to Tenant, four (4) gantry container cranes and mobile yard equipment necessary for cargo operations at the premises. Tenant shall make two (2) gantry cranes available for operation at the terminal by the terminal delivery date. All four (4) cranes shall be available for operation at the terminal within six (6) months of the terminal delivery date. Tenant shall also provide a terminal operating system for purposes of financial reporting and auditing which will serve its needs, provide all necessary customs information and at all times be compatible with automated reporting of all revenues due under this Agreement and sufficient to verify all charges due under the Port Tariff

in a reasonable and timely manner. Tenant shall provide all furniture and fixtures which it needs for its operations. Tenant agrees to provide City the crane design drawings for its review and incorporate changes reasonably requested by City to the extent such changes may be accommodated by the crane manufacturer at the time of the request by City.

(7) Access of Premises to Intermodal Rail. The parties acknowledge that the City is reviewing the feasibility of providing intermodal rail access at various terminals throughout the harbor. City agrees to provide intermodal rail access to NYK as soon as practically possible so that NYK may remain competitive with other terminals at the Port of Los Angeles and future developments at the Port of Long Beach. The Port agrees to provide NYK with progress reports at least once every three (3) months on the development of the premises and access to it for intermodal rail operations. [Rail access includes assuring that (a) the Badger Avenue Bridge is in the condition and has the capacity to handle intermodal rail access and (b) the Anaheim Street overpass provides sufficient clearance for a double stack container rail car with high cube (9.5 feet high) containers stacked two high.] The parties recognize (i) construction of such an intermodal rail facility would not be within the NYK terminal but in an area contiguous to it and generally referred to as the "Terminal Island Container Transfer Facility"; (ii) the development of intermodal facilities anywhere in the Port will require all necessary regulatory approvals including environmental compliances including but not limited to those necessary under CEQA, the Coastal Act and the Clean Air Act; and (iii) the cost of any intermodal facilities which may be made available to Tenant has not been included within the compensation provisions of this Permit and therefore, any compensation associated with the use of such facilities will be set separately.

(8) City's Right to Purchase and Right of First Refusal in Cranes. Tenant agrees to grant to City the right to purchase the cranes identified in Section 7(a)(6) upon the conditions set forth hereafter. If Tenant leases rather than purchases the cranes, Tenant hereby grants to City the right to exercise any option Tenant may have to purchase such cranes from the owner on the terms set forth in such crane lease provided that such owner and City may agree on different terms depending on the value of the crane(s) at the time such option may be exercised. Tenant agrees to include in its crane lease agreement with its lessor an option allowing Tenant to purchase the cranes upon the expiration of the crane lease. If Tenant leases the cranes, Tenant's crane lessor shall be subject to the terms and conditions specified below.

(aa) Replacement of the Cranes. If Tenant desires to replace one or more cranes, it shall provide City twelve (12) months advance written notice of the proposed replacement so that City may decide whether to purchase any or all of the cranes being replaced in accordance with the procedure set forth in subsection (dd) of this Section 7(a)(8).

(bb) Tenant's Default. If Tenant defaults and City desires to terminate this Agreement, then City shall be entitled to retain

any or all of the cranes on the premises for twenty four months (24) after Tenant vacates the premises and City shall also have a right to purchase any or all of the cranes in accordance with the procedure set forth in subsection (dd) of this Section 7(a)(8). If City does retain the crane(s) on the premises after a default, subject to the conditions in the following sentence, City agrees to remit to Tenant the Port of Los Angeles Crane tariff charges (less the City's cost of crane maintenance and utility charges that it incurs - both of which are included in the tariff crane rental rate that City collects from a new Tenant at the premises). Notwithstanding the foregoing sentence, City shall be entitled to retain all new Tenant crane tariff charges to the extent Tenant owes City any monies and Tenant shall not have any right in such monies until monies owed to City are first paid.

- (cc) Expiration and Non Renewal of Agreement. Upon the natural expiration of the term of this Agreement and if Tenant and City do not negotiate a successor Agreement, City shall have the same right to retain the cranes on the premises for twenty four (24) months following Tenant's vacation of the premises as set forth in subsection (bb) and to purchase any or all of the cranes as set forth in subsection (dd) of this Section 7(a)(8) and Tenant shall have the following rights. If Tenant wishes to shorten the twenty four (24) month crane retention period, it may do so by providing City advance written notice of its intention not to negotiate a successor agreement.

If, for instance, Tenant notifies City in writing twelve (12) months before the natural expiration of the Agreement that Tenant does not wish to negotiate a new Agreement, then City shall be entitled to retain the crane(s) on the premises after expiration of the Agreement for only twelve (12) months rather than twenty four (24) months. For every month in advance of the natural termination date that Tenant provides written notice of its intention not to negotiate a successor Agreement, a corresponding reduction shall be made in the above referenced twenty four (24) month period.

- (dd) City's Exercise of Option. In the event (i) City is given a written notice pursuant to subsections (aa), (bb) or (cc) above or (ii) the twenty four (24) month crane retention period commences after Tenant has vacated the premises following a default or natural termination of the Agreement, City may exercise its right to purchase one or more of the cranes (the "crane(s)") as follows:

- If City is interested in purchasing the crane(s), subject to the procedure below including the determination of a price acceptable to City, City shall so advise Tenant in writing within thirty (30) calendar days following the event specified in (i) or (ii) above.

- Within ninety (90) calendar days following City's notice, the fair market value purchase price of the cranes shall be determined by mutual agreement or by appraisal in accordance with the appraisal procedure set forth below. In the absence of agreement on the fair market value purchase price, the parties shall select a mutually acceptable qualified independent appraiser. If a mutually acceptable appraiser cannot be selected, each party shall select one appraiser and the two appraisers so selected shall select a third. The appraiser(s) selected must have at least five (5) years experience in the appraisal of heavy industrial equipment unless the parties mutually agree otherwise. The appraiser(s) so selected shall, within ninety (90) calendar days following the City's notice to Tenant of City's interest in purchasing the crane(s), determine the fair market value of the crane(s) which City is interested in purchasing.

- In determining the fair market value, the appraiser(s) shall give due consideration to the location, condition, manufacturer and remaining useful life of each crane appraised (including functional obsolescence) taking into account the fair market value of comparable cranes and the operational needs of container terminals when the appraisal is made. City shall also be entitled to purchase Tenant's inventory of crane spare parts which shall be appraised in the same manner. If three appraisers are appointed, the determination of the appraiser which differs most from the other two determinations shall be excluded. The remaining two determinations shall be averaged and such average shall constitute the determination of the appraisers. The fees and expenses of the appraisers shall be shared equally by City and Tenant. If following completion of the appraisal City determines the appraised price is satisfactory for the crane(s) so appraised, City and Tenant shall take all action necessary to close the sale within thirty (30) calendar days following completion of the appraisal.

- Notwithstanding the above, City shall always have the right of first refusal to purchase the crane(s) if Tenant intends to remove the crane(s) from the premises. The price payable by City shall be the appraised value of the crane(s) determined as set forth above. City's purchase of such crane(s) shall not alter Tenant's obligation to at all times maintain at least four (4) cranes on the premises unless the parties otherwise agree.

(b) Future Improvements By Tenant.

(1) Approval of Plans. Tenant shall not construct or alter any works, structures or other improvements upon the premises, including a change in the grade thereof, without first submitting to Harbor Engineer a complete set of drawings, plans, and specifications and obtaining his

approval. Harbor Engineer shall have the right to order changes in said drawings, plans and specifications and Tenant shall make such changes at its expense.

(2) Compliance with Applicable Laws. Every work, structure or improvement constructed, or alteration or change of grade made by Tenant shall conform with the plans and specifications submitted to the Harbor Engineer including any modifications required by the Harbor Engineer and shall conform in all respects to the applicable federal, state, regional, and local laws, statutes, ordinances, rules and regulations. The approval of Harbor Engineer given as provided in this Section 7 shall not constitute a representation or warranty as to such conformity.

(3) Cost of Permits. Tenant, at its own 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.

(4) Cost of Construction. All construction by Tenant pursuant to this Section 7(b) shall be at Tenant's sole expense. Tenant agrees to keep the premises and improvements constructed free and clear of liens for labor and materials. Tenant agrees to hold City harmless and agrees to defend City against liability or responsibility resulting from Tenant's construction.

(5) Notices. Tenant shall give written notice to Harbor Engineer, in advance, of the date it will commence any construction. Immediately upon the completion of the construction, Tenant shall notify Harbor Engineer of the date of such completion and shall, within thirty (30) days after such completion, file with him a statement, verified by the oath of Tenant or its duly authorized representative, setting forth the cost of the labor and material used. Tenant shall also file with Harbor Engineer, in a form acceptable to Harbor Engineer, a set of "as built" plans for such construction.

(6) Ownership. All improvements, works and structures made or erected by Tenant upon the premises shall be and remain the property of Tenant, subject to the terms and conditions contained herein particularly those of Section 6.

Section 8. Maintenance and Restoration.

(a) Maintenance.

The maintenance obligations of the parties are as follows:

(1) Maintenance Performed by City at City's Expense (Except as Noted). Except as provided in subsections (a)(3), (a)(4), (a)(7) and (a)(8), City will maintain at its expense the roofs and exteriors of all buildings owned by City and the structural integrity of wharf structures

as defined below and buildings owned by City. The "wharf structure" for purposes of this subsection means the beams, girders, subsurface support slabs, bulkheads and prestressed concrete or wood piling, joists, pile caps and timber decking (if any, and except as noted below), and any and all mooring dolphins. The wharf structure does not include the paving, the surface condition of timber decking or the fendering system. City will maintain and repair at its expense all fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems, and other fire protective or extinguishing systems or appliances (portable fire extinguishers and hoses excluded) which have been or may be installed in buildings or structures City owns on the premises. City shall also perform at its expense all electrical substation and switchgear preventive maintenance.

(2) Maintenance Performed by City at Tenant's Expense. Subject to the provisions of subsections (a)(3), (a)(4), (a)(7) and (a)(8), City shall maintain and repair at Tenant's expense the fender system along the wharves, (in accordance with City's wharf damage procedures, a copy of which will be provided to Tenant upon its request), refrigerated receptacle outlets, backflow devices and potable water systems and heating and air conditioning systems, so long as City forces are available. If, however, Tenant fails to pay City in accordance with City's wharf damage procedure (which contains depreciation criteria favorable to Tenant), then City reserves the right to collect the actual cost of repair based on actual depreciation factors as established by City in court. Tenant, upon prior written notice to City and after obtaining a Harbor Engineer's permit may maintain and repair the fender system itself at its expense.

