

REQUEST FOR PROPOSAL

for

Security Services at Middle Harbor Shoreline and Port View Park

RFP No. 13-14/05



PURCHASING DEPARTMENT
530 WATER STREET
OAKLAND, CA 94607



PORT OF OAKLAND

REQUEST FOR PROPOSAL

RFP No.: 13-14/05 Security Services at Middle Harbor Shoreline and Port View Park

The Port of Oakland (the "Port"), Oakland, California, through the Purchasing Department, is hereby soliciting competitive proposals for the above mentioned project. The successful Respondent will be required to furnish all labor, material, equipment, supplies, applicable taxes, insurance, bonding, and licenses to complete this project.

Proposal Information

Proposal Title	Security Services at Middle Harbor Shoreline and Port View Park
Proposal Type	General Services
Proposal Number	13-14/05
Proposal Issued	August 28, 2013
Issuing Department	Maritime Department
Non-Mandatory Pre-proposal Meeting	September 11, 2013 at 10:00 a.m. Port of Oakland, 530 Water Street, Oakland, CA 94607 (2 nd Floor Conference Room)
Scheduled Publication Date	August 31, 2013
Proposal Due Date	October 1, 2013 at 2:00 p.m.

Instructions for Submitting Proposals

Submittal Address	Port of Oakland Purchasing Department Attn: Rebecca Gibson 530 Water Street Oakland, CA 94607
Submittal Copies	One (1) Original copy clearly marked "Original" and four (4) Copies marked "Copy".
Submittal Envelope Requirements	Proposal must be <u>sealed</u> and have the following information <u>clearly marked</u> and visible on the outside of the envelope: <ul style="list-style-type: none">• Proposal Number• Name of Your Company• Address• Phone Number
Late Submittals	Proposals received after the time and date stated above shall be returned unopened to the Respondent.

How to Obtain Proposal Documents

Copies of the Proposal documents may be obtained at:

Available	Location
Yes	Port of Oakland Purchasing Department 530 Water Street Oakland, CA 94607 Monday through Friday 10:00 AM to 3:00 PM (510) 627-1104, rgibson@portoakland.com
Yes	http://www.portoakland.com/opportunities/bidsrfpsrfqs.aspx Or navigate to the Port of Oakland's main website at: http://www.portoakland.com/ , then click on "Doing Business" and then on "Bids/RFPs/RFOs" to download the RFP.

Questions about the Proposal

Questions and or Requests for Information (RFI) must be submitted in writing and can be submitted by fax or email as follows:

Primary Contact	Ramona Dixon Fax: (510) 627-1634 Email: rdixon@portoakland.com
Question/RFI Due Date	September 13, 2013 at 4:00 p.m. Please submit questions as soon as possible. No questions regarding the specifications will be responded to after the above date. All pertinent questions will be responded to and answered in writing no later than the Response Date listed below.
Response Date	September 17, 2013 All pertinent questions will be responded to via addendum faxed (or emailed) to all prospective proposers and placed on the Port's website. Proposers who did not receive a copy of the addendum should download it from the Port's website. See the "How to Obtain Proposal Documents" section for our web address. All addenda must be acknowledged on the RFP Acknowledgement and Signature form.

Full Opportunity

The Port's policy prohibits discrimination or preferential treatment because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation. It is the policy of the Port of Oakland to encourage and facilitate full and equitable opportunities for small local businesses to participate in its contracts for the provision of goods and services. It is further the Port's policy that no discrimination shall be permitted in small local business participation in Port contracts or in the subcontracting of Port contracts. The successful Respondent shall comply with the Port's non-discrimination policy.

The Port reserves the right to reject any or all proposals, to waive any irregularities or informalities not affected by law, to evaluate the proposals submitted and to award the contract according to the proposal which best serves the interests of the Port.

--John Banisadr, Purchasing Manager

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Attachments:

Title		Must Be Returned with Proposal
1	Non-Collusion Declaration	Yes
2	Statement of Equal Employment Opportunity	Yes
3	RFP Acknowledgement and Signature Form	Yes
4	Proposal Worksheet	Yes
5	Port of Oakland Non-Discrimination and Small Local Business Utilization Policy A. Chart for Submitting Data for Calculation of Preference Points B. Local Participation Questionnaire	Yes Attachment 5-A and 5-B are required with the Proposal. (Note: If you are submitting a new Certification Application for preference points, then your application is due 7 business days before the proposal due date.)
6	City of Oakland City Charter \$728 Living Wage Information A. Employer Self-Evaluation for Port of Oakland Living Wage B. Certificate of Compliance—Living Wage	Yes (Attachment 6-A and 6-B are required after contract award.)
7	Statement of Living Wage Requirements	Yes
8	Insurance Requirements	No
9	Insurance Acknowledgement Statement	Yes
10	Disadvantage Business Enterprise Program Affidavit	No
11	Map of Middle Harbor and Port View Parks	No

Title		Must Be Returned with Proposal
12	Security Services Professional Service Agreement	<p>No</p> <p>(Note: The successful Respondent will execute the Professional Services Agreement if awarded the contract.)</p>

I. Project Overview

The Port of Oakland, Maritime Division (Port) is soliciting proposals from contractors qualified to provide twenty-four (24) hours per day, seven (7) days per week (including holidays) unarmed security services to Middle Harbor Shoreline Park (MHSP) and Port View Park. The Contractor will be subject to the City of Oakland's Park Ordinances. Proposing contractors should carefully review the requirements of this Request for Proposals (RFP) to ensure that they meet all of the stated requirements.

The service area of Middle Harbor Park currently extends down 7th street and will include Port View Park. MHSP is located at 2777 Middle Harbor Road, Oakland, CA 94607. Attachment 11 shows a map of Middle Harbor and Port View Parks. The Park is a 38-acre shoreline park built and operated by the Port of Oakland for the community, with more than two miles of pathways encircling Middle Harbor Basin. The planning and design of this park was done with extensive community involvement, which identified key goals for the park. Primary goals included creation of a place for learning about the local history, natural environment, maritime activities and stewardship for the environment. In addition, MHSP provides unprecedented access to the shoreline, with associated views of the bay, natural habitats and maritime activity.

II. Scope of Services

The Port will select a supplier to provide unarmed security services to the park. The selected firm will work with the Port of Oakland staff to provide services as follows.

A. Hours of Operations and Uniforms

1. Security services shall be 24 hours/7 days a week.
 - Typically only one (1) guard is needed during the day shift. Day shift is defined as between 6:00 a.m. and 10:00 p.m.
 - Two guards are needed during the night shift. Night shift is defined as between 10:00 p.m. and 6:00 a.m.
2. Day guard uniform shall be khaki, tan, brown and/or green in color. Night guards may wear black or other dark colors. All uniforms must be approved by the Port of Oakland.

B. Guard Duties

1. Security guards will roam the parks more than two miles of pathways that encircle Middle Harbor and Port View Parks. Security will not be responsible for opening or closing the building structure on Port View Park.
2. Guards will monitor the security cameras and surveillance equipment. The Port will provide camera surveillance equipment access and the Supplier shall provide computer monitor and setup for work station, including the high speed internet access of at least 768kpbs or higher. Workstation: Most any relatively modern PC will work, with at least Intel i3 core processor.
3. Guards are required to work with the public and maintain a professional and courteous demeanor and have the ability to answer questions and deal with the public as needed.
4. Guards will raise and lower the American Flag on Mondays, Tuesday and Thursdays (weather permitting).
5. Unlock/Lock the park gates and bathrooms each morning at and each evening at sundown or closing, specific times will be provided to selected supplier.
6. Unlock and Lock bathrooms in the adjacent Port View Park.
7. Walk all park areas throughout the day and evening shifts and report any problems immediately. The Contractor shall be responsible for contacting The Oakland Police Department and establishing and maintaining communication on behalf of the Middle Harbor Shoreline Park.
8. Unlock/Lock Rail Tower wheel lift for disabled or wheel chair park guests, as needed. Once unlocked security guard to operate the rail tower to lift and/or lower as needed.

9. The Contractor and/or its employees shall not engage in the sale of any products or services, or the solicitation of sale, at any of The Maritime Park areas.

C. Activity Reports

1. Bi-monthly "incident" reporting is required. A written report of any serious incidents must be provided to the responsible Port staff within 24 hours of the incident. Port staff at their discretion may require daily, monthly and annual reports (on report forms, which shall be provided by The Contractor or Port).
2. Port staff will meet monthly with selected supplier designee to discuss incident report and all other issues.

Report forms may be modified at any time by the Director of Maritime (or Designee). Reports shall include, at a minimum the following:

- a) employees daily shift reports
- b) daily shift reconciliation
- c) bi-monthly work schedule and monthly employee rosters, including all new hires and termination
- d) daily activity logs
- e) monthly employee payroll reports
- f) monthly report of employees with active Guard Cards
- g) monthly reimbursable operational expenses summaries
- h) annual report of major incidents that occurred or were responded to by The Contractor since the commencement date or since the prior reporting date and any staffing issues or any other matter that the supplier would like to bring to the Port's attention
- i) any other statistical reports concerning management and operation of the Services as the Director or Designee reasonably may require from time to time as "Additional Service Reports"

D. Operations and procedures Manual

Selected contractor will provide the Port with an Operations and Procedures Manual. This Manual should describe their basic policies, practices, standard of performance and procedures covering all aspects of the management and operation of their services.

E. Other Requirements

1. The Contractor must have sufficient personnel who possess a current "Guard Card" to fill the position, and maintain additional personnel to provide the necessary lunch and other breaks and to cover vacation, sick time and other leaves as they may occur.
2. In the event a security officer is unable to perform his/her duties during a shift due to illness or injury, the Contractor shall provide a replacement officer within one (1) hour from the time the post is vacated.
3. The Contractor is responsible for the control, conduct, demeanor, and appearance of its guards, agents and employees.
4. The Contractor shall verify that all its employees have the right to work in the United States in compliance with the Immigration Reform and Control Act of 1996. The Port reserves the right to inspect employment eligibility verification forms (Form 1-9 OBM No. 1115-0236, or any revised version).
5. The Contractor will provide a list of the names and duty hours of each employee assigned to the Port under any agreement.
6. The Contractor to assign at least two (2) Supervisors who will act as liaison to the Port and be responsible for the management of services provided to the Port. Supervisors must have at least five (5) years experience managing or supervising security guard operations with eight or more employees on a multi-shift operation. Supervisors shall be on duty Monday through Sunday and be available for immediate consultation with Port staff as needed, including after hours.
7. Guard personnel shall be recruited, selected and assigned to assure the most dependable and efficient security guards capable to fully perform their duties in the most professional, courteous and pro-active manner, are assigned to this project.

8. Guards shall be able to understand written and oral instructions in English.
9. The Contractor shall perform background checks of at least five (5) years of verifiable background on all guard candidates and certify that all candidates have successfully passed a criminal background check prior to working on Port property.
10. The Contractor shall ensure that guards receive on-going training in public relations, guard patrol procedures, safety, and other related operations such as traffic enforcement.
11. Any guard assigned to driving responsibilities must possess and maintain a valid State of California driver's license for the duration of the driving assignment. The Contractor shall provide to the Port a copy of the completed DMV check on each guard prior to start-up assignment and annually on any guard assigned driving duties.
12. The Contractor shall confirm that each guard assigned to the Port possess and maintains a valid security guard license issued by the California Department of Consumer Affairs Bureau of Security and Investigative Services and any other licenses required.

F. The Port Holiday Schedule

The Port has 12 fixed holidays a year, and thus "holiday pay" is recognized. These days are:

January 1st
Martin Luther King, Jr. Day (third Monday in January)
President's Day (third Monday in February)
Memorial Day (last Monday in May)
July 4th Independence Day
Labor Day (first Monday in September)
Holiday (second Monday in September)
Thanksgiving (4th Thursday in November)
Day after Thanksgiving (Friday after Thanksgiving)
Christmas day (December 25th)

G. Term of Service

The term services will be for one year starting December 27, 2013 to December 27, 2014 and may be extended by the Port for two additional, one year increments for a maximum of three years.

III. Port Policy Requirements

The selected Respondent will be required to comply with the following Port Policy Requirements:

1. Non-Discrimination and Small Local Business Utilization Policy (NDSLBU):

The Port desires to maximize the participation of small local business and has instituted a Non-Discrimination and Small Local Business Utilization Policy (NDSLBU). The NDSLBU consists of two parts:

- Non-Discrimination policy which all Suppliers (Respondents) must adhere to, and must provide proof with their proposals
- Preference points to small local businesses who qualify under the Port's definition of a small local business. To receive these preference points, The Contractors (Respondents) must download a Certification Application at: <http://www.portofoakland.com/responsibility/certified.aspx> and submit it along with any supporting documentation to the Port's Social Responsibility Division seven (7) days prior to the proposal due date.

A summary of the Port's Non-Discrimination and Small Local Business Utilization Policy is included herein as **Attachment 5**. The entire policy is available at:

http://www.portofoakland.com/pdf/responsibility/ndslbu_policy.pdf

The Contractors already certified with the Port do not need to submit proof of certification, but still need to check the Port's certification database at: <http://www.portofoakland.com/srd> to ensure their certification has not expired and should fill out the Chart for Submitting Data for Calculation of Preference Points (**Attachment 5-A**), and the Local Participation

Questionnaire (**Attachment 5-B**), and submit them with your proposal. All The Contractors (Respondents) must still provide proof of adhering to the Port's Non-Discrimination policy.

A copy of the Port-certified Small Local Business Enterprises can also be downloaded at:
<http://www.portofoakland.com/srd>

For questions or assistance regarding NDSLBP, contact Ms. Donna Cason, Contract Compliance Officer, (510) 627-1252, at the Port's Social Responsibility Division, or via email dcason@portoakland.com.

2. Insurance Requirements:

All Respondents who plan on submitting a proposal in response to this RFP must meet the Port's Insurance requirements listed in **Attachment 8**, and must provide proof of insurance at the time of project award. Respondents must include a statement with their proposal agreeing to the Port's insurance requirements and indicate they will be able to obtain the proper insurances at the time of project award.

3. Security Sensitive Information:

By submitting a proposal, Respondent acknowledges that in the course of performing services under this contract, the selected consultant will come into possession of sensitive information subject to Port of Oakland regulation. Those firms which are included on the short list for final consideration will be required to comply strictly with the Port of Oakland's policies and practices for sensitive information.