(3) Maintenance Performed by Tenant at Its Expense. Tenant shall be responsible for performing and paying for all maintenance and repairs not expressly covered above. Tenant shall be responsible at its expense for inspecting and assuring that all necessary portable fire extinguishers are present on the premises and maintained in an operable condition. Notwithstanding subsection (1) above, all modifications or repairs to the electrical, plumbing or mechanical systems resulting from "call outs" (Tenant requested repairs requested on weekend, holidays or other than 7:45-4:15 Monday-Friday or such other times as City adopts as its maintenance force work hours) are at Tenant's expense. Tenant shall also be responsible at its expense for inspecting the premises and keeping the premises, [including but not limited to the surface of timber decking, all paving, landscaping, irrigation systems, fencing, signage, and striping (if any) and relamping] and all works, structures and improvements thereof, whether a part of the premises or placed by Tenant in a safe, clean, sanitary and sightly condition. All maintenance performed by Tenant shall assure the premises are maintained in a first class operating condition and in conformance with all applicable federal, state, regional, municipal and other laws and regulations. The appearance, safety and operational capability of the premises shall be maintained to the satisfaction of the Executive Director. Tenant shall make all efforts necessary to immediately discover and guard against any defects in all surfaces of timber decking, paving, buildings, structures and improvements on the premises without request from City. Tenant shall also completely maintain at its expense

all buildings, structures, improvements, timber decking surfaces and paving it erects, owns, or installs. All modifications and repairs which Tenant makes to City owned or Tenant owned buildings, structures, improvements, timber decking and paving require a Harbor Department Engineering permit. Sample permits are available upon request from the Harbor Engineer. Tenant agrees to strictly comply with all the terms and conditions of the Harbor Engineer's permit. Tenant shall maintain in its offices at the premises at all times the Harbor Engineer's permit allowing the work performed and proof that the work has been performed in accordance with all terms and conditions of the permit. Modifications and repairs shall be made in a first class manner using materials of a kind and quality comparable to the items being replaced (in-kind replacement shall be utilized if material still manufactured). Tenant is obligated at its expense to take both such preventive and remedial maintenance actions as are necessary to assure that premises are at all times safe and suitable for use regardless of whether Tenant is itself actively using all of the premises. Tenant shall provide notice to the Director of Port Construction and Maintenance and Director of Construction Management five (5) calendar days before any paving work is performed provided, however, Tenant shall immediately repair any condition creating a risk of harm to any user of the premises. All materials used and quality of workmanship shall be satisfactory to the Director of Construction Management.

(4) Tenant's Responsibility for Damage to City owned Structures. Notwithstanding the foregoing, if damage to the wharf structure or any other building, structure, improvement or surface area is caused by the acts or failure to act of Tenant, its officers, agents, employees or its invitees, (including but not limited to customers of Tenant and contractors retained by Tenant to perform work on the premises -- hereafter collectively "invitees"), Tenant shall be responsible for all costs, direct or indirect, associated with repairing the damage and the City shall have the option of requiring Tenant to make the repairs or itself making the repairs. If City makes the repairs, Tenant agrees to reimburse City for the City's cost of repair. All damage shall be presumed to be the responsibility of Tenant and Tenant agrees to be responsible for such damage unless Tenant can demonstrate to the satisfaction of City that someone other than its officers, agents, employees, or invitees caused the damage. Tenant agrees to reimburse City for the cost of repair to City's wharf for any damage to the wharf resulting from a collision between a vessel and the wharf while docking or undocking unless Tenant demonstrates that such damage was caused by the sole active negligence of City or demonstrates that such damage was caused by an invitee of some other tenant to which the premises are also assigned. The sufficiency of proof presented by Tenant to City shall be determined by City in its sole judgment.

(5) City's Option to Perform Work at Tenant's Expense. If Tenant fails to repair, maintain and keep the premises and improvements as above required, Executive Director may give thirty (30) days' written notice to Tenant to correct such default, except that no notice shall be required where, in the opinion of Executive Director, the failure creates a hazard to persons or property. If Tenant fails to cure such default within the

time specified in such notice, or if Executive Director determines that a hazard to persons or property exists due to such failure, Executive Director may, but is not required to, enter upon the premises and cause such repair or maintenance to be made, and the costs thereof, including labor, materials, equipment and administrative overhead, to be charged against Tenant. Such charges shall be due and payable with the next rent payment. During all such times, the duty shall be on Tenant to assure the premises are safe and Tenant shall erect barricades and warning signs to assure workers and the public are protected from any unsafe condition. None of City's remedies described above shall preclude City from terminating this Agreement if City is not satisfied with Tenant's compliance with the maintenance provisions of this Agreement.

(6) Inspection of Premises and Tenant Repairs. Tenant shall be responsible for inspecting the premises (including all surfaces of timber decking, paving, structures, buildings and improvements) and at all times maintaining the premises in a safe condition. Executive Director and/or his representatives shall have the right to enter upon the premises and improvements constructed by Tenant at all reasonable times for the purpose of determining compliance with the terms and conditions of this Agreement or for any other purpose incidental to the rights of City. This right of inspection imposes no obligation upon City to make inspections nor liability for failure to make such inspections. By reserving the right of inspection, City assumes no responsibility or liability for loss or damages to the property of Tenant or property under the control of Tenant, whether caused by fire, water or other causes. City assumes no responsibility for any shortages of cargo handled by Tenant. If City requests drawings and/or specifications showing the location and nature of repairs to be made or previously made by Tenant (including by its invitees), Tenant agrees to provide to City the material requested in writing within ten (10) calendar days of request by City.

(7) City's Access to Maintain and Repair Premises. If City deems it necessary to maintain or repair the premises, Tenant, shall cooperate fully with City to assure that the work can be performed timely and during City's normal working hours. If City is required to perform any work outside its normal working hours, even work which would otherwise be at City's expense, the entire cost of such work shall be at Tenant's expense.

(8) Maintenance/Repair Obligations Dependent on Indemnity/Insurance Provisions. City's agreement to perform certain maintenance and repairs and to pay for certain repairs is expressly conditioned on the indemnity and insurance provisions of this Agreement remaining in force and effect. If Tenant fails to comply with the indemnity and insurance provisions or if these provisions are ever deemed not applicable, then Tenant shall be obligated to perform and pay for all maintenance and repairs to the premises without exception at its own expense. Tenant shall perform such maintenance and repairs only after it has secured the Harbor Engineer's general permit. Such work shall be deemed completed only when all terms of the permit have been satisfied. If City inspects any work performed by Tenant and finds it unsatisfactory, Tenant shall be obligated to correct the work to City's satisfaction at Tenant's expense.

(9) Definition of City's Actual Costs. Whenever this section requires Tenant to reimburse City for the City's cost of maintenance, the City's cost of maintenance is agreed to include all direct and indirect costs which City incurs whether with its own forces or with an independent contractor. These costs include salary and all other costs City incurs from its employees ("salary burden"), all material and equipment costs including an administrative equipment handling charge, and also a general administrative overhead cost consistent with City's billing practice to its other tenants.

(10) Exhibit Listing More Common Maintenance Items. Attached as Exhibit "E," is a detailed description of items which is intended to describe the more common maintenance work which may be necessary at the premises. Not all items listed will be present at all premises within the Port. Costs and responsibilities shall be apportioned as set forth in this Exhibit except as may otherwise be required by the provisions above.

(11) Maintenance by City. All maintenance performed by City shall conform in all respects to the applicable federal, state, regional, and local laws, statutes, ordinances, rules and regulations.

(b) Restoration and Surrender of Premises.

(1) Restoration. On or before expiration of the term of this Agreement, or any sooner termination thereof other than by forfeiture pursuant to subsections (a) and (b) of Section 6 of this Agreement, Tenant shall remove, at its sole cost and expense, all works, structures, improvements and pipelines of any kind including paving (collectively referred to as "structures") placed on the premises by Tenant. Tenant is not obligated to remove the structures which City will construct and will deliver to Tenant on the terminal delivery date as defined in Section 2(g). If the premises, at the time of Tenant's occupancy, 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. Tenant shall leave the premises including all structures constructed, owned or controlled by Tenant free from hazardous substance and hazardous waste contamination caused by Tenant, its officers, agents, employees, sublessees, licensees, assignees or invitees [collectively hereafter "Tenant" whenever obligations involving hazardous materials are discussed in Sections 8(b) or 8(c)] including hazardous liquid bulk products and petroleum products (hereinafter collectively referred to in this Agreement as "hazardous material") as those terms are defined under any federal, state, local law or ordinance (hereinafter sometimes collectively referred to in this Agreement as "Law"). Tenant shall leave the surface of the ground in a clean level, graded and compacted condition with no excavations or holes resulting from structures removed. Tenant shall not be obligated to remove paving unless the paving was installed by Tenant and City requests such Tenant paving to be removed. The parties agree that Tenant is not responsible for any contamination caused by secondary or temporary assignees assigned to the

premises by City. Upon the expiration of the term of this Agreement or any sooner termination thereof, other than by forfeiture pursuant to subsections (a) and (b) of Section 6 of this Agreement, Tenant shall quit and surrender possession of the premises to Board leaving all City improvements in 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 or any prior Agreement, lease or permit, 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 this Permit is terminated by City, Tenant shall be responsible for the cost of such restoration. If the condition of the premises is upgraded during occupancy of the premises, such as by maintenance dredging, Tenant agrees to be responsible for restoring 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. 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 subsection (a) or (b) of Section 6, 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.

(2) Rent During Restoration. Tenant understands and agrees it is responsible for complete restoration of the premises including the clean up of any hazardous material contamination caused by Tenant (as defined in subsection (b)(1) of this Section 8) before the expiration or earlier termination of this Agreement pursuant to subsection (a) or (b) of Section 6. If, for any reason, such restoration is not completed before such expiration, then Tenant is obligated to pay City compensation during such restoration as determined by the fair market value of the land as if there was not any such contamination and the Harbor Department's then established rate of return. However, the new rent shall not be less than provided in Section 4.

(3) Bonds. In addition to any other requirement to provide security under this Agreement, Tenant also agrees to provide City a surety bond to assure restoration of the premises including removal of hazardous material caused by Tenant if at any time City demands such bond. The bond required herein shall be in a form acceptable to the City Attorney and the amounts shall be determined in the sole discretion of Executive Director after Tenant has had the opportunity to provide its opinion as to the amount, supported by a detailed estimate of an independent contractor experienced in the demolition of improvements and/or in hazardous material clean up and who has been in such business for at least three (3) years.

(c) Hazardous Material.

The parties recognize that the provisions set forth in subsections 9(c)(1) through (c)(5) below impose obligations on Tenant to remediate hazardous waste contamination only to the extent such contamination is caused by the operations of Tenant [as defined in subsection (b)(1) of this Section 8]. In addition, the parties recognize that if contamination should later be found on the premises which pre-existed Tenant's operations or which is caused by adjacent tenants after Tenant commences its operation and if Tenant has also contaminated the premises, Tenant's obligations shall extend only to the incremental contamination resulting from Tenant.

(1) Use of Hazardous Material. Tenant may not handle, use, store, transport, transfer, receive or dispose of, or allow to remain on the premises (hereinafter sometimes collectively referred to as "handle"), any substance classified as hazardous material in such quantities as would require the reporting of such activity to any person or agency having jurisdiction thereof without first receiving written permission of the City. Tenant shall immediately notify the Property Management Division of City of any incident involving the release of hazardous materials handled on the premises regardless of whether any property damage or personal injury is caused. Tenant may handle and temporarily store hazardous materials in the course of normal operations in connection with common carriage by water in interstate and foreign commerce, subject to regulations contained in 33 C.F.R. Part 126 (or its successor and the conditions of the this Section 8(b)). If Tenant has handled material on the premises classified by law as hazardous material [Tenant's attention is particularly called to the Resource Conservation and Recovery Act of 1967 (RCRA), 42 U.S.C. Sec. 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. Sec. 9601, et seq.; the Clean Water Act, 33 U.S.C. Sec. 1251 et seq.; the Clean Air Act, 42 U.S.C. Sec. 7901 et seq.; California Health & Safety Code Sec. 25100 et seq., Sec. 25300 et seq. and Sec. 28740 et seq.; California Water Code Sec. 13000 et seq.; California Administrative Code, Title 22, Division 4, Chapter 30, Article 4; Title 49 CFR 172.101; Title 40 CFR Part 302 and any amendments to these provisions or successor provisions] and such material has contaminated or threatens to contaminate the premises or adjacent premises (including structures, harbor waters, soil or groundwater), Tenant, to the extent obligated by law and to the extent necessary to satisfy City, shall at its own expense perform soil and groundwater tests to determine the extent of such contamination, and shall immediately remediate any such material from the premises. If in the determination of the Executive Director such hazardous material cannot be remediated on site to the satisfaction of City, Tenant shall remove and properly dispose of all contaminated soil, material or groundwater and replace such soil or material with clean soil or material suitable to City.

If during Tenant's occupancy hazardous materials are discovered on the premises or such materials have migrated to or threaten to contaminate adjacent premises (including structures, harbor waters, soil or

groundwater), Tenant shall immediately notify the City and Tenant at its sole expense shall perform such soil and groundwater testing as required by law and as City deems necessary and take immediate steps to remediate the premises to the satisfaction of City.

If Tenant disposes of any soil, material or groundwater contaminated with hazardous material, 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 shall not appear on any manifest document as a generator of such material.

Any tests required of Tenant by this Section shall be performed by a State of California Department of Health Services certified testing laboratory satisfactory to City. 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 8, the term "Tenant" includes agents, employees, contractors, subcontractors, and/or invitees of the Tenant.

(2) Site Characterization. Within sixty (60) days of written notice by the Executive Director, Tenant shall at its expense prepare and submit to City for its approval a complete site characterization plan to enable a determination of the extent of soil and groundwater contamination at the premises caused by Tenant. The plan shall include a detailed program for sampling and chemical analysis of the soil and groundwater and shall be in conformance with all applicable federal, state and local laws, regulations and guidelines. Provided Tenant has delivered to City a complete site characterization plan, City shall use reasonable efforts to expeditiously approve or disapprove the plan. Tenant shall provide additional information upon request of City if City deems the plan inadequate. Upon notice of approval of the complete site characterization plan, Tenant shall forthwith commence investigation and testing of soil and groundwater in accordance with the plan, and shall provide to City the results of such investigation and tests as they become available but in any event the investigation and tests shall be completed and the results submitted to City within forty-five (45) days of notice of approval of the plan by City.

(3) Site Remediation. Upon written notice by the Executive Director, Tenant shall at its expense prepare and submit to City for its approval a feasible remediation action plan (including soil, harbor waters and groundwater remediation) for removal and monitoring of hazardous material contamination discovered during site characterization and contamination which may occur after Tenant has received City's approval of Tenant's site characterization plan. The plan shall include a discussion of remedial action alternatives for restoration of the premises and a timetable for each phase of restoration. The remedial action plan shall be in conformance with all applicable federal, state and local laws, regulations and guidelines. Provided Tenant has delivered to City a complete site remediation action plan, City shall use reasonable efforts

to approve or disapprove the plan in a timely manner. Tenant shall provide additional information upon request of City if City deems the plan inadequate. Tenant shall submit to City its remediation action plan for review no later than sixty (60) days after receiving City's written notice to prepare same. Upon approval of the site remediation action plan by City, Tenant at its sole expense, to the satisfaction of City, and in accordance with all applicable laws, shall take immediate steps to remediate all contamination and perform such soil and groundwater testing as City deems necessary to assure the premises are free from contamination.

(4) Annual Disclosure. Within sixty (60) days of the effective date of this Agreement, and each year during the term thereof, as well as sixty (60) days before termination of this Agreement and upon sixty (60) days prior written notice by City to Tenant, Tenant shall submit to City the names and amounts of all hazardous materials, or any combination thereof, which were stored, used or disposed of on the premises during the previous year, or which Tenant intends to store, use or dispose of on the premises in the future.

(5) Tanks. Within sixty (60) days of the terminal delivery date, Tenant at its expense shall submit to City an inventory of all storage tanks it has placed or intends to place above or below ground on the premises indicating the number of tanks, type (atmospheric, etc.), contents, capacity, past historical use, location and the date each tank was last tested for structural integrity and leaks. Tenant and City by reviewing the as built drawings for the terminal shall mutually agree on the tanks placed on the terminal by City. Tenant shall confirm this understanding in writing to City. The letter shall be provided to the Chief Harbor Engineer, Director of Property Management and Director of Construction and Maintenance for their files. Tenant shall also at its sole expense, when required by law or when deemed necessary by the Executive Director or his designee, test all storage tanks located on the premises for structural integrity and leaks. Upon written request, Tenant shall make available to City the results of all such tests. Testing required herein shall be to the satisfaction of City and in conformance with applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently exist, or as they may be amended or enacted. If during Tenant's occupancy of the premises a tank or the pipelines servicing a tank containing hazardous material are discovered to be leaking, Tenant shall immediately notify the City and take all steps necessary to repair the tank and/or pipelines and clean up the contaminated area to the satisfaction of City and in accordance with this Agreement and all applicable law.

(d) 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 rentals required by the supplier of any such service, including City.

(e) Inspection of Premises. Executive Director and his duly authorized representatives shall have the right to enter upon the premises and improvements constructed by Tenant at any and all reasonable times during the term of this Agreement for the purpose of determining compliance with its terms and conditions or for any other purpose incidental to the rights of City. The right of inspection reserved hereunder shall impose no obligation upon City to make inspections to ascertain the condition of the premises, and shall impose no liability upon City for failure to make such inspections. By reserving the right of inspection, City assumes no responsibility or liability for loss or damage to the property of Tenant or property under the control of Tenant, whether caused by fire, water or other causes. Nor does it assume responsibility for any shortages of cargo handled by Tenant at the premises.

(f) Signs. Tenant shall not erect or display, or permit to be erected or displayed, on the premises, or upon works, structures and improvements made by Tenant, any advertising matter of any kind, including signs, without first obtaining the written consent of Executive Director. Tenant shall post, erect and maintain on the premises such signs as Executive Director may direct.

Section 9. Indemnity and Insurance.

(a) Indemnity. Tenant shall at all times relieve, indemnify, protect, defend 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 expenses incurred in defending against legal actions, 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:

(1) 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;

(2) 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;

(3) Any act, omission or negligence of Tenant, its officers, agents, employees, sublessees, licensees or invitees, regardless of whether any act, omission or active or passive negligence of City, its officers, agents or employees contributed thereto;

(4) 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

(5) The conditions, operations, uses, occupations, acts, omissions or negligence referred to in subdivisions (1), (2), (3) and (4) of this subsection (a), 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 the Charter of City.

Tenant also agrees to indemnify City and pay for all damages or loss suffered by City and the Harbor Department, including but not limited to: damage to or loss of City property, to the extent not insured by City's property insurance coverage; injury to city employees; and from 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 subdivisions (1), (2), (3) (4) and (5) of this subsection (a). The term "persons" as used in this subsection (a) shall include but not be limited to officers and employees of Tenant.

(b) Liability for Damages to Premises Caused by Third Parties. City's grant of the premises to Tenant imposes the obligation on Tenant to maintain the necessary security on the premises to assure they are not used by anyone not having the permission of Tenant or City. Tenant is liable for all damages to the premises caused by its invitees. It is also responsible for damage caused by non-invitee third parties, unless Tenant, within thirty (30) calendar days after said damages occur, secures and furnishes the City with information and evidence satisfactory to the City fixing liability on some responsible person other than Tenant, its invitees, licensees, sublessees or contractors and subcontractors. Damages at the facility are conclusively presumed to be caused by the Tenant unless Tenant demonstrates to the satisfaction of the City that said damages were caused by a third party unconnected to Tenant's operations. If Tenant demonstrates to the satisfaction of the City that said damages were caused by such other person, Tenant shall not be responsible for the cost of repairing the damage but shall be responsible for assuring the premises are kept in a safe condition until repaired.