4. Living Wage Policy:

On March 5, 2002, the voters in the City of Oakland passed Measure I, adding to the City Charter Section 728 ("§728") entitled "Living Wage and Labor Standards at Port-assisted Businesses." §728 requires Port Aviation and Maritime businesses that meet specified minimum threshold requirements to pay all nonexempt employees a Living Wage rate established by City Ordinance and adjusted annually based on the Consumer Price Index for the San Francisco, Oakland and San Jose area. The current Living Wage rate as of July 1, 2013 is at least \$11.96 with credit given to the employer for the provision to covered employees of health benefits, and \$13.75 without credit for the provision of health benefits. Specifically, §728 applies to Port contractors and financial assistance recipients with the Aviation or Maritime divisions that have contracts worth more than \$50,000 and that employ more than 20 employees who spend more than 25% of their time on Port-related work. §728 also provides covered employers with incentives to provide health benefits to employees, establishes a worker retention policy, requires covered employers to submit quarterly payroll reports and requires covered employers to allow Port representatives access to payroll records in order to monitor compliance and labor organization representatives access to workforces during non-work time and on non-work sites. Covered employers are responsible for complying with the provisions of §728 from the date the covered contract is entered into. When a contract is awarded, the Respondent will be required to fill out the attached Employer Self-Evaluation for Port of Oakland Living Wage Form (see **Attachment 6-A**) and Certificate of Compliance—Living Wage (see **Attachment 6-B**) and return them to the Social Responsibility Division. (i.e., do not include these forms in with your proposal). For more information, please call Connie Ng-Wong in the Port of Oakland's Social Responsibility Division at (510) 627-1390.

Respondent shall acknowledge Living Wage review and compliance by submitting the Statement Living Wage Requirement (**Attachment 7**) with the proposal.

5. Port's Standard Professional Services Agreement:

Submission of a proposal will confirm that the proposer fully understands the provisions of the Port's Professional Services Agreement and will execute such agreement if awarded the contract. Any objections to any provisions in such contract must clearly be identified in your proposal. Changes are discouraged.

IV. Submission Requirements

The Port has scheduled a **non-mandatory Pre-proposal meeting on the date indicated in the Table labeled "Proposal Information" (on page 1 of 2 "Invitation" for this RFP)** to review the submission requirements.

Please respond to the following 8 submission requirements in a straightforward, concise delineation of your capabilities proposed to satisfy the requirements of the RFP. The Port will use your responses to objectively determine your capabilities and experience. Please label your responses 1 through 8, in the order presented below. Please limit your total response to the number of pages indicated below (excludes the required attachment forms provided with this RFP).

Submittal Format:

Responses may not be longer than 16 pages (one sided or 8 pages double sided), printed on 8 ½" x 11" paper and formatted in no smaller than 10 point font. Each section shall be labeled according to the sections below. All submitted material must be bound with only **one staple or binder clip** in the upper left corner. Please no binders or any other type of binding. Submittals must be able to fit into a 9 x 11.5 inch folder.

1. Company Information: Provide the name of your company (including the name of any parent company), business address, email address, Federal Tax ID number, telephone and fax numbers, and names and titles of key personnel and a brief history of your company. Provide a brief statement of who is authorized to submit the proposal on the behalf of your firm. Please make sure that person signs and dates the statement.

2. Knowledge and Experience: Provide relevant information about your company's knowledge and experience, including a list of three or more projects (in similar size and scope to this RFP), with brief descriptions that demonstrate your experience.

3. Clients: Provide names, addresses and contact information for three (3) current clients. Provide the size and scope of each project and a brief description of the projects. Please make sure all contact information is current. By providing such information, you authorize us to contact such clients.

4. Plan and Approach: Provide an overview describing the general approach, scope of services, and methodology of your firm's ability to fulfill the general functions required in this RFP. Please use this section to describe the services you propose to provide to the Port. Your services can be above and beyond the requirements listed in the "Scope of Service" section.

5. Proposed Costs:
Provide your breakdown of the costs associated with this project. Make sure to describe the lump sum prices and hourly charges along with the total cost of the contract. The Port is requesting proposer submit a bid for a one year cost proposal. Also provide the cost for two additional years of service should the Port decide to extend the contract.

6. Debarment: Provide a written statement that your company has not been debarred from providing services to any State or Federal Agency within the last five (5) years. Sign and Date your statement. If your firm has been debarred, you will need to provide background information and reason for the debarment. Provide the name and contact information for the agency that debarred your firm. The Port must review the reason and duration for the debarment before it can determine if your firm can be considered for this project.

7. Port Policy Requirements: Provide documentation to support the policy requirements listed in the Section III (Port Policy Requirements). Any exceptions to the Port's Professional Services Agreement must be clearly set forth in your proposal.

8. Required Forms: The Respondent must fill out all forms included in the RFP (listed in the attachments section) and return them with your proposal. Failure of the Respondent to provide any

information requested in the RFP may result in rejection for non-responsiveness. These required forms will not count against the maximum page count (indicated above) for your response.

V. Evaluation Criteria

Prior to contract award, the Port must be assured that the Respondent selected has all of the resources required to successfully perform under the contract. This includes, but is not limited to, personnel with skills required, equipment/materials and financial resources sufficient to provide services called for under this contract. If during the evaluation process, the Port is unable to assure itself of the Respondent's ability to perform under the contract, if awarded, the Port has the option of requesting from the Respondent, any information that the Port deems necessary to determine the Respondent's capabilities. If such information is required, the Respondent will be notified and will be permitted five (5) working days to submit the requested information.

In awarding the contract, the Port will evaluate a number of factors in combination. Please make sure you have submitted responses to all items listed in the Submission Requirements section, as your responses will be evaluated based on the weights listed below.

A. Evaluation Weights

Item	Criteria	Weights
1	<u>References, Resources, and Key Personnel</u> Respondent's capacity to provide professional service as evidenced by past performance, company information, resources, debarment statement, and from list of key personnel. (Items 1, 3, and 6 of Submission Requirements section.)	10%
2	<u>Knowledge and Experience</u> Respondent's knowledge and experience in providing Security Services as evidence from your response to item 2 of Submission Requirements section.	15%
3	<u>Plan and Approach</u> As evidence from your response to item 4 of Submission Requirements section.	10%
4	<u>Proposed Costs</u> As evidence from your response to item 5 of Submission Requirements section, and as provided on the Proposal Worksheet.	45%
5	<u>Port Policy Requirements and Required Forms</u> Does your firm adhere to the Port's Non-Discrimination Policy? And has your firm submitted all the Policy requirements and forms listed in items 7 and 8 of Submission Requirements section?	5%
6	<u>Non-Discrimination Small Local Business Utilization Policy</u> Does your company meet the Port's definition of Small Local Business? The Port will evaluate companies that have provided substantiating documentation to prove they meet the Port's definition of Small Local Business, and award qualifying companies up to the maximum 15 points.	15%
	Total	100%

B. Selection Procedure:

All proposals received by the deadline which meet the RFP's requirements will be presented to the evaluation committee comprised of Port of Oakland staff and possibly external members. The evaluation committee will evaluate the proposals and score all submissions according to the evaluation

criteria above. The selection process may include interviews of the responding companies. If interviews are to take place, the Port will notify the Respondent companies. Interview details and scoring requirements will be provided to Respondents prior to the interview.

VI. Additional Provisions

The terms "Company", "Consultant", "Contractor", "Proposer", "Respondent", "Seller", "Supplier", and "Vendor" whenever appearing in this RFP or any attachments, are used interchangeably to refer to the company or firm submitting a proposal in response to this RFP.

A. Port's Legal Name and Jurisdiction

The Port of Oakland (the "Port") is legally known as the City of Oakland, a Municipal Corporation, Acting by and through its Board of Port Commissioners. The Port is an independent department of the City of Oakland. The Port has exclusive control and management of all Port facilities and properties. Port facilities and properties consist of marine terminals, a railway intermodal terminal and container storage areas (collectively, the "Seaport"); the Oakland International Airport (the "Airport"); and commercial and industrial land and properties (collectively, "Commercial Real Estate"); and other recreational land, other land, undeveloped land, and water areas, all located in Oakland, CA. The Port issues Purchase Orders under the name Port of Oakland.

B. Ownership of Proposal

All rights to information developed, disclosed, or provided in a Proposal and its attendant submissions are the property of Port, unless a Respondent makes specific reference to data that is considered proprietary. To the extent that a Respondent does not make specific reference to data that is considered proprietary, submission of an RFP constitutes the Respondent's express (a) grant and assignment of a perpetual, transferable (in whole or in part), non-exclusive royalty-free license to the Port for copyright, patent, or other intellectual property right (collectively referred to as "intellectual property"), and (b) agreement that the Port may use any such intellectual property without charge for any lawful purpose in connection with other Port development projects, including without limitation the creation of derivative works and issuance of sublicenses.

C. Public Records Act

Per the Public Records Act (Gov. Code 6250 et seq.), the Port may be obligated to make available to the public the submitted proposal and all correspondence and written questions submitted during the Request for Proposal process. However, such disclosure shall not be made prior to the date on which the Port publishes a final Board agenda report recommending award of the contract. Any trade secrets or proprietary financial information, which a Respondent believes should be exempted from disclosure, shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections shall not be permitted and shall be invalid. The specific information must be clearly identified as such.

The Port reserves the right to independently determine whether any document is subject to disclosure and to make such information available to the extent required by applicable law, without any restriction

D. Indemnification

If Respondent is selected to receive a contract, it will be required to agree to the indemnification clause contained in the Professional Services Agreement. **See Section 5** of the Professional Services Agreement (Attachment 12).

E. Reimbursable Expenses

All expenses incidental to performing Consultant's Basic Services including, but not limited to, reproduction of documents and other materials associated with Respondent's deliverables and presentation materials; reproduction of construction contractor's submittals; reproduction of Design Completion Consultants' submittals; transportation and subsistence; telephone, computer, facsimile, or other similar costs; and the like, shall be included within the Contract Price.

F. Port's Right to Modify

Respondents are advised that the Port has not incurred any obligations or duties in soliciting this Request for Proposals. The Port reserves the right to reject any or all proposals submitted in response to this RFP; to request additional information or clarification of information submitted; to cancel or modify, in part or in its entirety, this RFP; to request new RFPs or pursue any other means for obtaining the desired services; to waive any informalities or minor irregularities in the RFP, and other inconsequential deviations from the RFP's requirements. The Board of Port Commissioners retains the right to award this project in part or in total to the Respondent(s) of its choice, and to decide to undertake the project or to terminate the project at any time prior to approval of a formal contract.

G. Conflicts of Interest

By submitting a proposal, the Respondent represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections in connection with its proposal. Respondent also represents that its proposal has completely disclosed to the Port all facts bearing upon any possible interests, direct or indirect, which Respondent believes any member of Port, or other officer, agent or employee of Port or any department presently has, or will have, in any agreement arising from this RFP, or in the performance thereof, or in any portion of the profits there under. Willful failure to make such disclosure, if any, shall constitute ground for rejection of the proposals or termination of any agreement by Port for cause. Respondent agrees that if it enters into a contract with the Port, it will comply with all applicable conflict of interest codes adopted by the City of Oakland and Port of Oakland and their reporting requirements.

H. Cost of Preparing a Response

All costs for developing a response to this RFP and attending any proposal meetings or selection meetings are entirely the responsibility of the Respondent and shall not be chargeable to the Port.

I. Law Compliance

The Respondent must comply with all laws, ordinances, regulations and codes of the Federal, State, and Local Governments, which may in any way affect the preparation of proposals or the performance of the contract.

J. Respondent's Relationship

The Respondent's relationship to the Port shall be that of independent contractor and not deemed to be agent of the Port.

K. Proposal Considerations and Legal Proceeding Waiver

The Port has absolute discretion with regard to acceptance and rejection of proposals. In order to be considered the party submitting a proposal waives the right to bring legal proceedings challenging the Board of Port Commissioners choice of the award.

L. False Statements

False statements in a proposal will disqualify the proposal.

M. Taxes

The Respondent will be responsible for all Federal, State, and Local taxes.

N. Grade of Service

The Respondent must provide professional service and maintain appropriate personnel to provide expedient and courteous service.

O. The Respondent's Liability

The Respondent shall be responsible for any and all damages to the Port's premises resulting from the negligent acts or willful misconduct of the Respondent's agents or employees.

P. Amendments

The Port may, at its sole discretion, issue amendments to this RFP at any time before the time set for receipt of proposals. The Respondents are required to acknowledge receipt of any amendments (addenda) issued to this RFP by acknowledging the Addendum in the space provided on the RFP Acknowledgement and Signature Form. The Port shall not be bound by any representations, whether oral or written, made at a pre-proposal, pre-contract, or site meeting, unless such representations are incorporated in writing as an amendment to the RFP or as part of the final contract. All questions or requests for clarification concerning material terms of the contract should be submitted in writing for consideration as an amendment.

Q. Withdrawal or Modification of Offers

The Respondent may modify or withdraw an offer in writing at any time before the deadline for submission of an offer.

R. Acceptance

Any offer received shall be considered an offer which may be accepted or rejected, in whole or in part, by the Port based on initial submission with or without discussions or negotiations.

S. Representations

No representations or guarantees of any kind, either made orally, or expressed or implied, are made with regard to the matters contained in this document, including any attachments, letters of transmittal, or any other related documents. The Respondent must rely solely on its own independent assessment as the basis for the submission of any offer made.

T. Award Consideration and Length of Contract

The Port shall not be bound to accept the lowest-quote fee and will award the contract (if any) to the company/firm selected through the competitive process (and any subsequent interviews) outlined in this RFP.

The Port will award a one-year contract (if any) and will have the option to issue two (2) one-year extensions not to exceed a total period of 3 years (at the costs quoted in this proposal).

U. Contract Termination

The Port may terminate the agreement (and or contract) with the Respondent on thirty days notice for the failure of the Respondent to comply with any term(s) of the agreement/contract between the Port and the Respondent.

V. Protest Procedures

Any party that has timely submitted a responsive proposal may file a protest of award in accordance with the provisions set forth below:

1. Any protest must be submitted in writing to John Betterton, Secretary of the Board, by 5:00 p.m. of the fifth (5th) business day following publication of the identity of the apparent successful proposer (or of notice of intended award, if such notice is issued).
2. The protest must include the name, address and telephone number of the person representing the protesting party.
3. The initial protest document must contain a complete statement of the basis for the protest, including in detail, all grounds for protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the protest; any matters not set forth in the written protest shall be deemed waived. All factual contentions must be supported by competent, admissible and creditable evidence.

Any protest not conforming to the foregoing shall be rejected by the Port without recourse.

Provided that a protest is filed in strict conformity with the foregoing, protests shall be heard initially by the Executive Director, or his/her designee, who shall issue a written report and a recommended disposition of the protest, including written findings of fact and any conclusions

of law. The Board of Port Commissioners (Board) may then ratify the Executive Director's (or his/her designee's) recommendations or conduct such further review of the protest, as the Board may determine. The Board will render a final determination and disposition of a protest by taking action to adopt, modify or reject the disposition of a protest. Action by the Board relative to a protest shall be final and not subject to appeal or reconsideration by Protestor, the Port, any employee or officer of the Port or the Board of Port Commissioners.