(c) 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:

(1) Public Liability and Property Damage. Broad form comprehensive public liability and property damage insurance (including automobile and contractual liability assumed coverages) written by an insurance company authorized to do business in the State of California with Tenant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or death or property damage arising out of each accident or occurrence. If the submitted policy provides for an aggregate limit, such limit shall not be less than Five Million Dollars (\$5,000,000) except as otherwise may be acceptable to Executive Director. Said limits shall be without deduction, provided that Executive Director may permit a deductible amount in those cases where, in his judgment, such a deductible is justified. The insurance provided shall contain a severability of interest clause. In all cases, regardless of any deductible, said insurance shall contain a defense of suits provision. If Tenant operates watercraft or incurs other marine liability exposure,

liability coverage for such watercraft and marine exposure must be provided as above. All submitted policies, unless otherwise provided, shall, in addition, provide the following coverage either in the original policy or by endorsement substantially as follows:

"(i) Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or in any endorsement or certificate now or hereafter attached hereto, it is agreed that the City of Los Angeles, its Harbor Department, the City's and Department's 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. 692, and under any amendments, modifications, extensions or renewals of said Agreement regardless of whether such operations, uses, occupations, acts and activities occur on the premises or elsewhere within the Harbor District, and regardless of whether liability is attributable to the insured or a combination of the insured and the additional insured;

"(ii) The policy to which this endorsement is attached shall not be cancelled, reduced in coverage or nonrenewed until after the Board and the City Attorney of City have each been given thirty (30) days' prior written notice by certified mail addressed to P.O. Box 151, San Pedro, California 90733-0151;

"(iii) The coverage provided by the policy to which this endorsement is attached is primary coverage (or excess of primary coverage when an excess policy is also submitted) and any other insurance carried by City is excess of this insurance and shall not contribute to it;

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

"(v) Notice of occurrences or claims under the policy shall be made to [Tenant's insurance carrier is to provide this information]."

(2) Fire Legal Liability. In addition to and concurrently with the aforesaid insurance coverage, Tenant shall also procure and maintain, either by an endorsement thereto or by a separate policy, fire legal liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000.00), covering legal liability of Tenant for damage or destruction by fire or explosion to the works, structures 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. Such policy may provide for waiver of subrogation in favor of Tenant so long as permitted by Board's fire insurance policy. Neither City nor Board should be named as additional insureds in such policy; however, the same cancellation notice

as required for the public liability policy above described must be included.

(3) Fire and Extended Coverage Insurance. Tenant shall secure, and shall maintain at all times during the life of this Agreement, fire and extended coverage insurance covering ninety percent (90%) of the replacement value of the works, structures and improvements erected 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 Twenty-five Thousand Dollars (\$25,000) to be payable to Board to be held in trust for reconstruction. Such policies shall provide that Tenant's insurance carrier waive any right of subrogation against the City if it is contended that the City caused or contributed to any loss. In the event of loss or damage by fire to any of such structures or improvements, Tenant shall undertake replacement or reconditioning of such structures 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.

(4) Notice of Cancellation. Each insurance policy described above shall provide that it will not be cancelled or reduced in coverage until after Board and the City Attorney of City have each been given thirty (30) days' prior written notice by certified mail addressed to P. O. Box 151, San Pedro, California 90733-0151.

(5) Duplicate Insurance Policies. Tenant shall furnish two certified copies of each policy to Board. Alternatively, two duplicate original endorsements on forms provided by the Department may be submitted. The form of such policy or endorsement shall be subject to the approval of the City Attorney of City.

(6) Renewal of Policies. At least thirty (30) days prior to the expiration of each policy, Tenant shall furnish to Board a certificate or certificates showing that the policy has been renewed or extended or, if new insurance has been obtained, two certified copies of each new policy or two duplicate originals endorsements on forms provided by the Department shall be furnished to Board, and the form thereof shall be subject to the approval of the City Attorney of City. If Tenant neglects or fails to secure or maintain the required insurance, or if Tenant fails to submit copies thereof as required above, Board may, at its option and at the expense of Tenant, obtain such insurance for Tenant.

(7) Modification of Coverage. Executive Director, at his 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 Tenant.

(d) 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 Ten Thousand Dollars (\$10,000.00) 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. 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.

(e) Compensation Terms Dependent on Indemnity Provisions. Tenant is aware that the City's willingness to agree to the compensation provision of this Agreement is dependent upon Tenant's complying with each of the indemnity obligations above and on the enforceability of such provisions. Therefore, it is agreed that if any of these provisions shall be determined to be unenforceable, City may require Tenant to pay an adjusted minimum annual guarantee and revenue sharing breakpoints. If City chooses to adjust the minimum annual guarantee and revenue sharing breakpoints due from Tenant, the revised minimum annual guarantee and revenue sharing breakpoints shall be increased by five percent (5%) effective thirty (30) days after the date the provisions were rendered unenforceable. Notwithstanding the foregoing, if Tenant continues to provide City insurance which provides the same protection to City that City would have had prior to any provisions being rendered unenforceable, then City's right to increase compensation shall be delayed so long as Tenant provides said insurance.

(f) Environmental Indemnity. The City has identified various contamination at the site of the proposed terminal and has commenced clean up of the site directly and through the actions of tenants vacating the property. The City is undertaking all steps necessary to assure that the premises, when delivered to Tenant, will comply with all applicable federal, state, and local environmental laws and will be fully suitable for Tenant's use. These steps include removal of certain materials from the site as well as treatment of other materials on site as permitted by the environmental agencies. City will provide Tenant status reports of the site restoration at least once every two (2) months.

The City warrants the condition of the premises will comply with all applicable federal, state and local environmental laws, including all hazardous and toxic materials laws when the premises are provided to Tenant, and will be fully suitable for the use intended by Tenant. The City will indemnify, hold harmless and defend Tenant from personal injury claims or property damage claims resulting from failure of this obligation; provided that City's obligation shall not apply to any deterioration in the environmental condition caused by Tenant.

After the premises have been delivered to Tenant, Tenant agrees to protect, indemnify, hold harmless and defend the City against personal injury claims or

property damage claims resulting from Tenant's or its customers's and invitee's introduction of hazardous or toxic materials to the premises.

Section 10. Sublease and Assignment.

Tenant may not assign, sublease, transfer, grant, hypothecate, give away or encumber (hereafter collectively referred to as "transfer") the premises or this Agreement and any such attempted transfer is void. City recognizes that Yusen Terminals, Inc. will provide terminal operations services at the premises.

Section 11. Miscellaneous.

(a) Statements of Tenant as Applicant. This Agreement is 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 subsection (a) of Section 6 hereof.

(b) Applicable Law. It is expressly understood and agreed that this Agreement and all questions arising thereunder shall be construed according to the laws of the State of California.

(c) Compliance with Applicable Laws. Tenant shall, at all times, in its use and occupancy of the premises and in the conduct of its operations thereon, comply with all laws, statutes, ordinances, rules and regulations applicable thereto, enacted and adopted by federal, state, regional, municipal or other governmental bodies, or departments or offices thereof. In addition to the foregoing, Tenant shall comply immediately with any and all directives issued by Executive Director or his authorized representative under authority of any such law, statute, ordinance, rule or regulation.

(d) Affirmative Action. Tenant agrees not to discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, age or physical handicap. 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 "F" are incorporated herein and made a part hereof.

(e) Minority Business Enterprise/Women Business Enterprise. Tenant is aware of the Los Angeles Harbor Department's Minority Business Enterprise/Women Business Enterprise (MBE/WBE) policy (hereinafter "Policy"). Tenant shall comply with the Harbor Department's Policy for any construction it undertakes on the premises. Any construction contracts, assignments or subleases by Tenant

involving the premises shall include the Department's MBE/WBE policy, attached as Exhibit "G" which is incorporated herein and made a part hereof.

Tenant acknowledges that Board reserves the right to amend or modify its Policy from time to time. Any such amendment or modification to the Policy shall be binding on Tenant from the date Board approves such changes at a public meeting after notice and an opportunity to be heard thereon. Any contracts including subleases entered into by Tenant pursuant to this Agreement prior to Board approval of changes to the Policy shall not be affected by such changes.

(f) 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, structures, 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.

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.

(g) Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable to any extent by a final judgment of any court of competent jurisdiction, the remainder of the Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and shall continue in full force and effect.

(h) 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.

(i) Conflict of Interest. It is hereby understood and agreed that 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 Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of the 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.

(j) Visitors. Tenant shall allow Executive Director and his designated representatives access to the premises for the purpose of showing the premises and works, structures and improvements made by Tenant to visitors upon the giving of reasonable notice to Tenant, provided, however, that such entry shall not unreasonably interfere with Tenant's operations.

(k) Attorneys' Fees. If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of or based upon this Agreement, including but not limited to the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to recovery of its costs and reasonable attorneys' fees, including the reasonable value of the services of the Office of City Attorney or house counsel of Tenant. The hourly rate recoverable by the Office of the City Attorney shall be no less than the hourly rate charged by Tenant's counsel. If however, either party prior to, during trial, or after any appeal, makes a written offer to settle the dispute for a sum less than ultimately obtained by the person refusing the offer, the prevailing party shall be deemed to be the party making the offer.

(l) Notices. In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to City shall be addressed to Executive Director, Los Angeles Harbor Department, P. O. Box 151, San Pedro, California 90733-0151 and notice to Tenant shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

(m) Agent to Receive Service of Process. Tenant hereby irrevocably appoints the Terminal Manager at premises or an officer of company located at the address as set forth above as its agent for the purpose of service of process in any suit or proceeding which may be instituted in any court of the State of California or in any federal court in said State by City which arises out of or is based upon this Agreement. Delivery to such agent or, delivery to the terminal manager's office of a copy of any process in any such action shall constitute valid service upon Tenant. It is further expressly agreed, covenanted and stipulated that if for any reason service of such process upon such agent is not possible, then in such event Tenant may be served with such process in or out of this State in any manner authorized by California law. It is further expressly agreed that Tenant is amenable to the process so served, submits to the jurisdiction of the court so acquired, and waives any and all objection and protest thereto. It is Tenant's obligation at all times, whether during the term of this Agreement or after its termination, to provide the Harbor Department Executive Director in writing a correct address where Tenant can be located. Tenant agrees all disputes shall be resolved in California courts in the County of Los Angeles unless the parties otherwise agree in writing.

(n) Waivers. No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the proper party. 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.

(o) 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 140(f) 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.

(p) Integration. This Agreement constitutes the whole Agreement between City and Tenant. There are no terms, obligations or conditions other than those contained herein. No modifications of this Agreement shall be valid and effective unless evidenced by an agreement in writing.

(q) Time of the Essence. Time is expressly declared to be of the essence in this Agreement.

(r) Extensions. Board shall have the right to grant reasonable extensions of time to Tenant for any purpose or for the performance of any obligation of Tenant hereunder.

(s) Vessels. Tenant shall file with the Executive Director upon acceptance of this Agreement, a statement in writing showing the names of persons, firms or corporations owning or operating any vessel or vessels which are represented by its customers, and the names of any vessel or vessels owned or operated by Tenant, and shall immediately file with Executive Director supplemental statements in writing showing any deletions from or additions to such statement.

(t) Effective Date. The date appearing in the introductory paragraph of this Agreement shall be the date thirty-one (31) days after the order or ordinance approving this Agreement is published or the date it becomes effective under the Shipping Acts of 1984 or its successor which is later.

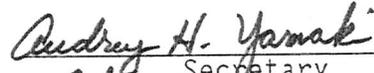
(u) Business Tax Registration Certificate. Tenant represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the City's Business Tax Ordinance (Article 1, Charter 2, Sections 21.00 and following, of the Los Angeles Municipal Code) or is exempt. Tenant shall maintain, or obtain as necessary, all such Certificates required of it under said Ordinance and shall not allow any such Certificate to be revoked or suspended.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first hereinabove written.

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

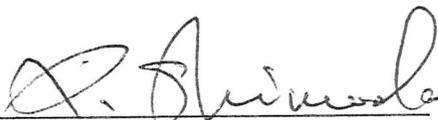
Tay Yoshitani for

By 
Executive Director

Attest: 
Audrey H. Yamaki acting Secretary

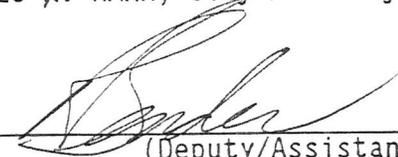
NIPPON YUSEN KAISHA (NYK)

By 
TOHRU INADA, DIRECTOR, NORTH AMERICA DIVISION
(Print/type name and title)

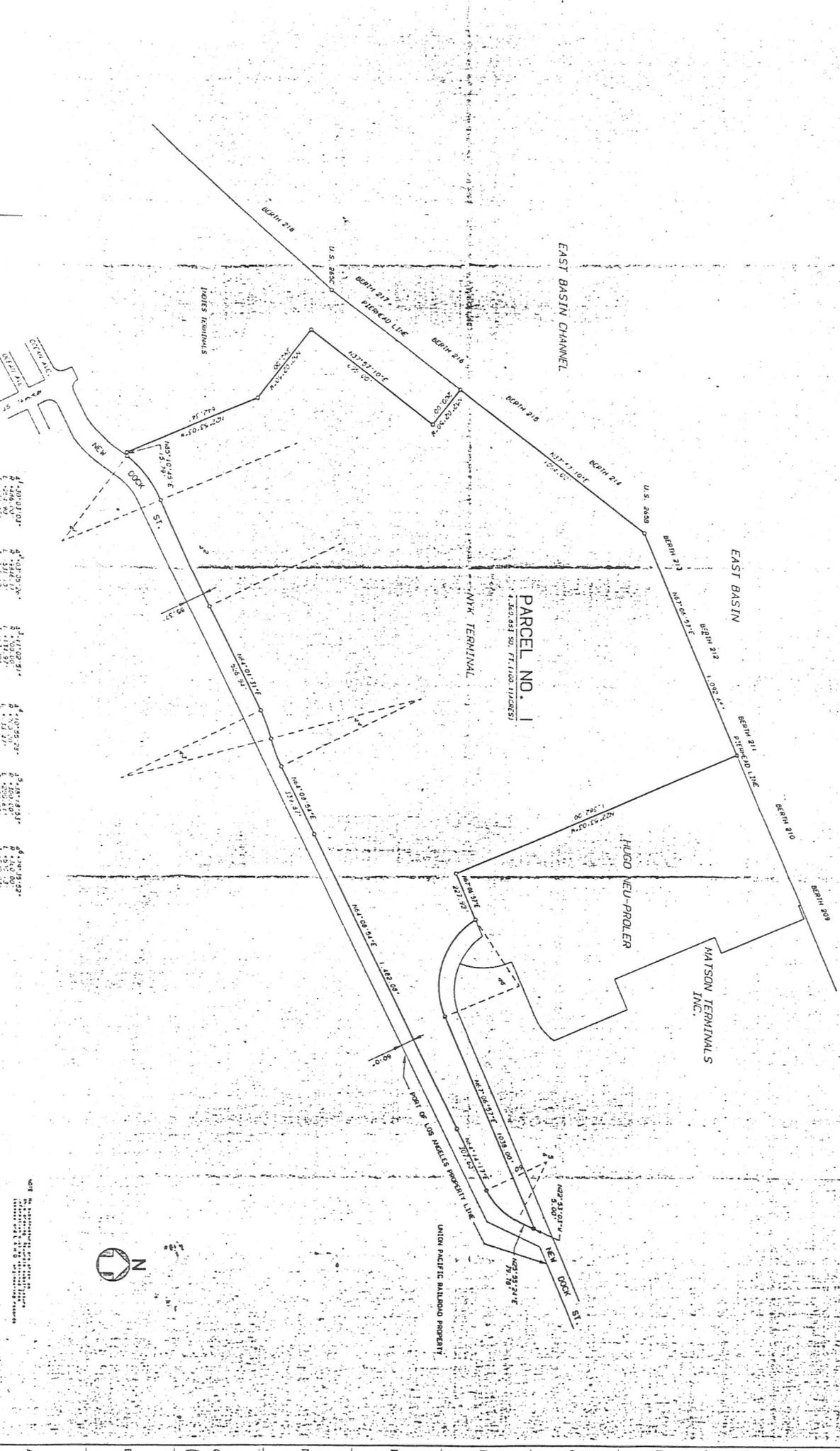
Attest: 
TAKEHIKO SHIMODA, PRESIDENT AND CEO
(Print/type name and title) YUSEN TERMINALS INC.

APPROVED AS TO FORM

7/20, 1990
JAMES K. HAHN, City Attorney

By 
(Deputy/Assistant)
RAYMOND P. BENDER, Assistant

RPB:mj
7/07/90 #15-T



PARCEL NO. 1
 4360341 501 771100117ADDRESS

1	41°40'01.01"	2	41°40'01.01"	3	41°40'01.01"	4	41°40'01.01"	5	41°40'01.01"	6	41°40'01.01"	7	41°40'01.01"	8	41°40'01.01"	9	41°40'01.01"	10	41°40'01.01"	11	41°40'01.01"	12	41°40'01.01"	13	41°40'01.01"	14	41°40'01.01"
1	41°40'01.01"	2	41°40'01.01"	3	41°40'01.01"	4	41°40'01.01"	5	41°40'01.01"	6	41°40'01.01"	7	41°40'01.01"	8	41°40'01.01"	9	41°40'01.01"	10	41°40'01.01"	11	41°40'01.01"	12	41°40'01.01"	13	41°40'01.01"	14	41°40'01.01"

1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	2	3	4	5	6	7	8	9	10	11	12	13	14

EXHIBIT B
[COMPENSATION FOR INITIAL FIVE YEARS COMMENCING ON TERMINAL
DELIVERY DATE AS DEFINED IN SECTION 2(G)]

I. Minimum Annual Guarantee

(1) "Tenant guarantees City a minimum annual payment (hereafter "minimum annual guarantee" or "MAG") of tariff wharfage (excluding auto wharfage charges) and dockage charges (hereafter collectively "qualifying tariff charges") in the following amounts:

Year 1	....Nine million dollars.....	\$ 9,000,000
Year 2	....Ten million dollars.....	\$10,000,000
Year 3	....Ten million dollars.....	\$10,000,000
Year 4	....Eleven million and Five Hundred Thousand Dollars	\$11,500,000
Year 5	....Eleven million and Five Hundred Thousand Dollars	\$11,500,000

No other tariff charges shall count toward reaching the minimum annual guarantee. Tenant may retain the portion of the qualifying tariff charges provided in Section II below subject to the requirements of subsection I(2) which immediately follows. For the above stated MAG Tenant may use office space not exceeding twenty- eight thousand (28,000) square feet without additional charge. Accordingly no office space tariff charges shall accrue for office areas less than twenty-eight thousand (28,000) square feet.

(2) If Tenant has not generated sufficient qualifying tariff charges to pay City the minimum annual guarantee by the end of each year, Tenant shall within thirty (30) calendar days of the end of each year pay such additional sums as are necessary to assure City has been paid the MAG. All monies due and unpaid within this thirty (30) calendar days shall bear interest at the rate provided in Item 270 of Tariff, currently 1/30 of 2 percent per day.

II. Revenue Sharing

Subject to the above provisions and for each year of the first five (5) years of this Agreement, Tenant may withhold (1) fifty percent (50%) of the qualifying tariff charges accruing at the premises from the first dollar until gross charges of Eighteen million Six Hundred Thousand dollars of qualifying tariff charges have accrued at the premises and (2) seventy five percent (75%) of the qualifying tariff charges accruing thereafter.

Tenant's right to share revenue is conditioned upon Tenant's payments to City being current. For any period in which Tenant receives a notice of delinquency from City, Tenant shall thereafter remit one hundred percent (100%) of tariff charges otherwise qualifying for revenue sharing to City until the delinquency has been cured. If Tenant fails to remit 100% of all qualifying

tariff charges to City after receiving a notice of delinquency, City shall have the right after sending Tenant a second notice of delinquency to cancel Tenant's right to revenue share qualifying tariff charges for the balance of the year in which the delinquency continues. If City exercises such right, Tenant shall not be entitled to revenue share any qualifying charges accruing during the balance of the year, after the second notice of delinquency.

III. Non Qualifying Tariff Charges

One hundred percent (100%) of all non qualifying tariff charges shall be paid to City including but not limited to all automobile wharfage charges.