PORT OF OAKLAND

Non Collusion Declaration

RFP No.: 13-14/05 Security Services at Middle Harbor Shoreline and Port View Park

(To Be Executed By Proposer and Submitted With Proposal)

I, _____, declare as follows:

That I am the _____ of _____, the party making the attached proposal; that the attached proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal, or that anyone shall refrain from proposing; that the proposer has not in any manner, directly or indirectly, sought by agreement, communication, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and further, that the proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

Any person executing this declaration on behalf of a proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____, 201__, at
_____, California

Signature

Authority: Public Contract Code 7106

CCP 2015.5



PORT OF OAKLAND

Statement of Equal Employment Opportunity

I hereby certify that I _____ (Legal Name of Respondent/Supplier/Consultant/Contractor), will not discriminate against any employee or applicant for employment because of because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation.

I declare under penalty of perjury under the laws of the state of California that the information I have provided herein is true and correct and is of my own personal knowledge.

BY: _____
Date

Print Name



PORT OF OAKLAND

RFP Acknowledgement and Signature Form

RFP No.: 13-14/05 Security Services at Middle Harbor Shoreline and Port View Park

The undersigned having carefully examined the location of the proposed work, the local conditions of the place where the work is to be done, the Invitation, the General Conditions, the Specifications and all of the documents for this project, proposes to enter into a contract with the Port of Oakland to perform the work listed in this RFP, including all of its component parts, and to furnish any and all required labor, materials, equipment, insurance, bonding, taxes, transportation and services required for this project in strict conformity with the plans and specifications prepared, including any Addenda, within the time specified.

Addendum Acknowledgement

The following addendum (addenda) is (are) acknowledged in this RFP: _____

Acknowledgement and Signature:

1. No Proposal is valid unless signed in ink by the person authorized to make the proposal.
2. I have carefully read, understand and agree to the terms and conditions on all pages of this RFP. The undersigned agrees to furnish the services stipulated in this RFP.

Respondent's Name and Title: _____

Company Name: _____

Address: _____

Telephone: _____ Fax: _____

Email: _____ Cell Number: _____

Contractor License # (if applicable): _____ Expiration Date: _____

Federal Tax Identification Number: _____

Authorized Signature: _____ Date: _____

Decline RFP:

We **do not** wish to submit a Proposal on this Project. Please state your reason below. Please also indicate if you would like to remain on our Supplier list.

Reason: _____

Company: _____ Address: _____

Name: _____ Signature: _____ Date: _____



PORT OF OAKLAND

Proposal Work Sheet

RFP No.: 13-14/05 Security Services at Middle Harbor Shoreline and Port View Park

Unarmed Security Guard Rate:

Straight Time: _____

***Overtime/Holiday Rate:** _____

*Overtime rate applies to holidays and special last minute requests for additional service.

Administrative Fees:

Please note those costs

Total Cost of Contract for Year *1 _____

Total Cost of Contract for Year *2 _____
(if extended)

Total Cost of Contract for Year *3 _____
(if extended)

* A year consists of 365 days of which 353 days are straight time and 12 days are holiday time. Calendar year 2016 is a leap year so it will consist of 366 days, of which 354 are straight time and 12 days are holiday time.

Respondent Name: _____ Title: _____

Company Name: _____

Authorized Signature: _____ Date: _____

Non-Discrimination: Port of Oakland (Port) policy prohibits discrimination or preferential treatment because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation.

Local Business Utilization: On October 7, 1997, the Board of Port Commissioners initiated a formal policy to encourage full participation of firms from its Local Business Area ("LBA"), the counties of Alameda and Contra Costa, particularly those in its Local Impact Area ("LIA"), in its work. The LIA includes the cities of Oakland, Alameda, Emeryville and San Leandro. The LBA includes all cities within the counties of Alameda and Contra Costa. The Port will also take into consideration efforts the prime and sub-consultants make to assist in the community, e.g., assigning meaningful work to small and/or very small local sub-consultants, mentor protégé relationships, participation in job/trade fairs, hiring interns, pro bono work, and working with local schools, etc.

Consultant Preference Points: The Port allots preference points for the percentage of work being performed by consultants/sub-consultants located in either the LBA or the LIA and for community involvement for a maximum total of up to 15 points. These points are added to a maximum of 85 technical points for a composite maximum of 100 points in evaluating consultant proposals as follows:

- Up to 5 points will be credited proportionately (counting the whole team, prime consultant and sub-consultant(s)) for LIA certified firms, and 2.5 for LBA certified firms.
Note: LIA/LBA credit is given only for certified firms which have had established active offices in the respective area for at least a year at the time of proposal due date, and NOT for outside firms which plan to do the project work at a LIA/LBA office;
- An additional 3 points will be credited for an LIA certified prime consultant (proportionate to the share of prime consultant work in the case of a joint venture) and 1.5 points for an LBA certified prime consultant;
- Up to 4 points will be credited proportionately (counting the whole team, prime consultant and sub-consultant(s)) for Very Small Business Enterprise (VSBE) certified firms, and 2 points for Small Business Enterprise (SBE certified firms); and
- Up to 3 points for commitment to the Port's values and programs, e.g., mentoring small and/or very small local businesses and providing meaningful work for small and/or very small local sub-consultants; utilization of college and high school interns from the LIA; participation in job fairs and trade fairs targeted to LIA residents and businesses; and other work showing the consultant's efforts to contribute to the economic development of the LIA.

In summary, please submit the following attachments in each copy of your proposal:

1. Attachment 5-A, Chart for Submitting Data for Calculation of Preference Points. List the team members' (prime and subs) names, roles, location and LIA/LBA/SBE/VSBE status in the format shown in Attachment 5-B. Be specific as to the nature and estimated percentage of the work to be performed by the prime, any joint venture partners and/or sub-consultants.
2. Attachment 5-B, Local Participation Questionnaire.
Complete for each sub-consulting firm or individual, as well as for the prime consultant.

Any proposal that fails to complete and submit the above two items (Prime *and* sub-consultants) will not be considered. For firms headquartered outside the LIA/LBA, who wish to obtain credit for local offices, the Port will only telephone or address mail to that office and expect personnel assigned to the project to work at that office.

To obtain credit for these factors and for any preference points on this RFP, consultants or any team member must submit:

- Consultants or any team members wishing to be certified by the Port must submit a Certification Application, with all supporting documentation seven (7) business days prior to the proposal due date. The questionnaire and checklist of necessary supporting documents for certification may be obtained at: <http://www.portofoakland.com/srd> . For questions regarding certification, you may contact Pamela Bell at pbell@portoakland.com or (510) 627-1419. Firms certified by the Port of Oakland do not need to submit proof of certification.

For questions or assistance regarding this section, contact Ms. Donna Cason (510) 627-1252, or dcason@portoakland.com in the Port's Social Responsibility Division.



PORT OF OAKLAND

**Chart for Submitting Data
for Calculation of Preference Points**

Company	Nature of Work to be Performed	Prime or Sub?	Location of Firm	*LIA/LBA SBE/VSBE Certification Status	Percent of Total Contract	Percent of Sub-consulting Work
(Name of Prime)		Prime				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
Total (must add up to 100%)					100%	100%

*** In order to qualify for preference points, the firm must be certified by the Port of Oakland.** Local Impact Area (LIA), Local Business Area (LBA), Small Business Enterprise (SBE), Very Small Business Enterprise (VSBE)

Notes:

- Please make sure the column labeled "Percent of Total Contract" adds up to 100%
- Please make sure the column labeled "Percent of Sub-consulting Work" adds up to 100% of the Sub-consulting work.



(Use additional paper if necessary)

1. Is the consultant or large sub-consultant mentoring or providing a professionally meaningful share of the project to small and/or very small LIA firms on this project? Yes___ No___

If the response is "yes", please provide specific details on how the mentoring or sharing will be performed. In addition, be specific as to the nature of the relationship and the persons responsible for implementing it.

2. (A) Do any team members regularly use local students as interns in their work? Yes___ No ___
(B) Do any team members currently use local students as interns in their work? Yes___ No ___
(C) Have any team members used local students as interns in past work? Yes ___ No___
(D) If planning to use interns on this project, how will you utilize them?

If you answered "yes" to any of these questions, please state from what schools or programs the interns were obtained, what type of work was performed by them, and any other details that might be relevant, i.e. paid internship, length of service, number of interns.

3. Have firms in the team participated in other community projects, e.g., job fairs targeted to local neighborhoods, youth or school programs, community rehabilitation groups, etc.? Yes___ No___
If so, please give details:



PORT OF OAKLAND

**City of Oakland City Charter § 728
Living Wage Information**

**EMPLOYERS SUBJECT TO §728 OF THE CITY CHARTER MUST COMPLY WITH THE
FOLLOWING REQUIREMENTS:**

- 1) Pay all non-exempt employees the living wage rates (As of July 1, 2013, \$13.75 without health benefits or \$11.96 with health benefits). Port Ordinance No. 3666, as amended also requires that covered businesses provide employees at least twelve compensated days off per year, including holidays.
- 2) Pay at least \$1.79 per hour worked toward the provision of health care benefits for employees and/or their dependents, if the employer claims credit for health benefits.
- 3) **Provide written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of these regulations.** The notification shall be provided in English, Spanish and other languages spoken by a significant number of the employees, and shall be posted prominently in communal areas at the work site. A copy of said notification is available from the Port Division of Social Responsibility.
- 4) Provide all employees earning less than \$12/hour notification in English, Spanish, and any other language spoken by a significant number of employees of their right to advance Earned Income Credit payments.
- 5) **Maintain a list of the name, address, date of hire, occupation classification, rate of pay, benefits paid for each of its employees, and compensated time off - and submit this list to the Port's Social Responsibility Division, Attention: Connie Ng-Wong, Living Wage Compliance Officer, by March 31st, June 30th, September 30th, and December 31st of each year.** If a covered employer has obtained a waiver from the Port Board of Directors, then the employer must still submit an annual payroll report covering each of its employees by December 31st of each year. Failure to provide the list within five days of the due date will result in a penalty of \$500 per day. Covered employers shall maintain payrolls and basic records for all employees and shall preserve them for a period of at least three years after the close of the compliance period.
- 6) Require subcontractors, tenants and subtenants, or licensees who are covered by these requirements to comply with the provisions of these regulations. **Covered employers shall be responsible for including language committing the subcontractor's, tenant's or licensee's agreement to comply, in the contract with the subcontractor.** Covered employers shall submit a copy of such subcontracts or other such agreements to the Port Division of Social Responsibility.
- 7) Permit authorized Port representatives access to work sites and, with employee consent, relevant payroll records for the purpose of monitoring compliance with these regulations, investigating employee complaints of non-compliance and evaluating the operation and effects of these regulations, including the production for inspection and copying of its payroll records for any or all of its employees for the applicable compliance period. Permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas to ensure compliance.

Employers who fail to submit documents, declarations or information required to demonstrate compliance with these regulations shall be deemed noncompliant or non-responsive and subject to the remedies as set forth in §728.



PORT OF OAKLAND

**Employer Self-Evaluation for
Port of Oakland Living Wage**

COVERED BUSINESS CHECKLIST WRITE YES/NO ANSWER IN APPROPRIATE BOX:

1. ☐ Is the Business entering into a contract, tenancy agreement or subordinate agreement (such as, subcontract, subtenancy, or sublicense) with the Port? *If no, go on to question 2. If yes, go to question 3.*
2. ☐ Has the Business amended an existing contract, tenancy agreement or subordinate agreement at any time since April 2002? *If no to 1 and 2, stop here: the business is not covered. If yes, go to question 3.*
3. ☐ Is the contract with Aviation or Maritime divisions for a value of greater than \$50,000 over the life of the contract (over the next five years if contract is for less than a year and expected to be renewed or extended)? *If no, stop here; the contract is not covered. If yes, go to question 4.*
4. ☐ Is the contract for service other than the delivery of products, equipment or commodities? *If no, stop here: the business is not covered. If yes, go to question 5.*
5. ☐ Does the Business employ more than 20 employees who spend at least 10 hours per week (4 hours per week if part time employees) working under the contract with the Port or on Port property? Indicate the number of employees that are employed by the Contractor _____. *If no, stop here the business is not covered. If yes, go to question 6. exemptions for specified employees of a covered employer.*

All employees of a covered employer are required to be provided compensation and other benefits as provided under §728 of the Charter, except for specified employees exempt under the following exemptions. The following questions should be answered for each employee.

6. ☐ *Does the employee work less than 25% of his/her time (10 hours per week for full time employee) under the contract with the Port? If yes, stop here; the specified employee is exempt. If no, go to question 7.*
7. ☐ *Is the employee under 21 years of age, employed by a government agency or nonprofit for after school or summer employment, or as a trainee for 90 days or less? If yes, stop here; the specified employee is exempt. If no, go to question 8.*
8. ☐ *Has the Business obtained a waiver that covers the employee? If yes, stop here; the specified employee is exempt. If no, go to question 9.*
9. ☐ *Is the employee participating in a bona-fide temporary job-training program in which a significant part of the compensation consists of acquiring specialized*

knowledge, abilities or skills in a recognized trade? If yes, stop here; the specified employee is exempt. If no, go to question 10.

10. ☐ *Is the employee a volunteer who is not compensated other than for incidental expenses or stipends? If yes, stop here; the specified employee is exempt. If no, go to question 11.*
11. ☐ *Is the employee working for the Business less than 20 hours per week for a period of 6 months or less? If yes, stop here the specified employee is exempt. If no, go to question 12.*
12. ☐ *Of the remaining employees (employees for which no exemption applies as indicated by your answers to questions 6 through 11), are there 20 or fewer non-exempt employees working for the employer under the Port Contract? If yes, stop here; each of the remaining specified employee(s) is/are exempt. If no, each of the remaining specified employee(s) is covered by §728.*

The undersigned authorized representative of Contractor hereby certifies under penalty of perjury that all of the information on this form is true and accurate.

Company Name

Signature of Authorized Representative

Address

Type or Print Name & Title

Area Code and Phone

Email Address

Name of Primary Contact

Date

Project Name (Be Specific)

Submit Completed Checklist To:

Connie Ng-Wong

Port of Oakland

Social Responsibility Division

530 Water Street

Oakland, CA 94607

Phone: (510) 627-1390 Fax: (510) 451-1656

Email: cng-wong@portoakland.com



PORT OF OAKLAND

Certificate of Compliance – Living Wage

The City of Oakland Living Wage Charter §728 ("§728") and Port Ordinance No. 3666 ("Ordinance 3666") as amended, provide that certain employers that enter into a contract, lease, license (or a subcontract, sublease, sublicense, or other agreement) with the Port for \$50,000 or more over the term of the contract and certain recipients of Port financial assistance for \$50,000 or more shall pay a prescribed minimum level of compensation to their covered employees ("Employees").