IV. OCP Guarantee

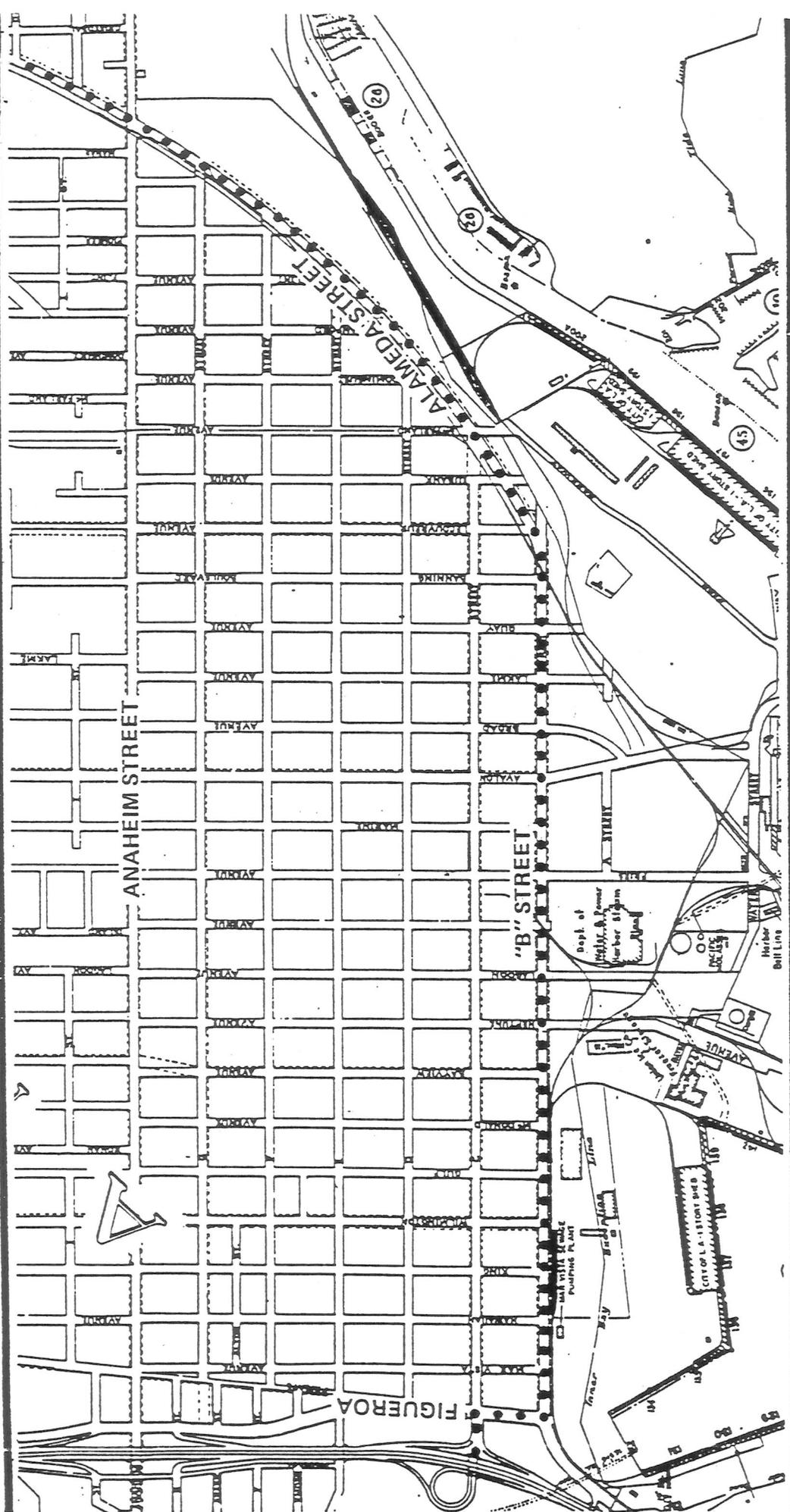
Tenant guarantees the transport through the Port of Los Angeles of certain "OCP cargo" as defined below. For purposes of this provision the term "OCP cargo" means the NYK cargo which Tenant loads and discharges from NYK vessels at the premises (i) moving under a through, multimodal or combined transport bill of lading or a port to port bill of lading and (ii) consigned to or from those areas east of the Rocky Mountains. Tenant guarantees that it will for each year of the first five year term of this Agreement (1) move two million (2,000,000) revenue tons of NYK OCP cargo through the Port of Los Angeles or (2) if it fails to move this volume of NYK OCP cargo through the Port of Los Angeles, Tenant agrees to pay City the amount of wharfage City would have received on this two million (2,000,000) revenue tons of NYK OCP cargo if the cargo had been transported through the Port of Los Angeles. The Tenant OCP guarantee for a partial year, if applicable, shall be prorated based on the numbers of days in the year the guarantee is in effect. The revenue due for any shortfall in the NYK OCP cargo guarantee of two million (2,000,000) revenue tons shall equal the product of (2,000,000 minus X) times Y. The parties agree X equals the number of NYK OCP revenue tons billed by the Port during the compensation year and Y equals the average per ton wharfage rate of NYK OCP cargo billed by Port for the applicable revenue year. If Tenant is required, during a compensation year, to pay City pursuant to subclause IV (2) above for failure to move the minimum volume OCP cargo, the amount of the shortfall shall be added to all other items of qualifying tariff charges payable by Tenant to City during that compensation year for purposes of application of the minimum annual guarantee and revenue sharing breakpoints. For purposes of this provision, "revenue ton" for each compensation year, shall be determined as follows: (total wharfage charges on NYK OCP cargo billed during the year, divided by the tariff wharfage rate in effect, per KT or M3, for Merchandise, N.O.S. originating at or destined to points in OCP territory.) (Currently Four Dollars Forty Cents (\$4.40) - see Tariff No. 4, Item No. 550-001. The only OCP cargo which shall count towards the OCP guarantee is the cargo of NYK not the OCP cargo of Tenant's invitees. The OCP wharfage guarantee level shall be renegotiated with the other compensation as provided in subsection (i) of Section 4.

V. Adjustments to Compensation.

(1) Within thirty (30) calendar days of this Agreement becoming effective (which shall be the latter of the thirty-first (31st) day after publication of the order approving the City Council's action or the Agreement becoming effective under the Shipping Act of 1984), City agrees to purchase from Tenant the plans prepared by VZM for the Tenant Designed Improvements (as defined in Section 7(a)(2)). City shall pay Tenant in cash One Million Six Hundred Sixty Six Thousand Dollars (\$1,666,000) for the plans provided (1) Tenant delivers to City all plans, calculations, reports and other writings related to the plans, and (2) Change Order No. 3 to Work Order No. 3 of the Agreement between NYK and VZM (which is attached to this Agreement as Exhibit "H") has become effective.

(2) Tenant shall be entitled to reduce its first year's compensation by the Credit described in Sections 2(g)(1), as such may be adjusted in accordance with Section 7(a)(2), [the "Initial Credit"] as follows:

- (aa) Each month City will invoice Tenant for the Tariff charges which are due City in accordance with all of the compensation provisions of this Agreement.
- (bb) Each month City will apply one tenth (1/10) of the Initial Credit as an offset against that month's invoiced Tariff charges. Until offset, the Initial Credit shall earn ten percent (10%) interest per year commencing on the terminal delivery date.
- (cc) As an example, assume the Credit is \$3,500,000 and the first month's gross Tariff charges are \$850,000, including \$800,000 of dockage and wharfage charges which are shared 50/50. Accordingly, the amount invoiced would be \$450,000 less a \$350,000 Credit offset. Tenant would therefore pay City \$100,000.



TRUCK ROUTE - WILMINGTON

NYK Tenant Designed Improvements

Tenant-Designed Improvements are shown on POLA Drawing Nos. 1-1708 and 1-1776, and include the following:

Phase IV

- Administration Building/Inbound Canopy, out to five-foot line from building
- Guard House, out to five-foot line from building
- Sign Bridge
- Intercom Pedestals
- Communications and Terminal operating system related utilities only as shown on Drawings 1-1708-E1.1 & E1.2
- Closed Circuit Television System, excluding conduits *
- Scale Pits *
- Security System excluding conduits *
- Landscaping and irrigation *

Phase V

- Marine Building, out to five-foot line from building
- Maintenance and Repair Facility, out to five-foot line from building, except to edge of concrete apron where appropriate
- Outbound Gate Booth and Camera Bridge
- Wash Down Area, excluding pavement outside of five-foot line from structures
- Fuel Station, excluding pavement outside of five-foot line from structures
- Any interconnecting utilities, such as underground pipes between gas tanks and fuel pumps

Phase VI

- Container Freight Station (CFS), out to five-foot line from building

Cost of Tenant-Designed Improvements may not be readily apparent from contractors' bids. A bid breakdown of lump sum will be obtained from the successful contractor(s) after award of contract to establish actual costs associated with Tenant-Designed Improvements. All related and incidental costs, including profit, overhead, bonding and insurance will be appropriately and jointly allocated by City and Tenant to the cost of above listed Tenant-Designed Improvements, if not already included by the contractor in its bid prices.

* Only 50% of the cost of these items are allocated to Tenant-Designed Improvements

EXHIBIT "E"

MARINE TERMINAL MAINTENANCE PROVISIONS
FOR ALL LEASE AGREEMENTS

I. Structural Maintenance & Repair Performed by City at City's Expense* Within Lease Area

1. Roofs
2. Exteriors of structures, including exterior painting
3. Wharf structure (as defined)
4. Wharf bulkheads
5. Rock slopes
6. Maintenance dredging provided Tenant timely notifies City of any problems
7. Replacement of deteriorated electrical conduit and pipeline system
8. High and low voltage systems, including switchgear and crane power trench
9. Fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems

II. Maintenance & Repair Performed by City at Tenant's Expense Within Lease Area

1. Fender system repair (wharf damage procedure)
2. Refrigerated receptacle outlet (reefer) maintenance
3. Backflow devices and potable water systems
4. HVAC servicing and repair

III. Operational Maintenance & Repair to be Performed by the Tenant. Port Will Perform if Forces Available by Accommodation Work Order Within Leased Area at Tenant's Expense. Tenant However Remains Responsible for Sufficiency of All Work

This portion of the Exhibit describes the maintenance and repair of items commonly found on terminal premises granted to Tenants. Not all items listed below may be present on all terminal premises. This list is only illustrative of the items which Tenant must maintain.