The undersigned ("Contractor") submits this certificate under penalty of perjury and as a condition of payment of its invoice(s) for service provided under the _____ agreement between the Port and Contractor.

- 1) Contractor hereby certifies that it is in compliance with §728 and Ordinance 3666 with respect to all non-exempt Employees of Contractor engaged in Port-related employment or work on Port property.
- 2) Contractor hereby acknowledges that the Port is relying on Contractor's certification of compliance with §728 and Ordinance 3666 as a condition of payment of Contractor's invoice(s).
- 3) Contractor understands that it may be subject to fines or penalties for noncompliance with §728 and Ordinance 3666 up to and including potential fines of \$500 per day until Contractor complies.
- 4) Contractor hereby certifies that claims, records and statements relating to Contractor's compliance with §728 and Ordinance 3666 are true and accurate, that such claims, records and statements are made with the knowledge that the Port will rely on such claims, records and statements, and that such claims, records and statements are submitted to the Port for the express benefit of Contractor's employees engaged in Port-related employment or work on Port property.

Please check the appropriate box and sign below

- ☐ Contractor hereby certifies its compliance with all of its obligations under §728 and Ordinance 3666;
- ☐ Contractor hereby certifies that all Employees of Contractor working under Contractor's contract with the Port are compensated at wage rate(s) greater than \$12.00 per hour;
- ☐ Contractor hereby certifies that it is not currently covered by §728 or Ordinance 3666. Contractor further certifies that should §728 or Ordinance 3666 become applicable, Contractor will comply with all of its Living Wage obligations.

All terms used herein and not defined shall have the meaning ascribed to such terms in §728 and Ordinance 3666.

The undersigned authorized representative of Contractor hereby certifies under penalty of perjury that all of the information on this form is true and accurate.

Company Name

Signature of Authorized Representative

Address

Type or Print Name & Title

Phone and Email

Date

Project Name (Be Specific)

Submit to: Connie Ng-Wong, Port of Oakland, Social Responsibility Division, 530 Water Street, Oakland, CA 94607. Email: cng-wong@portoakland.com



PORT OF OAKLAND

Statement of Living Wage Requirements

RFP No.: 13-14/05 Security Services at Middle Harbor Shoreline and Port View Park

I hereby certify that I _____ (Legal Name of Respondent/Supplier/Consultant/Contractor), has reviewed the Living Wage Requirements, included herein as Attachment 6 to this Request for Proposal and will comply with said requirement. Upon execution of an Agreement, the selected consultant will be required to complete the attached Employer Self-Evaluation Form and Certificate of Compliance –Living Wage Form of this Request for Proposal, and submit them to the Social Responsibility Division.

I declare under penalty of perjury under the laws of the state of California that the information I have provided herein is true and correct.

Print Name

Title

Signature

Date



PORT OF OAKLAND

Insurance Requirements

For the port's insurance requirement, see the Insurance Requirements listed in Attachment 12, Security Services Professional Services Agreement, Exhibit "I".



PORT OF OAKLAND

Insurance Acknowledgement Statement

RFP No.: 13-14/05 Security Services at Middle Harbor Shoreline and Port View Park

I hereby certify that _____ (Legal Name of Respondent) agrees to meet all of the Port's Insurance requirements included in this Request for Proposal or included in the Professional Services Agreement attached to this Request for Proposal and Respondent will be able to evidence such insurance when and if awarded the contract and will provide proof of insurance at the time of project award if awarded the contract.

I declare under penalty of perjury under the laws of the state of California that the information I have provided herein is true and correct and is of my own personal knowledge.

BY: _____
Date

Print Name

Title



Disadvantaged Business Enterprise Program Affidavit

RFP No.: 13-14/05 Security Services at Middle Harbor Shoreline and Port View Park

I hereby certify that I _____ (Legal Name of Respondent/Supplier/Consultant/Contractor), shall carry out applicable requirements of 49 Code of Federal Regulations (CFR) Part 23 or Part 26 in the award and administration of this contract and cooperate with the Port of Oakland in meeting its commitments and objectives with regard to ensuring nondiscrimination, and shall use best efforts to ensure that barriers to participation of Disadvantaged Businesses do not exist.

Upon execution of an Agreement, the selected consultant will be required to complete quarterly DBE attainment reports and a final report at contract completion, and submit them to the Social Responsibility Division.

I declare under penalty of perjury under the laws of the state of California that the information I have provided herein is true and correct.

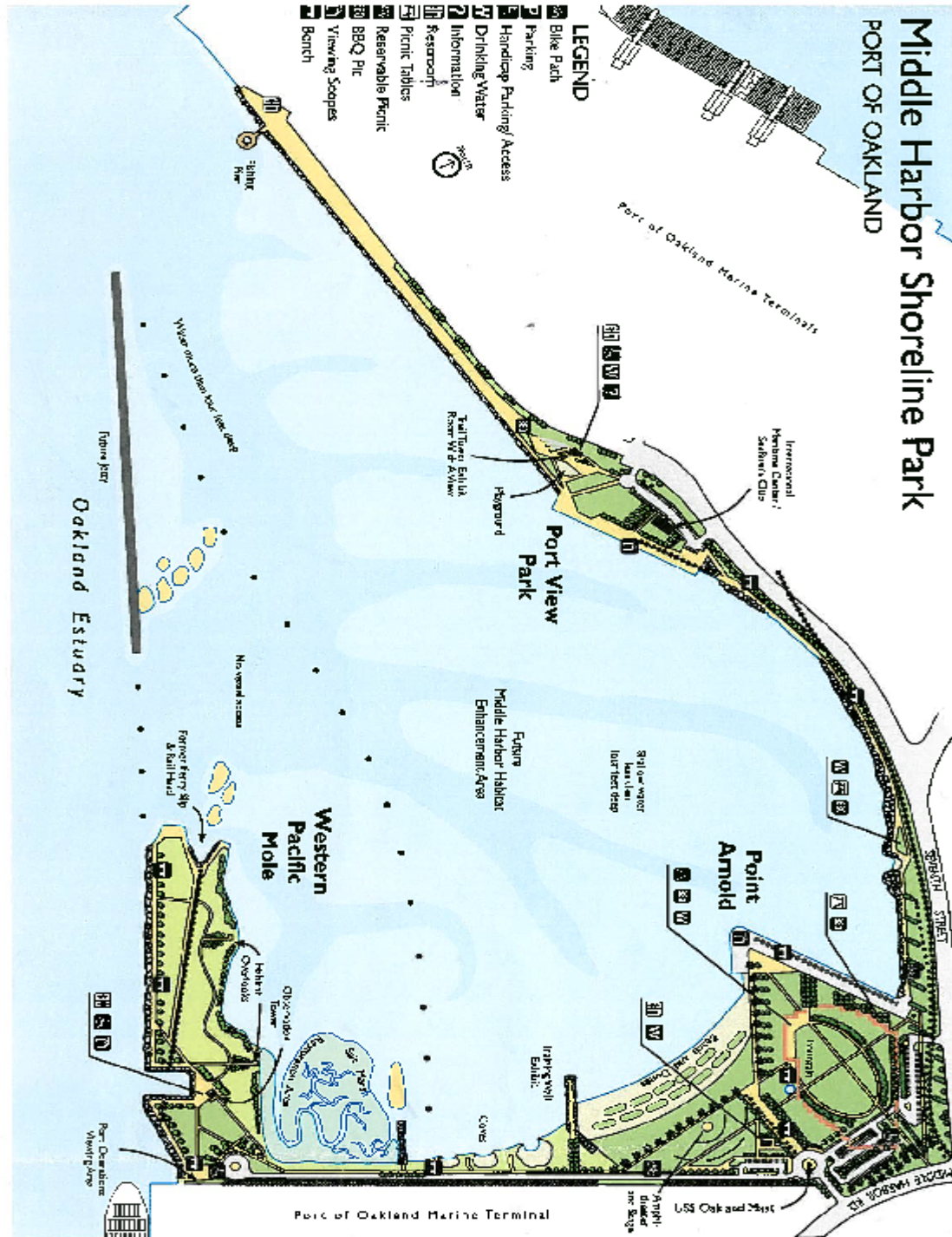
BY: _____
Date

Print Name



PORT OF OAKLAND

Middle Harbor Shoreline Park Map



ATTACHMENT 12

-AGREEMENT

FOR

**SECURITY SERVICES AT MIDDLE HARBOR SHORELINE PARK AND
PORT VIEW PARK IN THE MARITIME AREA**

BETWEEN

PORT OF OAKLAND

AND

DATED

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MIDDLE HARBOR SHORELINE PARK SECURITY SERVICES AGREEMENT

THIS MIDDLE HARBOR SHORELINE PARK SECURITY SERVICES AGREEMENT, dated as of the _____ (“Agreement”), is entered into by and between the CITY OF OAKLAND, a municipal corporation (“City”), acting by and through its Board of Port Commissioners (hereinafter referred to as the “Port”), and _____, as the operator (hereinafter referred to as the “Operator”).

W I T N E S S E T H

WHEREAS, the Port desires to obtain professional and expert management and operation of Contract Security Services (as hereafter defined) at Middle Harbor Shoreline Park and Port View Park in the Port’s Maritime Area (hereinafter collectively referred to as the “Maritime Park Area”), and has solicited Proposals from firms with experience and expertise in the management and operation of similar contract security services; and

WHEREAS, in response to such solicitation by the Port through the Port’s Request for Proposals for Security Services in the Maritime Park Areas (the “RFP”), the Operator submitted a proposal (the “Proposal”); and

WHEREAS, Operator has the requisite experience and expertise to provide the Contract Security Services; and

WHEREAS, the Port desires to accept the Proposal in order to retain Operator as an independent contractor to manage and operate the Contract Security Services in accordance with this Agreement;

NOW, THEREFORE, in consideration of the terms, covenants and conditions contained herein to be kept and performed by the respective parties hereto, IT IS MUTUALLY AGREED AS FOLLOWS:

1 RETENTION OF OPERATOR.

The Port hereby retains Operator, and Operator agrees with the Port, to manage, operate and provide, as an independent contractor, the Contract Security Services described in this Agreement (hereafter the “Contract Security Services” or the “Services”). The Operator agrees to provide the Contract Security Services at locations at the Maritime Park Area as directed from time to time by the Port’s Director of Maritime (hereinafter the “Director”) or any individual authorized in writing as a designee by the Director (“Designee”). The Operator shall be responsible for all functions related to staffing, supervision and overall professional management of the Contract Security Services hereunder, including hiring, training, scheduling, evaluating services and coordinating with Port staff.

2 TERM OF AGREEMENT.

2.1 Term.

This Agreement shall have an initial term of _____ (“Commencement Date”), and terminating at _____. The term “Operating Term” shall mean the initial term of this Agreement and any Extension Term resulting from the automatic renewal of this Agreement under this Section 2.1. Notwithstanding any provision of this Agreement to the contrary, the Port’s Executive Director or the Director may terminate this Agreement with or without cause at any time as provided in Section 22.1 below. If this Agreement has been extended for two (2) Extension Terms, then upon expiration of the second Extension Term, unless this Agreement is earlier terminated pursuant to Section 22 below, this Agreement shall extend and continue on a month-to-month basis, subject to termination by either party on 30 days prior written notice to the other party.

3 SCOPE OF SERVICES; WORKFORCE REQUIREMENTS.

3.1 Services. The Operator agrees to provide the Services, as directed from time to time by the Director or the Designee. Operator agrees to provide the Services in the Maritime Park Area at such locations and during the hours specified in attached Exhibit “A”, unless and until other locations or hours for the Services are established by the Director or the Designee, in which case Operator shall provide the Services from those locations and during those hours. The Port shall have the right in its sole discretion to increase or decrease Service hours. Operator shall provide replacement security guards to cover vacancies within four (4) hours of a request by the Director or the Designee. Operator shall provide up to four (4) security guards for emergency assignments within four (4) hours’ notice from the Director or the Designee.

3.2 Workforce Requirements.

a) Operator must provide a reliable and consistent work force, qualified to perform the Services under this Agreement, with a low turnover rate. Throughout the Operating Term of this Agreement, all employees assigned to perform work under this Agreement shall possess a valid security guard license issued by the California Department of Consumer Affairs Bureau of Security and Investigative Services in the appropriate discipline for the type of work performed, and shall obtain and maintain all other licenses required to provide any of the Services under applicable California, City of Oakland and Federal law. In addition, Operator and its employees providing any of the Services must comply with the following:

(i) all work sites served by Operator will be non-smoking and Operator's employees shall comply with all applicable smoking restrictions; and

(ii) the Port will issue an initial set of keys to Operator at no charge. However, in the sole discretion of the Port, in the event the locks need to be changed to maintain security as the result of Operator's employees’ loss or misuse of keys, Operator will be responsible for the cost of changing the affected locks;

b) All security guards providing any of the Services under this Agreement must, in addition to all other requirements contained in Section 3(a) above or under “GUARD PERSONNEL QUALIFICATIONS” on attached Exhibit “G”:

(i) be able to distinguish all colors, and have vision correctable to 20/20;

(ii) be able to climb inside and bend under vehicles for vehicle inspections (example, construction dump trucks, etc.);

(iii) work while exposed to outdoor elements such as, but not limited to, wind, rain, snow, and aircraft noise;

(iv) read and write in English, and comprehend sensitive security information and Port rules, regulations, and other communications and to communicate effectively. Security guards acting as representatives of the Port shall conduct themselves in a courteous and professional manner while performing duties on behalf of the Port. The Port retains the right to have any guard removed for failure to meet Port standards for customer service and performance;

(v) hold a valid drivers license issued by the State of California; and

(vi) conduct its operation in a first-class, businesslike, efficient, courteous and accommodating manner.

Failure to comply with the foregoing shall constitute a breach of the Agreement.

3.3 Resources. Operator shall dedicate sufficient staff, equipment and other resources exclusively to implement the Services as specified in this Agreement and shall not divert such dedicated staff, equipment or resources to any other security service or to any other business.

4 COMPENSATION.

4.1 Total Compensation. The Port shall pay Operator for satisfactorily completed Services at the hourly rate set forth in attached Exhibit “B”. Operator shall include the Agreement number provided by the Port on all requests for payments and shall submit invoices no more frequently than monthly to: Port of Oakland, 530 Water Street, 6th Floor, Oakland, CA 94607, Attention: Ramona Dixon. The Port will pay for all completed Services within thirty (30) calendar days after the Port's receipt of a properly completed invoice covering those Services, subject to the Port's set-off rights provided for in this Agreement. Invoices shall detail the number of hours worked in increments of fifteen (15) minutes and shall reflect the agreed hourly rates for guards and patrols regardless of the time of day, day of week, or holiday. Until the Port has been provided with invoices that have been properly completed in accordance with the requirements of this Section 4, and with such supporting documentation as the Director or the Designee shall reasonably request, which may include, without limitation, employee time sheets, time cards and payroll receipts, Port shall have no obligation to pay Operator any of the invoiced amounts.

Payment for all Services provided by all of Operator's off-site staff shall be included in the hourly rate set forth in attached Exhibit "B" and shall not be paid for as a separate position. In addition, Operator may not charge Port under this Agreement for Operator's Supervisors.

Operator agrees that Operator shall not be entitled to any additional management fee or administrative fee in connection with Operator's provision of services under this Agreement.

In no event shall the Port be obligated to pay Operator for any services under this Agreement if the total amount the Port has paid to Operator under this Agreement exceeds _____.

4.2 Hourly Work. For Services performed in accordance with the terms of this Agreement, each of Operator's invoices shall include, at a minimum, the name, title, labor rate (from the rate set forth on attached Exhibit "B", as such rate may be adjusted pursuant to Section 4.3 below), number of hours, and total charge for the Services performed by each individual being charged.

4.3 Pricing Escalation. Operator may request a rate adjustment no more frequently than annually for the ensuing Extension Term to reflect actual increases in Operator's cost to perform the Services that have been documented by Operator to the satisfaction of the Director or the Designee. In no event shall the rate adjustment be more than the change in the Consumer Price Index. Any request for a rate adjustment shall be submitted to the Port in writing no less than ninety (90) calendar days prior to the end of the current year of the Operating Term, and adjustments approved by the Director shall be effective as of the beginning of the next Extension Term.

For the purposes of this Agreement a "change in the Consumer Price Index" shall mean the difference between the Consumer Price Index, Urban Wage Earners and Clerical Workers, (base year 1982 - 1984 = 100) for the San Francisco - Oakland - San Jose CMSA, published by the United States Department of Labor, Bureau of Labor Statistics ("Index") published most immediately preceding the most recent anniversary of the Commencement Date ("Extension Index") and the Index published most immediately preceding the commencement of the prior term ("Beginning Index").

4.4 Overtime Rate Clarification. Requests for additional Services that are provided by the Director or the Designee to Operator with at least a 72-hour advance notice shall be charged at the regular hourly rate. Requests provided by the Director or the Designee with less than a 72-hour advance notice shall be charged at one and one-half times the regular hourly rate within the first 48 hours of Service, and shall be charged at the regular hourly rate thereafter. No overtime shall be paid to the extent caused by Operator's failure to provide the staffing set forth on attached Exhibit "A". Operator's invoices shall provide a detailed explanation of any charges billed as additional services, and shall also include, at a minimum, the name, title, labor rate, number of hours, and total charge for each individual's overtime services.

5 EXPENSE REIMBURSEMENTS.

Operator shall, pursuant to the reimbursement procedures set forth in attached Exhibit "C", pay only those expenses that constitute Reimbursable Expenses (as defined in attached Exhibit "C"), and that are incurred by the Operator in performing the Contract Security Services at the Maritime Park Area.

5.1 Monthly Reports and Budget. Operator shall submit to the Port accurate monthly reports detailing Reimbursable Expenses for the previous month for which Operator is seeking reimbursement from the Port, pursuant to reimbursement procedures set forth in attached Exhibit "C" hereof. No later than thirty (30) business days following the Port's receipt of the reports and supporting documentation required by this Agreement and subject to the Port's set-off rights provided for in this Agreement, the Port shall reimburse to the Operator actual, properly documented Reimbursable Expenses, without markup or premium, that are applicable to the month covered by the report. The provisions of this Section 5.1, and of attached Exhibit "C", shall not prevent Operator from being reimbursed for Reimbursable Expenses properly attributable to a month and that were not covered by the report for such month, provided that (i) any such Reimbursable Expense could not be properly documented by Operator at the time such report was submitted to Port, and (ii) Operator submits proper documentation for such Reimbursable Expense and an amended report within sixty (60) days after the end of the month in which such Reimbursable Expense was actually incurred. Until receipt of all such certifications, reports and supporting documentation, the Port shall have no obligation to pay to Operator any of the aforesaid amounts. The Operator shall provide Port with a detailed monthly budget report, which shall include detailed explanations of significant budget variances. Operator shall meet with Port staff every six (6) months during the Operating Term of this Agreement to review adherence to the approved annual expense budget, explain significant variances, and develop a plan to maintain budget adherence.

Notwithstanding the foregoing, the Reimbursable Expenses described in Section (3) under "REIMBURSABLE EXPENSES" on attached Exhibit "C" shall not be reimbursable by the Port until the end of each year of the Operating Term of this Agreement, provided, however, that if this Agreement is terminated during any year of such Operating Term, then the not to exceed amount referred to in said Section (3) shall be reduced to the amount determined by multiplying \$10,000 by a fraction, the numerator of which is the number of days that expired in the year of the Operating Term in which this Agreement was terminated, and the denominator of which is 365.

5.2 Overbilling and Overpayment. If in any given month, the Operator submits a report, invoice or bill which overstates the actual expense to the Operator of a Reimbursable Expense or charges the Port for more than what should properly be charged to the Port pursuant to Section 4 of this Agreement and the Port makes such reimbursements or payments to the Operator in reliance on such report, invoice or bill, Operator shall immediately:

- a) Repay the Port for any such amount of overpayment together with interest equal to twenty-five one-thousandths of one percent (.025%) of such amount for each day from the day the Port made its reimbursement or payment to the Operator until the day

the overpayment is refunded to the Port, but not to exceed the maximum rate of interest permitted by law;

b) If the amount of the overpayment is more than two percent (2%) of the sum which should properly have been reimbursed or paid to the Operator, the Operator shall, in addition to Section 5.2(a) above, pay a \$250.00 Administrative Fee for each invoice, report or bill which overcharges the Port, not to exceed \$500.00 per month, to compensate the Port for the administrative services and burdens in such overpayment recovery; and

c) If the amount of the overpayment is more than five percent (5%) of the sum which should properly have been reimbursed or paid to the Operator, the Port shall, in addition to remedies provided for in Sections 5.2(a) and 5.2(b) above, have the right to terminate this Agreement for cause.

In addition to remedies provided for in Sections 5.2(a) through 5.2(c) above, Operator shall pay the cost of any audit by the Port under Section 6.4 below (including salary, fringe benefits, other direct expenses of the audit and an additional 20% of those costs to cover administrative charges) if such audit reveals, uncovers or identifies an overpayment of more than two percent (2%) of the sum which properly should have been reimbursed or paid, less a credit for any Administrative Fee charged pursuant to Section 5.2(b) above.

As an example, but without limitation, submitting a duplicate bill, invoice or report or a request for reimbursement resulting in a duplicate payment to the Operator or a request for reimbursement of an expense that is not a Reimbursable Expense resulting in any payment by Port shall be considered an overpayment by the Port for purposes of this Section 5.2.

The Port's payment of any amount pursuant to Section 4 above or its approval or payment of any expenditure pursuant to this Section 5 or Exhibit "C" to this Agreement shall not waive any of the Port's rights under this Section 5.2 unless the amount of the overstatement or the amount of the excess charge was described as such in a written disclosure to the Director or the Designee and was approved in writing by the Director or the Designee after such written disclosure.

Any amount owed by Operator to Port pursuant to this Section 5.2 or any other provision of this Agreement may be set-off by Port against any amount otherwise payable by Port to Operator pursuant to this Agreement, including, without limitation, payments under Section 4 or payment of Reimbursable Expenses.

6 BOOKS AND RECORDS; ACTIVITY REPORTS.

6.1 Maintenance and Production of Books and Records. Operator shall maintain complete and accurate books of account and supporting documentation (collectively "books and records") in a form consistent with generally accepted accounting principles, including such books and records as would normally be examined by an independent certified public accountant in performing an audit or examination of amounts billed by Operator pursuant to Sections 4 or 5 of this Agreement, including employee timesheets, timecards, payroll receipts, receipts for Reimbursable Expenses, and all records required to be kept pursuant to attached Exhibit "G".

6.2 Inspection of Books and Records. All such books and records shall, upon reasonable notice from Port, be made available either at the offices of the Port or at the offices of the Operator, for inspection and copying by the Port through its duly authorized representative. If such books and records are not kept and maintained by Operator within a radius of ten (10) miles from the offices of the Port at 530 Water Street, Oakland, California, Operator shall, upon request of the Port, make such books and records available to the Port for inspection at a location within said ten (10) mile radius or Operator shall pay to the Port the reasonable and necessary costs incurred by the Port in inspecting Operator's books and records, including, but not limited to, travel, lodging and subsistence costs. Operator shall provide such assistance as may be reasonably requested by the Port in the course of such inspection. The Port further reserves the right to examine and reexamine and copy said books, records and data during the three (3) year period following the expiration or earlier termination of this Agreement, as evidenced in writing by the Port. The Operator shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any matter whatsoever for three (3) years after the Port makes the final or last payment under this Agreement; provided, however, that if prior to the expiration of such three (3) year period, any audit, review or investigation is commenced by the Port, or any claim is made or litigation is commenced relating to this Agreement by the Port or the Operator, such books and records shall continue to be maintained by Operator, and Port shall continue to have the right to inspect and copy such books and records in the manner stated above, until the audit, claim or litigation is finally resolved (including the determination of any and all appeals or the expiration of time for such appeal).

6.3 Port Audit. The Operator shall provide an Audit Manual ("Audit Manual") to the Director, within thirty (30) days from the Commencement Date, for review and approval by the Director or the Designee. The Operator shall devise, revise, comply with and maintain the Audit Manual under the same terms and conditions as provided for in the Operations and Procedures Manual submitted pursuant to Section 8.1. The Audit Manual provided by Operator pursuant to this Section 6.3 shall be attached to and made a part of this Agreement as Exhibit "E".

6.4 Audit of Records. During the Operating Term of this Agreement, in addition to its rights under Section 6.2 above, the Port, using its own employees or by contracting with a third party, may audit any or all payments made by the Port to Operator under Section 4 above or for Reimbursable Expenses. In case of such audit, the Operator shall make available to the Port any and all ledgers, books of accounts, canceled checks, and other records or documents evidencing or relating to Reimbursable Expenses, payroll records, personnel files and staffing schedules of personnel assigned to the Services and such other evidence or information as the Port may require with regard to any payroll or other expenditure charged by the Operator. Such audit may also include a review of general, input, processing and output controls of information systems used to record financial transactions and other statistical reports. The Port shall notify the Operator of such audit and Operator shall provide such records in the manner, time and place as provided for in Section 6.2 above and in attached Exhibit "E". Operator's failure to comply shall be subject to administrative fees as specified in attached Exhibit "D" and shall also constitute a breach of Operator's obligations under this Agreement.

6.5 Deductions from Payments to Operator. The Port shall have the right to deduct from any amounts payable or reimbursable to the Operator, upon written notice, any unauthorized or disputed payments made by Port to Operator, any Administrative Fees imposed,

overpayments pursuant to Section 4 or of Reimbursable Expenses by the Port and any other amounts owed by Operator to the Port. If the Port is required or elects to pay any sum, or if it incurs any obligations or expenses, because of the failure, inability, neglect or refusal of the Operator to perform or fulfill any of its obligations under this Agreement, then the Port shall have the right to deduct these sum(s) from any amounts payable or reimbursable to the Operator.

6.6 Activity Reports. Operator shall submit to the Director or its Designee weekly, monthly and annual reports on report forms, which shall be provided by Operator or Port, at Port's election, which shall include, at a minimum, all of the information specified under "ACTIVITY REPORTS" on attached Exhibit "A".

Any specific incidents requiring guard actions are to be included in the reports. The Operator shall immediately report any personal injuries, property loss or damage, threats or potential threats against life or property or any incident or activities that present imminent danger to health and safety of the general public. Any emergency conditions requiring immediate attention are to be reported by telephone immediately to the Port's Designee at 510-715-7467 and to the Oakland Police Department. A follow-up written report delineating the emergency condition and corresponding action taken shall be submitted to the Port within 24 hours. Failure to provide a written report within 24 hours shall result in the assessment of an Administrative Fee as specified in Exhibit "D". Any and all daily reports shall be submitted by noon of the next business day. Weekly reports shall be submitted by the Wednesday of the following week. Monthly reports shall be submitted within ten (10) calendar days of the end of the month, or part thereof, for which a report is due. Annual reports shall be submitted by February 1st of each year of the Operating Term of this Agreement. Operator shall supply Port with such other financial or statistical reports as the Executive Director may request from time to time during the term of this Agreement. In addition, Operator shall address each customer complaint regarding the Maritime Park Area within five (5) working days of receipt by Operator of the notice of such complaint.

7 OPERATIONS.

7.1 Operations and Procedures Manual. Operator shall develop an Operations and Procedures Manual ("Operations Manual"), or modify the Port's existing Operations Manual based upon its best judgment and best industry standards, and shall provide a copy to the Director and the Designee, within one hundred and eighty (180) days from the Commencement Date, for review and approval by the Director or the Designee. The Operator will confer with the Director or the Designee in its preparation of the Operations Manual and shall revise the Operations Manual from time to time as required by the Director or the Designee.

The Operations Manual shall provide basic guidance on policies, practices, and procedures covering all aspects of the Services, including but not limited to standards of performance. The Operator shall keep the Operations Manual current and shall comply with its provisions throughout the Operating Term. Any revision shall be subject to the written approval of the Director or the Designee. Each revision to the Operations Manual shall have a revision number and date. The Operations Manual shall become an integral part of the Agreement, but in the event of any conflict between the Operations Manual and this Agreement, the terms of this Agreement shall prevail. The Operations Manual, including all revisions as approved by the Director or the Designee, is herein incorporated into and made a part of this Agreement. The

failure of the Operator to comply with or satisfy the requirements as spelled out in the Operations Manual shall be an Event of Default hereunder, entitling the Port to all of the remedies set forth herein.

7.2 Report of Injuries or Loss. The Operator, using a form provided by the Port, shall immediately report any personal injuries, property loss or damage, threats or potential threats against life or property or any incident or activities that present imminent danger to health and safety of the general public. Any emergency conditions requiring immediate attention are to be reported by telephone immediately to the Port's Designee at 510-715-7467 and to the Oakland Police Department or Deputy Sheriff or as otherwise directed in writing by the Port. A follow-up written report, using a form provided by the Port, delineating the emergency condition and corresponding action taken shall be submitted to the Port within 24 hours.

8 PERSONNEL.

Exhibit "G", entitled PERSONNEL, is attached and made a part of this Agreement.

8.1 Training Manual. The Operator shall provide a Training Manual ("Training Manual") to the Director, within one hundred and eighty (180) days from the Commencement Date, for review and approval by the Director or the Designee. The Operator shall devise, revise, comply with and maintain the Training Manual under the same terms and conditions as provided for in the Operations Manual submitted pursuant to Section 7.1. Exhibit "I" attached to this Agreement provides information to assist in structuring the Training Manual and shall be replaced by the Operator's Training Manual once approved by the Director or the Designee.