1. All landscaping, including irrigation systems
2. Daily janitorial service***
3. Relamping of terminal wharf and backland light standards**
4. Interior painting
5. Elevator and escalator maintenance**
6. Clarifier maintenance & servicing***
7. All toxic waste removal***
8. Storm drain inlet maintenance and cleaning
9. Cleaning clogged drains, including toilet/urinal stoppages

10. Pneumatic tube system maintenance**
11. Emergency generator unit maintenance**
12. Mooring capstans
13. Mechanical ramps and loading dock boards
14. Passenger gantries**, baggage systems**, conveyor systems**
15. Replacement of all light bulbs
16. Traffic and backland area striping (requires permit & approval by Harbor Engineer)
17. Weigh scales**
18. Wheel stop maintenance
19. Fence and gate maintenance
20. Rolling and sliding door maintenance
21. Window, door glass replacement
22. Carpet, tile, and vinyl floor replacements
23. All mechanical, electrical, hydraulic and air equipment and devices used by Tenant to maintain Tenant-owned machinery and equipment
24. Gate house equipment, including gate arms and mechanical/electrical equipment therein
25. Recharging and servicing of fire extinguishers
26. Surface paving, wharf and backland (as defined in agreement)
27. All underground and above ground tanks, pipelines and appurtenances unless the Agreement specifically otherwise provides.

* To be maintained at Tenant's expense if damaged by Tenant.

** To be maintained to Port's standards and subject to periodic audits and inspection by the Port of Los Angeles

*** At no time does Port provide or perform

IV. City May, but is Not Obligated to Maintain or Repair Items Tenant Fails to Maintain or Repair at Tenant's Expense

AFFIRMATIVE ACTION PROGRAM

A. Definitions

The following definitions shall apply to the terms used in this Exhibit:

"Affirmative Action" means the taking of positive steps by a contractor or subcontractor to ensure that its practices and procedures will promote and effectuate the employment, retention and advancement of a particular class or category of employee, generally referred to as a minority group, including women and any person or group described by race, religion, sex, ancestry, national origin, age, and physical handicap. The action may also involve the concept, when applicable, of remedying the continuing effects of past discrimination.

"Affirmative Action Plan" means a plan, program, scheme, or policy setting forth in detail acts to be taken, procedures to be followed, and standards to be adhered to to establish an Affirmative Action Program. It may include provisions for positive recruitment, training and promotion, and procedures for internal auditing and reporting to ensure compliance and measure the success of the program.

"Awarding Authority" means any Board or Commission of the City of Los Angeles, or any authorized employee or officer of the City of Los Angeles, including the Purchasing Agent of the City of Los Angeles, who makes or enters into any contract or agreement for the provision of any goods or services of any kind or nature whatsoever for or on behalf of the City of Los Angeles.

"Contract" means any agreement, franchise, lease, or concession, including agreements for any occasional professional or technical personal services, for the performance of any work or service, the provision of any materials or supplies, or the rendition of any service to the City of Los Angeles or to the public, which is let, awarded or entered into with, or on behalf of, the City of Los Angeles or any awarding authority thereof.

"Contractor" means any person, firm, corporation, partnership, or any combination thereof, who submits a bid or proposal or enters into a contract with any awarding authority of the City of Los Angeles.

"Employment Practices" means any solicitation of, or advertisement for, employees, employment, change in grade or work assignment, assignment or change in place or location of work, lay-off, suspension or termination of employees, rate of pay or other form of compensation including vacation, sick and compensatory time, selection for training, including apprenticeship programs, any and all employee benefits and activities, promotion and upgrading, and any and all actions taken to discipline employees for infractions of work rules or employer requirements.

"Office of Contract Compliance" is that office of the Department of Public Works of the City of Los Angeles created by Article X of Chapter 13 of Division 22 of the Los Angeles Administrative Code.

"Subcontractor" means any person, firm or corporation or partnership, or any combination thereof who enters into a contract with a contractor to perform or provide a portion or part of any contract with the City.

B. During the performance of this 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, age or physical handicap.

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 or subcontractor agrees to post a copy of paragraph B hereof in conspicuous places at its place of business available to employees and applicants for employment.

C. 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, age or physical handicap.

D. At the request of the awarding authority or the office of Contract Compliance, the contractor shall certify on a form to be supplied, that the contractor has not discriminated in the performance of this contract against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, age or physical handicap.

E. 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 of this contract, and on their or either of their request to provide evidence that it has or will comply therewith.

F. The failure of any contractor or subcontractor to comply with the Affirmative Action Program of this contract may be deemed to be a material breach hereof. 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 or subcontractor in accordance with the provisions of Section 22.359.3 of the Los Angeles Administrative Code.

G. Upon a finding duly made that the contractor or subcontractor has breached the Affirmative Action Program of this contract, this 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 or subcontractor is an irresponsible bidder pursuant to the provisions of Section 386 of the Los Angeles City Charter. In the event of such determination, such contractor or subcontractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he shall establish and carry out a program in conformance with the provisions hereof.

H. In the event of a finding by the Fair Employment Practice 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 or subcontractor has been guilty of a willful violation of the Fair Employment Practice Act of California, or the Affirmative Action Program of this contract, there may be deducted from the amount payable to the contractor or subcontractor by the City of Los Angeles under this 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 this contract.

I. Notwithstanding any other provision of this contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.

J. The office of Contract Compliance shall promulgate rules and regulations and forms for the implementation of the Affirmative Action Program of this contract, 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.

K. Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

L. At the time its bid is submitted, the contractor shall submit an AFFIRMATIVE ACTION PLAN to the awarding authority which shall meet the requirements of this ordinance. The awarding authority may also require contractors and suppliers to take part in a prebid 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 next succeeding the date of contract award or the date of first approval by the Office of Contract Compliance whichever is the earliest.

L. (1). Every contract or subcontract in excess of \$5,000 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.

L. (2). A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance.

M. Contractors and suppliers who are members in good standing of a trade association which has negotiated an Affirmative Action Program with the Board of Public Works, Office of Contract Compliance may make the program of such association their commitment for the specific contract upon approval of the Office of Contract Compliance, without the process of a separate prebid or preaward conference. Such an association agreement shall be effective for a period of twelve months next succeeding the date of approval by the Office of Contract Compliance. Trade associations shall provide the Office of Contract Compliance with a list of members in good standing in such association.

N. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed approved Affirmative Action Nondiscrimination 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.

O. The Affirmative Action Plan required to be submitted hereunder and the prebid or preaward 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 nonapprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Preapprenticeship education and preparation;
4. Upgrading training and opportunities;
5. Encouraging the use of contractors, subcontractors and suppliers of all 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; and

6. The entry of qualified women and minority journeymen into the industry.

7. The provision of needed supplies or job conditions to permit persons with some unusual physical condition to be employed, and minimize the impact of any physical handicap.

P. Any adjustments which may be made in the contractor's or supplier's work force to achieve the requirements of the City's affirmative action contract compliance program in purchasing and construction shall be accomplished by either or both an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement, or death and not by termination, lay-off, demotion, or change in grade.

Q. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the prebid or preaward conferences shall not be confidential and may be publicized by the contractor at his 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.

R. 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, subcontractors or suppliers engaged in the performance of City contracts.

Minority Business Enterprise/Women Business Enterprise. It is the policy of the City of Los Angeles to provide Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs) ¹ and all other business enterprises an equal opportunity to participate in the performance of all City contracts. Bidders and proposers shall assist the City in implementing this policy by taking all reasonable steps to ensure that all available business enterprises, including local MBEs and WBEs, have an equal opportunity to compete for and participate in City contracts. Bidders' or proposers' good faith efforts to reach out to MBEs, WBEs and all other business enterprises shall be determined by the following factors:

(1) The bidder's or proposer's efforts to obtain participation by MBEs, WBEs and other business enterprises could reasonably be expected by the Awarding Authority to produce a level of participation by interested subcontractors, including 18 percent MBE and 4 percent WBE as established by the Awarding Authority.

(2) The bidder or proposer attended pre-solicitation or pre-bid meetings, if any, scheduled by the Awarding Authority to inform all bidders or proposers of the requirements for the project for which the contract will be awarded. The Awarding Authority may waive this requirement if the bidder or proposer certifies it is informed as to those project requirements.

(3) The bidder or proposer identified and selected specific items of the project for which the contract will be awarded to be performed by subcontractors to provide an opportunity for participation by MBEs, WBEs and other business enterprises. The bidder or proposer shall, when economically feasible, divide total contract requirements into small portions or quantities to permit maximum participation of MBEs, WBEs and other business enterprises.

¹ Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) - for the purposes of this City policy Minority Business Enterprises and Women Business Enterprises are defined as any business, bank or financial institution which is owned and operated by a minority group member or woman, or such business, bank or financial institution of whom 50% or more of its partners or stockholders are minority group members or women. If the business is publicly owned, the minority members or stockholders must have at least 51% interest in the business and possess control over management capital earnings.

(4) The bidder or proposer advertised for bids or proposals from interested business enterprises not less than 10 calendar days prior to the submission of bids or proposals, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media specified by the Awarding Authority.

(5) The bidder or proposer provided written notice of its interest in bidding on the contract to those business enterprises, including MBEs and WBEs, having an interest in participating in such contracts. All notices of interest shall be provided not less than 10 calendar days prior to the date the bids or proposals were required to be submitted. In all instances, the bidder or proposer must document that invitations for subcontracting bids were sent to available MBEs, WBEs and other business enterprises for each item of work to be performed.

The Mayor's Office of Small Business Assistance shall be available to help identify interested MBEs, WBEs and other business enterprises.

(6) The bidder or proposer documented efforts to follow up initial solicitations of interest by contacting the business enterprises to determine with certainty whether the enterprises were interested in performing specific portions of the project.

(7) The bidder or proposer provided interested enterprises with information about the plans, specifications and requirements for the selected subcontracting work.

(8) The bidder or proposer requested assistance from organizations that provide assistance in the recruitment and placement of MBEs, WBEs and other business enterprises not less than 15 days prior to the submission of bids or proposals.

(9) The bidder or proposer negotiated in good faith with interested MBEs, WBEs and other business enterprises and did not unjustifiably reject as unsatisfactory bids or proposals prepared by any enterprise, as determined by the Awarding Authority. As documentation the bidder or proposer must submit a list of all sub-bidders for each item of work solicited, including dollar amounts of potential work for MBEs, WBEs and other business enterprises.

(10) The bidder or proposer documented efforts to advise and assist interested MBEs, WBEs and other business enterprises in obtaining bonds, lines of credit, or insurance required by the Awarding Authority or contractor.

Achievement of expected levels of participation in paragraph (1) above may only be used as one of the 10 indicia,

above, of whether a bidder or proposer has made a good faith effort to recruit MBEs, WBEs and other business enterprises. If the Awarding Authority has established expected levels of participation for MBE and WBE contractors, failure to meet those levels shall not by itself be the basis for disqualification of the bidder or proposer. An Awarding Authority's determination of the adequacy of the bidder's or proposer's good faith effort must be based on due consideration of all indicia of good faith as set forth above.