8.2 Removal of Employees. The Director or the Designee, at its sole discretion, reserves the right to require the Operator to remove, and to keep removed, from the Services and the Premises any employee of Operator, including without limitation the Supervisors, if said employee has failed to perform in accordance with any of the terms or conditions of the Agreement, or if said employee is alleged to have been involved in wrongdoing, while those allegations are under investigation. The Operator shall remove from the Services and the Premises any employee who operates a vehicle recklessly or in a manner that endangers the safety of Maritime Park Area patrons, under the influence of alcohol or other prohibited substances or who no longer satisfies the requirements set forth in Section 3.2 or attached Exhibit "G". The Operator will comply with any request to remove any such employee as soon as written notice is received from the Director or the Designee. Operator's failure to comply within twenty-four (24) hours of receipt of such notice shall be considered an Event of Default hereunder, entitling the Port to all of the remedies contained in this Agreement. Operator shall remove any employee of the Operator on the spot from the Services and the Premises, if the Operator is advised that the Director or the Designee has determined in his or her sole discretion that the seriousness of the incident justifies such immediate removal.

8.3 Uniforms. Operator shall at its expense furnish all of its personnel engaged in providing any of the Services with uniforms of the type and in sufficient quantity to satisfy Operator's obligations under "EMPLOYEE UNIFORMS" on attached Exhibit "G", and Operator at its expense shall maintain all such uniforms in good condition. All uniforms shall be approved by the Port and obtained from a vendor selected by the Operator and approved by the Port. In addition, all of Operator's employees for except day guards shift shall wear similar style

uniforms for such shift. Operator shall also provide rain gear, boots, flashlights, and safety equipment required by State of California standards. Operator agrees that each employee shall only use such approved uniforms.

8.4 Industry Operating Standards. Operator shall operate the Services in compliance with the highest industry operating standards.

9 PREMISES.

For the purpose of performing all duties and obligations required by the Agreement and for no other purpose, the Port shall allow Operator, as a licensee, and at no charge to Operator, to use an approximately 60 ft by 12 ft modular office space at the Middle Harbor Shoreline Park (the "Premises"), in a location to be determined by the Director. The Port reserves the right to terminate the license at any time and to relocate, from time to time and at the Port's expense, the Operator to such other space or location in the Maritime Park Area as determined by the Director. The license to use the Premises provided herein shall cease upon the expiration or earlier termination of this Agreement.

9.1 Maintenance. Operator shall provide, at its own expense, all custodial services, maintenance and repairs to the Premises and shall keep the Premises clean, attractive and in good repair and safe condition. The Port shall provide at its own expense all maintenance, repairs and replacement of the structural portion of the Premises, except with respect to damage resulting from negligence or willful misconduct of Operator, its officers, agents, employees, or contractors, in which case the cost of repair shall be borne by Operator. Operator shall have no obligation under this Agreement to make physical modifications to the Premises or other locations at the Maritime Park Area where the Contract Security Services are to be performed to comply with applicable Laws (as defined in Section 24.1 below).

9.2 Safe and Sanitary Working Conditions. The Operator shall not permit any part of the Services to be performed under hazardous or dangerous conditions to its employees or the general public. Subject to the limitations in the last sentence of Section 10.1 above, the Operator shall comply with all Laws applicable to the Premises and all other locations from which any of the Services are performed. The Operator shall, at least once each day, inspect all locations at which the Services are being provided and the Premises to determine whether any hazardous or dangerous conditions exist or if any such location is in need of maintenance or repair. Operator shall immediately provide Port with telephonic notice, which shall later be confirmed by written notice, of any and all hazardous or dangerous conditions or any need for maintenance or repair at any location where the Services are being provided or at the Premises and of any injuries or damages resulting directly or indirectly there from, together with whatever information Operator has about the party responsible for creating any such condition. The Port shall have responsibility for correcting any hazardous or dangerous condition existing at any location where the Services are being provided or, to the extent provided in Section 11.1 above, the Premises, following notice to Port by Operator of the existence of such hazardous or dangerous condition. The Operator shall reimburse the Port promptly after its written demand for (a) any liability incurred by the Port (I) which arose out of any hazardous or dangerous conditions, and any injuries or damages resulting directly or indirectly there from, caused by the Operator, its officers, agents, employees, contractors or invitees, or (ii) which arose after Operator should

have reported such conditions to Port pursuant to the provisions of this subsection, and (b) the costs incurred by the Port to correct any such hazardous or dangerous condition to the extent caused by Operator, its officers, agents, employees, contractors or invitees.

9.3 Utilities. The Port shall pay the cost of all water, electric utility and telephone services to the Premises. The Port will install and pay for all telephone equipment on the Premises. The Port shall determine the number of lines and phones to be provided to the Premises. Subject to the limitations in Section 31 below, the Port shall provide all maintenance and repairs of such telephone equipment to keep such equipment in good working condition, except for damage resulting from the negligence or willful misconduct of Operator, its officers, agents, employees, or contractors, in which case the cost of repair shall be borne by Operator. The Operator shall comply and shall cause all of its employees providing any of the Services to comply with the Port's Policies and Procedures for the Use of Telephones and on Electronic Communications as fully as if Operator and such employees were employees of the Port.

9.4 Area Access. Solely for the purpose of performing the Contract Security Services, the Port grants the Operator, without charge therefore, the right of ingress to and egress from the Premises and all other Maritime Park Area locations from which any of the Contract Security Services are to be performed by the Operator, its officers, agents, employees, or contractors; provided that such right of ingress and egress shall at all times be exercised in compliance with all applicable Laws and regulations promulgated by lawful authority for the care, operation, maintenance, and security of the Maritime Park Area.

9.5 Improvement. Operator shall make no alterations or improvements, and shall post no signs, on the Premises or elsewhere at the Maritime Park Area, except with the prior written approval of the Director or the Designee, which approval may be denied or conditioned as the Port may determine in its sole discretion. Operator may, at no cost to the Port, and subject to subsequent prompt removal, at Operator's expense, at the request of the Port at any time, provide such movable furniture and other trade fixtures, as Operator deems appropriate. Operator agrees that it will not depreciate for tax purposes any alterations or improvements made by it at the Maritime Park Area.

9.6 Surrender of the Premises. Upon expiration or earlier termination of this Agreement, the Operator shall vacate the Premises. Operator shall thereupon deliver to the Port the Premises, all Office Equipment, and all other office facilities and equipment belonging to Port, and, to the extent of Operator's obligations, as set forth in this Section 10, assure that they are in good working condition in all respects, reasonable wear and tear excepted, or Operator shall pay to the Port such sums as necessary for the repair of the Office Equipment and any such office facilities and equipment, and to restore the Premises to its original condition, normal wear and tear excepted. If, at the expiration or earlier termination of the Agreement, the Operator retains ownership of any operating equipment, movable furniture and other trade fixtures used at the Premises and provided at Operator's expense (and not reimbursed by Port), the Operator shall remove any such property, subject to any valid lien which the Port may have thereon; provided that, upon removal of any such operating equipment, movable furniture and other trade fixtures, the Operator shall restore the Premises to the original condition, normal wear and tear excepted. The Operator shall be deemed to have abandoned to the Port any operating equipment, furniture and other trade fixtures which it has failed to remove within fifteen (15) calendar days

after the expiration or earlier termination of this Agreement, unless the Director or the Designee shall grant additional time for this purpose in writing; provided, however, the Port, at its sole option, shall have the right to remove and store same after it is deemed abandoned and restore the area to satisfactory condition and hold the Operator liable for all costs incident to such removal, storage and restoration. In the event the Port removes such operating equipment, furniture and other trade fixture, the Port shall not sustain, be charged with, or incur any liability by reason of any damage to same or for such removal or custodial care.

9.7 Inspection. The Port and staff, including but not limited to administrative staff, facilities staff, custodial staff, authorized persons, and the Port's agents, retain the right at the Port's sole discretion to enter the Premises for the examination and inspection of the area from time to time with reference to any emergency, or to the general maintenance of said area, or for the purposes of surveying or viewing the area for anticipated alterations or improvements, or any other purpose deemed necessary by the Port.

10 EQUIPMENT.

10.1 Operating And Maintenance of Equipment. Except as otherwise provided in Section 10.6 above, Operator shall provide and maintain, at its own expense, all office equipment, motor vehicles, and other supplies and equipment required for Operator to perform its duties and obligations under the Agreement (the "Equipment"), whether owned by Operator or supplied by the Port. Upon the expiration or earlier termination of this Agreement, Operator shall return all Port provided Equipment to the Port, with any repairs that Operator is required to make pursuant to Section 10.7 above completed in a manner that is acceptable to Port.

a) Vehicles. Operator shall provide and maintain, at its expense and in good working condition, one service vehicle approved by the Port and equipped with a two-way radio and a roof-mount light bar to be operated by each of Operator's on-duty field supervisors. Said vehicles shall be, and at all times remain, the property of the Operator and shall be used solely for the Services. Additionally, said vehicle shall display the Operator's name in a minimum 4" type style and size, shall have the Operator's identification number, and shall be equipped with an Maritime Park Area issued electrical identification device, so as to be readily identifiable as belonging to the Operator. Each vehicle shall have no visible body damage at any time.

b) Port owns and maintains one Kawasaki Mule vehicle that will be provided for use within Port Security Services Area only. The service vehicle will be properly maintained and used only for the purposes of roving throughout the Port Security Services area designated on Exhibit ? and? herein. except with respect to damage resulting from negligence or willful misconduct of operator, its officers, agents or employees, contractors or invitees, in which case the cost of repair and or maintenance shall be borne by Operator.

c) Two-Way Radios. Port shall at its expense provide Operator with eight (8) two-way radios to perform the Contract Security Services, and such two-way radios shall remain the property of the Port. Operator, at its expense, shall maintain all such two-way radios in good working condition, and shall repair any damage to such two-

way radios arising out of damage in excess of normal wear and tear. Operator shall use such two-way radios to establish essential links between Operator's Supervisors, traffic control and Port personnel and to minimize the time required to react to and correct any service interruption due to traffic, breakdowns, emergencies or any other reasons. Additionally, the Operator, at its expense, shall maintain a two-way radio network and provide a network radio to each of its security guards or traffic officers on duty at the Maritime Park Area, as well as two (2) network radios to the Maritime Operations Office.

d) Operator's Reporting Obligations. Operator shall immediately report to Port any Equipment that Operator knows or reasonably should know is in need of service, repair or replacement, or any Port facility or dangerous condition that Operator knows or reasonably should know is in need of maintenance or repair, and such report shall be made to the Director during business hours of 8:30 A.M. to 5:00 P.M. Mondays through Fridays (except on Port-observed holidays) and to the Port's Maritime Park Area Operations 24-hour telephone number at times on Mondays through Fridays other than during the business hours described above and at any time on weekends or on Port-observed holidays.

11 LIMITATIONS ON OPERATOR ACTIVITIES.

11.1 Limitations on Uses. Operator shall and shall require Operator's Representatives (as defined in Section 12.2(a) below) to use the Premises and to enter and exit the Maritime Park Area only to provide the Contract Security Services, to perform Operator's obligations under this Agreement, and to construct, install, use and maintain Operator's improvements in or on the Premises, subject to the Director's or the Designee's prior written approval of such construction or installation.

a) Operator shall not do or permit anything to be done by Operator's Representatives in, on or about the Premises, or any part of the Maritime Park Area, nor bring or keep or permit any of Operator's Representatives to bring or keep thereon, anything which is prohibited by or will in any way conflict with any applicable Laws, or which is prohibited by a standard form of fire insurance policy or which will in any way increase or affect the then-existing rate of any fire or other insurance carried by the Port or required to be carried by the Operator under this Agreement, or which will cause a cancellation of any insurance policy covering the Maritime Park Area or the Premises and any part thereof or any of their contents.

b) Operator shall not and shall not permit any of Operator's Representatives to commit, cause or maintain (except to the extent expressly authorized by Section 12.2(c) below), any Toxic Material (as defined in Section 12.2(a) below) upon the Premises or any part of the Maritime Park Area, any public or private nuisance, or any other act or thing which may disturb the quiet enjoyment of any tenant, licensee, invitee or person using or occupying any portion of the Maritime Park Area.

c) Operator shall not and shall not permit any of Operator's Representatives to install, maintain or operate in, on or about the Premises or any part of the Maritime

Park Area, any vending machine or device designed to dispense or sell foods, beverages, tobacco products or merchandise of any kind to the general public.

d) Operator shall not and shall not permit any of Operator's Representatives to install, erect, affix, paint or place any sign or lettering in, on, or about the Premises or any part of the Maritime Park Area, except as otherwise provided herein.

e) Operator shall not and shall not permit any of Operator's Representatives to make any improvements or alterations to the Premises or any part of the Maritime Park Area without the prior written consent of the Director or the Designee.

f) Operator agrees to conduct its operations upon the Premises or any part of the Maritime Park Area so as to reduce to the minimum that is reasonably practicable, the emanation therefrom of fumes and odors.

g) Operator agrees to handle and dispose of its trash, garbage and refuse in a sanitary manner and not to store or maintain any boxes, cartons, barrels, trash, debris or refuse in or about the Premises or any part of the Maritime Park Area where they will be an eyesore to the public, as reasonably determined by the Director or the Designee. If the Director or the Designee makes such determination, then at the request of the Director or the Designee, the Operator shall promptly remove such boxes, cartons, barrels, trash, debris or refuse from the Maritime Park Area, or store same in a location approved by the Director or the Designee in the exercise of his or her sole discretion.

h) Operator shall not and shall not permit any of Operator's Representatives to engage in the sale of any product or service, the solicitation of such sale, or the distribution of any literature or goods of any type, at the Maritime Park Area.

i) The Operator's evening guard(s) shall carry firearms, mace, batons or any other weapons at the Port Property.

j) Armed guards should never fire their weapons under any circumstances. If a matter requires such force, Oakland Police are the only authorized City agents with authority to fire weapons. Armed guards are strictly for visual affect to assist in deterring potential crime.

11.2 Toxic Materials.

a) For the purpose of this Agreement, the following terms shall be defined as follows:

(1) "Clean-up" shall include investigation, feasibility studies, risk assessment, treatment, removal, disposal, handling, transport, containment, capping, mitigation, remediation and monitoring in accordance with all applicable Environmental Laws.

(2) "Environmental Laws" shall mean all Laws (as defined in Section 24 below), including, but not limited to, those so defined in or regulated under

any of the following: 15 U.S. Code Section 2601, et seq. (the Toxic Substances Control Act); 33 U.S. Code Section 1251, et seq. (the Federal Water Pollution Control Act); 42 U.S. Code Section 6901, et seq. (the Resource Conservation and Recovery Act); 42 U.S. Code Section 7401, et seq. (the Clean Air Act); 42 U.S. Code Section 9601, et seq. (the Comprehensive Environmental Response, Compensation and Liability Act); 49 U.S. Code Section 1801, et seq. (the Hazardous Materials Transportation Act); 42 U.S. Code Section 4321, et seq. (NEPA); H&S Code Section 116270 et. seq. (California State Drinking Water Act); H&S Code Section 25100, et seq. (Hazardous Waste Control); H&S Code Section 25300, et seq. (the Hazardous Substance Account Act); H&S Code Section 25404, et seq. (Unified Hazardous Waste and Hazardous Materials Management Regulatory Program); Government Code Sections 66600 et seq. (McAteer Petris Act); H&S Code Section 25531, et seq. (Hazardous Materials Management); H&S Code Section 18901, et seq. (California Building Standards); California Water Code Section 13000, et seq. (the Porter-Cologne Water Quality Control Act); H&S Code Section 25249.5, et seq. (the Safe Drinking Water and Toxic Enforcement Act of 1986); Division 26, of the H&S Code (including H&S Code Section 39000 et seq. and 40200 et seq. among others, (authorizing regulation by CARB and the BAAQMD); Division 25.5 of the H&S Code (H&S Code section 38500 et seq. - the Global Warming Solutions Act); California Public Resources Code Section 21000, et seq. (CEQA); local fire codes; the regulations adopted and promulgated pursuant to such statutes, including any regulations adopted pursuant to such statutes after the Commencement Date, as well as any subsequently enacted federal, California, local and Port law, statute, ordinance, rule, regulation, program, plan, resolution, policy, program, permit, order, or other directive issued by any Governmental Authority as may be modified, amended or reissued, in any way relating to or regulating the Operator's operations with regard to:

(i) Human health, safety and industrial hygiene related to Toxic Materials;

(ii) The environment, including natural resources, pollution or contamination of the air, soil, sediment, soil gas, surface water, groundwater, structures, and subsurface structures including utility vaults, corridors or conduits, or noise or light pollution;

(iii) Toxic Materials, including, without limitation, the handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release, treatment or disposal of any Toxic Materials, or Response Actions (as defined in Section 12.2(i)(ii) below) associated with same; or

(iv) Global warming or generation of green house gases.

(3) "Governmental Authority" shall mean any court, federal, State or local government, department, commission, board, bureau, agency or other

regulatory, administrative, governmental or quasi-governmental authority, including the Port, of the United States of America, including any successor agency.

(4) “Indemnification Obligations” shall have the definition provided in Section 12.2(i)(i) below.

(5) “Indemnitees” shall mean, collectively, the Port and the Port’s Commissioners, agents, employees, representatives, contractors, the Port-designated secondary users of the Premises, directors and officers.

(6) “Operator Release” shall have the definition provided in Section 12.2(e) below.

(7) “Operator’s Representatives” shall mean, collectively, Operator’s officers, agents, employees, contractors, subcontractors, licensees and invitees.

(8) “Response Action” shall mean the investigation, testing, feasibility study, risk assessment, treatment, removal, disposal, reuse, handling, transport, clean up, remediation, containment, capping, encapsulating, mitigation, or monitoring of Toxic Materials, including the demolition, reconstruction or construction of any subsurface or surface structures to implement the Response Action and the restoration of the Premises or other Port property after the completion of the Response Action whether required by Environmental Laws or as a result of any future development or construction activities by the Port or a third party.

(9) “Toxic Materials” shall mean (i) substances that are toxic, corrosive, flammable or reactive; (ii) petroleum products, crude oil (or any fraction thereof) and their derivatives; (iii) explosives, asbestos, radioactive materials, hazardous wastes, sewage, infectious substances, toxic substances or related hazardous materials; (iv) air pollutants, noxious fumes, vapors, soot, smoke or other airborne contaminants; and (v) substances which now or in the future are defined by Environmental Laws as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “pollutants,” “contaminants”, “reproductive toxins,” “carcinogens” or “toxic substances,” or regulated under applicable Environmental Laws.

b) Operator shall comply with all Environmental Laws relating to the use of Toxic Materials on or about the Premises or any part of the Maritime Park Area or other property of the Port.

c) Operator shall not contaminate the Premises or any part of the Maritime Park Area or other property of the Port, or their subsurfaces, with any Toxic Materials. Operator shall not cause or permit any Toxic Materials to be brought upon, remain, kept or used in or about the Premises or any part of the Maritime Park Area or other property of the Port, by Operator, its agents, employees, contractors or invitees other than those kinds of materials that are normally used in performing the Services, ordinary office and

janitorial supplies, and other materials used in the ordinary course of Operator's providing Services so long as such supplies, substances and automobiles and standard contents therein are stored, used and disposed of in accordance with the Environmental Laws.

d) Disposal of any Toxic Materials at the Maritime Park Area is strictly prohibited. Storage of such permissible Toxic Materials is allowed only in accordance with all applicable Environmental Laws. All safety and monitoring features of any storage facilities shall be subject to the approval of the Port's Executive Director or the Director.

e) If Operator, or any of Operator's Representatives, or any other persons as a result of any of the foregoing parties' conduct of Operator's business, cause contamination or deterioration of water, soil or any portion of the Premises or any part of the Maritime Park Area or other property of the Port on account of Toxic Materials or any release, spill, discharge, disposal, leak, leaching, migration or dispersal of Toxic Materials, (whether onto the Maritime Park Area, the Premises or other properties of the Port or any other party, or into the city of Oakland's or Alameda's sewerage or storm drainage systems) ("Operator Release"), then Operator shall promptly take any and all action necessary to Clean-up such contamination or remediate such deterioration as required by the Environmental Laws, and to the reasonable satisfaction of Port. Operator shall be solely and fully responsible and liable for any such Operator Release and any costs or expense of Clean-up. Operator shall take Clean-up actions on any portions of the properties of the Port only with the permission of the Port. In any case, Operator shall provide Port with written notification of all actions taken by Operator, its officers, agents, employees or contractors for the Clean-up.

f) In addition to all other rights and remedies of Port hereunder, if an Operator Release is not removed by Operator within 90 days after discovery by Operator, or within 90 days of written notice to Operator of its discovery by the Port or any other third party, or within such shorter period of time (including immediately) as Port may reasonably determine is necessary to prevent further damage or harm, Port may pay to have the same removed and Operator shall reimburse Port for such costs within five days of Port's written demand for payment.

g) In addition to Operator's obligations to report spillage, discharge, release and disposal of Toxic Materials to local, state and federal agencies, Operator shall immediately provide Port with telephonic notice, which shall later be confirmed by written notice, of any and all spillage, discharge, release and disposal of Toxic Materials onto the Premises or by Operator or any of Operator's Representatives within the Maritime Park Area or other property of the Port, and any injuries or damages resulting directly or indirectly therefrom. Further, Operator shall deliver to Port each and every notice or order received from any governmental agencies concerning such Toxic Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order.

h) Operator shall at all times maintain with the Port and post in an appropriate location a complete copy of the “Oil & Hazardous Substances Spill Notifications” forms, as said form may be amended from time-to-time by the Port. Operator shall comply with all notification and procedural requirements for Port tenants set forth in the “Port Spill Plan,” and as said “Port Spill Plan” may be amended from time-to-time by the Port.

i) (i) Neither the Port nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by Operator or Operator’s Representatives arising from or relating to Environmental Laws or Toxic Materials under this Agreement. It is understood and agreed that Operator shall be solely responsible for and shall fully indemnify, protect, defend (with counsel chosen by the Port) and hold harmless the Indemnitees from and against any and all claims, suits, actions, costs, expenses, penalties, fines, liabilities and losses of every name, kind and description, which arise during or after the Operating Term of this Agreement as a result of an Operator Release on the Maritime Park Area during the term of this Agreement or the failure of Operator or Operator’s Representatives to comply with Operator’s obligations under this Section 12.2, or Operator’s responsibilities, if any, for pre-existing contamination as described in subsection 12.2(j) below, including, without limitation: (i) diminution in value of the Premises and of any other Port property; (ii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises (including, without limitation, deed restrictions), or any other Port property; (iii) damages arising from any adverse impact on marketing of space in the Premises or other Port property; (iv) increased costs of maintenance, construction, repairs or major improvements to the Premises, or any other Port property; (v) stigma damages; (vi) costs of any Response Action; (vii) claims asserted by any governmental entity acting or purportedly acting under any Environmental Laws; (viii) all orders and directives issued by a Governmental Authority pursuant to Environmental Laws; (vix) all Governmental Authority or third party claims or suits for injury to persons or to the environment (including, without limitation, any such claims, suits or actions brought for or on account of damage to or loss of property or injury as identified in Government Code Section 810.8) or failure to comply with Environmental Laws; (x) claims involving lost opportunities, lost profits, lost revenues, business interruption, increased operating expenses and any related damages, including any consequential or exemplary damages arising from or attributable to the requirements of Environmental Laws; and (xi) sums paid in settlement of claims, attorneys’ fees, consultant fees and expert fees, damages, injuries, causes of action, judgments, taxes and expenses (collectively referred to as “Indemnification Obligations”).

(ii) If the Port receives a notice of an event subject to the Indemnification Obligations hereunder, the Port shall, within a reasonable time, give notice to Operator, provided that the failure to do so shall not relieve Operator of any liability it may have to the Port under this section. Upon receipt of such notice, Operator shall accept tender of defense of the Indemnification Obligations. The Port and Operator shall cooperate with each other in the defense of such Indemnification Obligations, including, without limitation, the tendering of claims to appropriate insurance carriers for defense and indemnity. Operator’s Indemnification Obligations under this Section 12.2(i) shall

commence no later than receipt by the Port or Operator or an Operator Representative of any notice of any claim whether by regulatory notice (which shall be deemed to include, without limitation, verbal or written notice by a governmental agency of an informational request, or to take any Response Action) or any other notice by a third party, threatened legal action, arbitration, mediation, administrative proceeding or lawsuit.

j) Operator shall, at its sole cost and expense, promptly undertake and complete any and all Response Action (i) within the Premises or other Port property resulting from an Operator Release (including migration through soil or groundwater) by Operator or Operator Representatives, (ii) within the Premises or any other Port property for all Toxic Materials present therein which are disturbed by Operator or Operator Representatives, to the extent the Response Action is required either by Environmental Laws, or by the specific needs of Operator's activities (such as, for example, where Environmental Laws might allow contaminated soils to remain on the Premises, but there is no available space within the Premises for that soil). Operator's acceptance of the Premises is in an "as-is, whereis" condition, with all faults, including preexisting contamination, if any, within the Premises and any other adjacent Port property for all Toxic Materials present therein which are disturbed by Operator or Operator Representatives in making any improvements to the Premises. Operator shall not be responsible for any Response Action with respect to any Toxic Material outside the Premises unless the Toxic Material was either disturbed or initially the result of an Operator Release by Operator or Operator Representatives. In addition, to the extent that any soils excavated, moved, stockpiled, or otherwise handled in the course of Operator's activities or construction on the Premises may be subject to Response Action, disposal or special handling restrictions under Environmental Laws due to contamination by Toxic Materials, Operator shall be responsible for such Response Action, handling and disposal of such soils in compliance with Environmental Laws. The cost of disposing of any Toxic Materials under this subsection, including, without limitation, any manifest costs (including the execution of hazardous waste manifests or other waste profile sheets as generator), taxes, landfill disposal fees, transportation taxes or fees, shall be paid by Operator. At Operator's sole cost and expense, Operator shall perform all Response Actions in compliance with all applicable Environmental Laws and to the satisfaction of the government agencies having jurisdiction over such Toxic Material or Response Action, but in all cases at least to standards appropriate for unrestricted commercial use; provided, however, that with respect to Operator Releases caused by Operator or Operator Representatives, in the event a future use of any Port property requires a Response Action to a higher standard, such as a unrestricted residential or public use, any such Response Action shall be at Operator's sole cost and expense. Operator shall take reasonable steps to obtain the approval of the Port, which approval shall not be unreasonably withheld, prior to undertaking any Response Actions; provided, however that Operator may perform Response Actions without Port approval (i) if so directed by a Governmental Authority with jurisdiction under any Environmental Laws or (ii) if Operator reasonably and in good faith believes that action is required by any Environmental Laws.

k) This Section 12.2 and the Operator's obligations thereunder shall survive the expiration or earlier termination of this Agreement.

Toxic Materials Reporting. Operator's obligation under this Agreement to immediately report to Port or to immediately provide Port with telephonic notice of any presence, spillage, discharge, release or disposal of Toxic Materials shall be made to the Port's Landside Operations Parking Coordinator during business hours of 8:30 A.M. to 5:00 P.M. Mondays through Fridays (except on Port-observed holidays) and to the Port's Maritime Park Area Operations 24-hour telephone number at times on Mondays through Fridays other than during the business hours described above and at any time on weekends or on Port-observed holidays.

12 INSURANCE.

Operator shall comply with Exhibit "I", entitled INSURANCE REQUIREMENTS, which is attached to and made a part of the Agreement.

13 OPERATOR AN INDEPENDENT CONTRACTOR; WORKERS' COMPENSATION INSURANCE; PAYROLL TAXES.

Operator shall provide the Services hereunder as an independent contractor. Nothing contained herein is intended or shall be construed to make the Port and the Operator partners, joint venturers or joint employers, and employees of Operator shall not be considered agents or employees of the Port. Operator shall provide workers' compensation insurance as required by the laws of the State of California. Operator shall have the sole responsibility for paying the salaries, payroll taxes, contributions for unemployment insurance, and all other expenses relating to each employee of Operator.

14 ASSUMPTION OF RISKS; INDEMNIFICATION.

Operator agrees to voluntarily assume any and all risk of loss, damage, or injury to the person or property of Operator, its officers, agents, employees, contractors and invitees, which may occur in, on or about the Premises or the Maritime Park Area at any time and in any manner, except to the extent such loss, injury, or damage is caused solely by the gross negligence or willful misconduct of Port, its agents, operators, employees, and officers.

14.1 Indemnification. Operator agrees to indemnify, defend and hold completely harmless Port (including, without limitation, members of Port's Board of Commissioners, and Port's agents, employees, representatives, contractors, directors and officers), from and against all liabilities, suits, claims, demands, judgments, damages, fines, penalties, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, expert fees and paralegal and attorneys' fees prior to institution of legal proceedings and at both trial and appellate levels, and in any mediation or arbitration agreed to by Port), which may be incurred by, charged to or recovered from any of the foregoing indemnified parties (i) by reason or on account of damage to or destruction of any property of Port (except as otherwise expressly provided by this Agreement), or any property of, injury to or death of any person resulting from or arising out of Operator's performance of the Services or its use, occupancy, maintenance or repair of the Premises or any improvements thereto, or Operator's operations anywhere on the Maritime Park Area, or the acts or omissions of Operator's officers, agents, employees, contractors, subcontractors, invitees, vendors, suppliers or licensees, regardless of

where the damage, destruction, injury or death occurred, unless such liability, suit, claim, demand, judgment, damage, fine, penalty, cost or expense was caused solely by Port's gross negligence or willful misconduct, or (ii) arising out of any allegation that Operator, or the Port in concert with Operator, has infringed on or violated any Federal, state, or common law patent, trademark, copyright, or trade secret rights, or violated any Federal or state labor laws, or any Federal or state laws governing consumer credit, credit cards, or the sale of abandoned property, or (iii) resulting from or arising out of the failure of Operator to keep, observe or perform any of the covenants or agreements in this Agreement to be kept, observed or performed by Operator. In carrying out its obligations hereunder, Operator shall use counsel acceptable to Port Attorney.