In the event that an Awarding Authority is considering awarding away from the lowest bidder or not awarding a contract to a proposer because the bidder or the proposer is determined to be nonresponsive for failure to comply with the good faith indicia set forth above, the Awarding Authority shall, if requested, and prior to the award of the contract, afford the bidder or proposer the opportunity to present evidence to the Awarding Authority in a public hearing of the bidder's or proposer's good faith efforts in making its outreach. In no case should an Awarding Authority award away pursuant to this program if a bidder or proposer makes a good faith effort but fails to meet the expected levels of participation.

CHANGE NO. 3 TO WORK ORDER NO. 3
DATED JULY 1, 1989
UNDER THE MASTER PROFESSIONAL SERVICES AGREEMENT (MPSA)
BETWEEN NIPPON YUSEN KAISHA (NYK) LINE, INC.,
ACTING THROUGH ITS AFFILIATE NYK LINE (NORTH
AMERICA), INC., (NYK) AND VICKERMAN-ZACHARY-MILLER (VZM)

WHEREAS, NYK and VZM entered into the Standard Form of Agreement Between Owner and Architect, AIA Document B727, dated April 24, 1989, as supplemented by Work Order No. 3 dated July 1, 1989 and executed as of December 12, 1989 (including, among others, an attachment entitled Standard Form of Agreement Between Owner and Architect, AIA Document B141/CM dated May 25, 1989), and the following Changes to Work Order No. 3: Change No. 1 dated September 1, 1989 and Change No. 2 dated January 19, 1990 (collectively, the "Agreement");

WHEREAS, pursuant to Change No. 2 the presently authorized amount for services under Work Order No. 3 is \$1,330,000; and

WHEREAS, NYK and VZM are agreeable to increasing the authorized amount for services under Work Order No. 3 and to amend the Agreement upon the terms and conditions specified below;

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Scope of Services. In consideration of the increased total authorized amount for services specified in Section 7 below, VZM agrees that it will (subject to the modification in subsection 1.4) in addition to performing all of its obligations under Work Order No. 3 as supplemented by Change Nos. 1 and 2, perform the following:

- 1.1 Undertake and complete within a date satisfactory to NYK and subject to the direction of NYK the redesign of such facilities and improvements as are the subject of Work Order No. 3 (collectively, the "Work Order No. 3 Facilities") to permit the construction of the Work Order No. 3 Facilities within the project budget of \$15,200,000 (Phases IV and V and Phase VI, if authorized) as agreed between the City of Los Angeles ("City") and NYK.
- 1.2 At its sole cost and expense correct any defects in the design of the Work Order No. 3 Facilities arising out of negligence or intentional acts,

errors or omissions of VZM or its subconsultants discovered during the design phase, construction phase or within one (1) year after substantial completion of construction.

- 1.3 Perform a maximum of two hundred (200) hours (exclusive of the services described in Section 1.2) of engineering services during the construction phase of the Work Order No. 3 Facilities as necessary in coordination with such consultant or consultants as City may hire to perform construction management and engineering services during construction.
- 1.4 The parties recognize that the scope of services to be performed by VZM does not include construction administration and bidding consultation.

2. Professional Standards. VZM is aware that City will obtain the use of the VZM design drawings for the Work Order No. 3 Facilities. Notwithstanding any other provision in the Agreement to the contrary:

- 2.1 VZM hereby represents to NYK and to City that the Design Drawings have been completed in accordance with the standard of care for engineers and architects in the Los Angeles community and are reasonably suitable for construction of the Work Order No. 3 Facilities provided that the parties agree this provision shall not be deemed to create any rights in contractor(s) constructing the terminal.
- 2.2 VZM agrees that, if defects in design arising out of negligence or intentional acts, errors or omissions of VZM or its subconsultants are discovered within one (1) year following substantial completion of construction of the Work Order No. 3 Facilities, it will, at no additional cost to City or to NYK and upon request of City or NYK, correct such defective design and provide revised design drawings to City within forty-five (45) calendar days following notification in writing to VZM of such design defect.

3. Indemnity. Notwithstanding any other provision in the Agreement to the contrary, VZM shall comply with the following indemnity provision:

VZM shall indemnify, protect, defend and hold harmless NYK and City and any and all of their boards of

directors or other officials, officers, employees, from and against any claims, charges, damages, costs, expenses (including attorney's fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against NYK or City, their boards of directors or other officials, officers, employees, by reason of any damage to property or injury to person arising out of negligence or intentional acts, errors or omissions of VZM, its directors, officers, employees, agents, representatives or subconsultants in the performance of this Agreement.

4. Insurance. Notwithstanding any other provision in the Agreement to the contrary, VZM shall comply with the following insurance provision:

VZM represents that it has procured and maintained in effect, as of the effective date of this Agreement, professional liability insurance in the amount of One Million Dollars (\$1,000,000) and that it will keep such insurance or equivalent coverage in effect at all times during performance of this Agreement and maintain the insurance until two (2) years following substantial completion of construction of the Work Order No. 3 Facilities and acceptance of such Facilities by the Board of Harbor Commissioners (unless such insurance is not reasonably available in the insurance market). Such insurance shall provide coverage equivalent to the professional liability coverage identified as CNA Policy No. AAE 823-37-22 (the "Policy") currently in effect for VZM. The Policy shall provide for thirty (30) day cancellation notice. Two (2) certified copies of the full policy in effect on July 1, 1990, shall be submitted to NYK and to City within ten (10) working days following execution of Change No. 3 to Work Order No. 3. Thereafter, during the period set forth above during which the Policy must be maintained, VZM shall submit, at least annually, Certificates of Insurance within ten (10) working days following renewal or modification of the Policy. Notice of occurrences or claims under the policy shall be made to City to the attention of the City Attorney's Office.

5. Resolution of Disputes. Notwithstanding any other provision of the Agreement to the contrary, disputes between the parties arising out of or in connection with the Agreement, including disputes involving City, shall be resolved, unless otherwise agreed by NYK, VZM and City, in the Municipal or Superior Courts, as appropriate, of the County of Los Angeles in accordance with California law.

6. City of Los Angeles as Third Party Beneficiary.

In consideration of City's use of the design drawings of the Work Order No. 3 Facilities from NYK and adjustment of the contract price for VZM's performance of its obligations under Work Order No. 3 as modified by Change Nos. 1, 2 and 3, NYK and VZM agree that City is an express and intended third party beneficiary of the Agreement. Accordingly, VZM agrees that NYK and City shall be entitled to be indemnified by VZM for failure of VZM to perform its obligations in accordance with the Agreement. City, as well as NYK, shall be entitled to enforce the obligations of VZM under this Agreement. But VZM's liability under this Agreement is limited to that arising out of negligence or intentional acts, errors or omissions of VZM or its subconsultants.

7. Adjusted Compensation. Subject to Section 8

below, in consideration of VZM's obligations under this Change No. 3 to Work Order No. 3, NYK agrees to pay VZM additional compensation in the amount of Three Hundred Thirty-Six Thousand Dollars (\$336,000), inclusive of out-of-pocket costs and expenses incurred by VZM and approved by NYK. Subject to Section 8 below, the total compensation payable by NYK to VZM pursuant to Work Order No. 3, as modified by Change Nos. 1, 2 and 3, shall be One Million Six Hundred Sixty-Six Thousand Dollars (\$1,666,000), inclusive of out-of-pocket costs and expenses incurred by VZM and approved by NYK. The parties understand that the City will pay the cost of all printing and reproduction costs of contract documents for distribution to contractors. The parties also understand that the Harbor Department will use its best efforts to expedite plan approval from the Department of Building and Safety for Phase V and Phase VI submittals but also understand that the Harbor Department does not control the Building and Safety permit process. The additional compensation in the amount of \$336,000 shall be paid to VZM in accordance with the following payment schedule for satisfactory performance by VZM of its obligations under this Change No. 3:

7.1 Redesign of Phase IV	\$ 253,000
7.2 Completion and Redesign of Phase V (without CFS)	56,000
7.3 Completion of Phase VI and Redesign of CFS (subject to Section 8 below).	27,000
Total	\$ 336,000

8. Redesign of CFS Facility. NYK reserves the right

to direct VZM not to perform the Phase VI redesign of the CFS facility. If NYK so directs VZM, the additional compensation, and consequently the total compensation, set forth above, in Section 7, shall be reduced by Twenty-Seven Thousand Dollars (\$27,000). If the compensation is reduced in accordance with this Section 8, the additional compensation set forth in Section

7 shall be Three Hundred Nine Thousand Dollars (\$309,000) and the total compensation set forth in Section 7 shall be One Million Six Hundred Thirty-Nine Thousand Dollars (\$1,639,000).

9. Release of NYK from Liability Under the Agreement.

In consideration of NYK's agreement to increase the compensation as set forth in Section 7 above, VZM hereby releases and agrees to indemnify and hold harmless NYK, its affiliates and their directors, officers, employees, agents and representatives from liability, claims and demands caused by the negligence or intentional misconduct of VZM or its subconsultants, including costs and attorney's fees, arising out of or in connection with the Agreement.

10. Definition of Satisfactory Performance of Work.

Payment for VZM's work in accordance with the payment schedule set forth in Section 7 above is conditioned upon the work being satisfactory. For purposes of this Agreement, the term satisfactory means that the Professional Standards set forth in Section 2.1 are met. VZM agrees:

- 10.1 The work has and will be initially completed in accordance with the directions of NYK but modified to address any reasonable concerns raised by the Harbor Engineer.
- 10.2 The work satisfies all permitting requirements.
- 10.3 The work has and will be expeditiously completed to allow completion of the terminal by August 20, 1991.
- 10.4 Defects in design, if any, will be corrected in accordance with Section 2.2 above.

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11. Construction Management. After the specifications for the terminal improvements are advertised, the parties recognize that the Construction Management Division of the City of Los Angeles will perform the construction management function of the owner for the project, but in agreeing to do so City does not assume the obligation of NYK under the Agreement.

Dated: July 13, 1990

VICKERMAN-ZACHARY-MILLER

By Mark Hopper
Executive Vice President
Mark Hopper

Dated: July 18, 1990

NYK LINE (NORTH AMERICA), INC.

By Takehiko Shimoda
PRESIDENT & CEO
MITSUBISHI TERMINALS INC.
Takehiko Shimoda

STORED: VZMB.AGT