The foregoing provisions of this Section 14.1 are not intended and shall not be construed to limit in any manner whatsoever the protection or benefits to which Port otherwise would be entitled as an additional insured under any liability insurance maintained or required to be maintained by Operator under this Agreement.

The provisions of this Section 14.1 shall survive the expiration or earlier termination of the Operating Term with respect to any acts or omissions occurring during the Operating Term.

14.2 Waiver By Port. The waiver by Port of any breach of any provision of this Agreement shall not be deemed for any purpose to be a waiver of any other provision hereof, nor of any continuing or any subsequent breach of the same or any other provision, nor shall any custom or practice which may arise between the parties in the administration of any of the provisions of this Agreement be construed to waive or to lessen the right of Port to insist upon the performance by Operator in strict accordance with the provisions of this Agreement.

14.3 Waiver By Operator. As a material part of the consideration to be received by Operator from Port under this Agreement, Operator waives any and all claims or causes of action against Port, the Port's Commissioners and the Port's agents, employees, representatives, contractors, directors and officers which Operator may now or hereafter have at any time for damage to Operator's personal property located in, on or about the Premises or the Maritime Park Area, and for injury to or death of any person occurring in, on or about the Premises or the Maritime Park Area from any cause arising at any time, except to the extent that such damage, injury or death is directly caused solely by the gross negligence or willful misconduct of the Port, its agents, operators, employees or officers.

15 RESERVED.

16 EQUAL OPPORTUNITY; NON-DISCRIMINATION.

During the Operating Term of this Agreement, the Operator, for itself, and its authorized assignees and successors in interest, agrees as follows:

(1) In furtherance of the Port's long-standing policy to insure that equal employment opportunity is achieved and nondiscrimination is guaranteed in all Port-related activities, it is expressly understood and agreed with respect to Operator's activities upon the Maritime Park Area:

- a) That Operator shall not discriminate against any employee or applicant for employment on any basis prohibited by state or federal law. Operator shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Operator agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Port's Equal Opportunity Officer setting forth the provisions of this paragraph.
- b) That Operator shall, in all solicitations or advertisements for employees placed by or on behalf of Operator, state that all qualified applicants will receive consideration for employment without regard to any basis prohibited by state or federal law.
- c) That Operator will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Port's Equal Opportunity Officer, advising the labor union or workers' representative of the Operator 's commitments under this paragraph, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d) That Operator shall not discriminate by segregation or otherwise against any person or persons on any basis prohibited by state or federal law in furnishing, or by refusing to furnish, to such person or persons the use of any public facility upon the Maritime Park Area, including any and all services, privileges, accommodations, and activities provided by Operator.
- e) That Operator shall maintain work force records showing male, female and minority employees by job category and similar information with respect to new hires and shall permit the Port's Equal Employment Opportunity Officer to inspect such records at all reasonable times and not less than annually and shall submit a summary of such information annually on a form provided by the Port.
- f) That if Operator has fifteen (15) or more employees, Operator shall within ninety (90) days of the Commencement Date provide the Executive Director or his designee with a copy of its affirmative action program, if any, as may be required by any appropriate federal or state agency, by the Port pursuant to any federal or state requirements, or as a result of a court ordered consent decree. Thereafter any change(s) in the Operator 's affirmative action program shall be forwarded to the Port within thirty (30) days of its adoption. Such submissions shall be accorded the same level of confidentiality as provided for by the state or federal regulations or court order under which it was originally submitted.

- g) That Operator 's noncompliance with any of the provision of this Section 16(1) shall constitute a material breach of this Agreement. In the event of a breach of any of the above-stated nondiscrimination and affirmative action covenants, the Port shall have the right to consider but not be limited to the following:

(1) Terminate this Agreement and to re-enter and possess the Premises and the facilities thereon, and to hold the same as if this Agreement had never been made without liability therefore; or

(2) Seek judicial enforcement of said covenants.

- h) The Port shall assist Operator in preparing the required affirmative action program to secure equal employment opportunities, whenever such assistance would be beneficial and shall be available to advise and counsel Operator in the implementation of Operator 's Affirmative Action Program.

(2) Non-Discrimination and Small/Local Business Utilization Policy

On October 7, 1997, the Board of Port Commissioners initiated a formal policy to encourage full participation of firms from its Local Business Area, the counties of Alameda and Contra Costa ("LBA"), particularly those in its Local Impact Area ("LIA"), in its work. The LIA includes the cities of Oakland, Alameda, Emeryville and San Leandro.

The Operator shall, in consultation with the Port, establish and maintain compliance on a case-by-case basis with the Port's Non-Discrimination and Small Business Utilization Policy, as amended from time-to-time, with respect with the operations and any possible construction, erection or improvements on the Premises.

(3) Prevailing Wage Standards

- a) *Basic Requirements.* The Operator agrees that, with respect to the Services and the Operator's performance of any other work on the Premises (including the construction, erection or improvements), the Operator shall comply with the Public Work Prevailing Wage Requirements and the Private Work Prevailing Wage Requirements (collectively, the "Prevailing Wage Requirements"), provided, however, that the Private Work Prevailing Wage Requirements shall not apply to (i) improvements costing less than \$50,000.00 or with respect to which the initial building permit for such work is issued more than one year after the certificate of occupancy is approved on the core and shell, and (ii) maintenance work.
- b) *Additional Prevailing Wage Provisions.* The following provisions of this Section 18(3)(b) apply only if, and to the extent that, the Prevailing Wage Requirements are applicable:

(i) The Prevailing Wage Requirements shall apply to the employees of any employer including the Operator and any Respondent Contractor, including their successors and assignees, but shall not apply to supervisory or managerial personnel or to persons employed in the operation or (in the case of Private Work Prevailing Wage Requirements only) maintenance of the Premises.

(ii) The Operator shall cause the provisions of this Section 18(3)(b) to be incorporated into each contract and subcontract and other agreement which would be subject to this Section 18(3)(b). In the event the provisions are not so incorporated, the Operator shall be liable to the worker in any action or proceeding for the difference between the prevailing wage rate required to be paid and the amount actually paid to the worker, including costs and attorney fees, as if the respondent were the actual employer.

(iii) Nothing in the Agreement shall prevent the employment of any number of properly registered apprentices, as defined in Chapter 4, Division 3 of the California Labor Code. Every such apprentice shall be paid not less than the standard wage paid to apprentices under the regulations of the crafts or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which the apprentice is in training. Good faith efforts shall be made to maintain a ratio of apprentices to journeymen of not less than 20%, if the employer is signatory to an agreement to train, or otherwise bound to train, apprentices.

(iv) The Operator shall be responsible for complying with Section 1777.5 of the California Labor Code concerning apprenticeable occupations, with respect to all work covered by that section.

(v) The Operator agrees that to the extent that the Operator is required to comply with the Prevailing Wage Requirements, the Operator shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with the California Labor Code), in effect at the time the work is performed. Copies of the applicable prevailing rate of per diem wages are on file at the Port's principal office and will be made available to any interested party on request. The Operator agrees to post a copy of the prevailing rate of per diem wages at each job site.

(vi) Except where the context otherwise requires, the definitions of terms and phrases contained in the California prevailing wage law, Sections 1720 et seq. of the California Labor Code, and in the implementing administrative regulations, shall apply to the same terms and phrases which are used in the Prevailing Wage Requirements of this Section 18(3)(b).

(vii) The Operator, as a penalty to the Port, shall forfeit twenty five dollars for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Operator

(4) Community Relations

a) The Operator shall cooperate with the Port's Community Relations Department. Operator understands the Port's Community Relations Department seeks to serve the needs of Port tenants for a qualified workforce and address the needs of Oakland's chronically unemployed and underemployed, by identifying employment opportunities, training and job preparation resources for persons seeking such opportunities and by facilitating access to this information.

b) The Operator will notify the Port's Community Relations Supervisor of job opportunities open with the Operator either informally, or by providing copies of all advertisements or solicitations by or on behalf of the Operator, so that the Port's Community Relations Department may assist the Operator by inclusion of Operator's opportunities in its monthly Job Listing for the Port's website and providing assistance to Operator with additional recruitment if requested. The Port's Community Relations Department focuses on making Operator employment opportunities accessible to the local community and in particular, agencies and organizations that provide employment and training services.

c) The Operator shall consider the Port's Community Relations Department for its recruitment and advertisement of available opportunities to solicit applicants from the local community as required by this Section 18(4) and by relevant state or federal equal employment opportunity law. Operator retains and at all times shall have the right, consistent with Operator's obligations pursuant to its non-discrimination program, both to determine qualifications of all applicants for employment and, in its sole discretion, to select the applicants it deems best qualified.

(5) Living Wage Requirements

On March 5, 2002, the voters in the City of Oakland passed Measure I, adding to the City Charter Section 728 ("§728") entitled "Living Wage and Labor Standards at Port-assisted Businesses." §728 requires Port Aviation and Maritime businesses that meet specified minimum threshold requirements to pay all nonexempt employees a Living Wage rate established by City Ordinance and adjusted annually based on the Consumer Price Index for the San Francisco, Oakland and San Jose area. The current Living Wage rate as of July 1, 2008 is at least \$10.83 with credit given to the employer for the provision to covered employees of health benefits, and \$12.45 without credit for the provision of health benefits. Specifically, §728 applies to Port contractors and financial assistance recipients with the Aviation or Maritime divisions that have

contracts worth more than \$50,000 and that employ more than 20 employees who spend more than 25% of their time on Port-related work. §728 also provides covered employers with incentives to provide health benefits to employees, establishes a worker retention policy, requires covered employers to submit quarterly payroll reports and requires covered employers to allow Port representatives access to payroll records in order to monitor compliance and labor organization representatives access to workforces during non-work time and on non-work sites. Covered employers are responsible for complying with the provisions of §728 from the date the covered contract is entered into. When a contract is awarded, the contractor will be required to fill out an Employer Self Evaluation Form and Certificate of Compliance that may be obtained from the Port's website at http://www.portofoakland.com/portnvou/livi_form.asp and return them to the Port's Social Responsibility Division.

(6) Compliance with Regulations.

a) Nondiscrimination. The Operator, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, creed, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment.

b) Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive Proposals or negotiation made by the Operator for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Operator of the Operator's obligations under this Agreement relative to nondiscrimination on the grounds of race, color, or national origin.

17 NON-DISCRIMINATION IN SUBCONTRACTING WITH VENDORS AND/OR SUPPLIERS.

Operator agrees that it shall not discriminate against any professional service, contractor or vendor because of race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical handicap or disability (as set forth in the Americans with Disabilities Act of 1990) or veterans status; and that the Operator shall, in all solicitations or advertisements placed by or on behalf of Operator, for vendors, contractors or professional services, state that all qualified Proposers will receive consideration on merit, without regard to race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical handicap or disability (as set forth in the Americans with Disabilities Act of 1990) or veteran status.

The Port's Social Responsibility Division will assist Operator in finding diverse professional services, contractors and vendors.

18 REPRESENTATIONS, WARRANTIES AND COVENANTS.

Operator represents, warrants and covenants with respect to this Agreement and any amendment hereto (which representations and warranties shall be continuing during the Operating Term):

a) That all information submitted by Operator, its officers, agents, employees and contractors (the “Aforementioned Parties”) during the Port’s RFB process, or thereafter, upon request of Port, whether or not submitted by any of the Aforementioned Parties under a continuing obligation by the terms of this Agreement to do so, was true and correct at the time such information was submitted or made available to Port;

b) That none of the Aforementioned Parties has colluded, conspired, or agreed, directly or indirectly, with any person in regard to the terms and conditions of Operator’s response to the and Port’s RFB;

c) That Operator has the power and authority to enter into this Agreement with the Port and that the individual executing this Agreement is duly authorized to do so;

d) That none of the Aforementioned Parties has made an attempt to exert undue influence with the evaluation committee of the Port to award the Agreement for the Services to the Operator;

e) That there are no unresolved claims or disputes between Operator and Port; and

f) That Operator has furnished (and will furnish) true and accurate financial statements, records, reports, resolutions, certifications, and other information as may be requested of Operator by Port from time to time during the term of this Agreement.

19 TERMINATION.

19.1 Termination by Port. The Port may terminate this Agreement without cause at any time upon giving thirty (30) day’s prior written notice to Operator. Port may terminate this Agreement immediately upon notice upon the happening of an Event of Default (as defined in Section 23.1), and such a termination shall be deemed a termination “for cause.”

19.2 Termination by Operator. Operator may terminate this Agreement without cause by giving to the Port at least one hundred eighty (180) day’s prior written notice of termination, which notice may not be given earlier than the first anniversary of the Commencement Date.

19.3 Effect of Termination. At the termination date, the Operator shall immediately quit the assigned Premises and return the Office Equipment, any other Equipment provided by the Port, and any equipment purchased with Port funds or for which Operator has been reimbursed under this Agreement, to the Port in the condition required by this Agreement. If the Port elects to terminate this Agreement for cause, everything contained in this Agreement on the part of the Port to be done and performed shall cease without prejudice, subject, however, to the right of the Port to recover from the Operator all monetary damages or other relief that may be available to the Port arising out of any breach of this Agreement by Operator. Within sixty (60) days after the termination of this Agreement, the Port shall be obligated, subject to its set-off rights provided for in this Agreement, to pay all amounts owed to Operator under this Agreement to the termination date; provided, however, that the Port shall not be obligated to reimburse the Operator for Reimbursable Expenses if receipts for such expenses, in the form required by this

Agreement, have not been received by Port within sixty (60) days after the termination date. If either party elects to terminate this Agreement as provided for herein based on the other party's material breach of this Agreement, the non-breaching party shall be entitled to damages as permitted by law or under this Agreement.

19.4 Removal from Premises. Upon expiration or termination of this Agreement, the Port may immediately or any time thereafter, re-enter the Premises and remove the Operator, Operator's employees, agents, subcontractors, invitees and property from the Premises. The Port shall be entitled to the benefits of all provisions of law respecting speedy recovery of the Premises held over by the Operator. Any other notice to quit or other notice to permit Port to re-enter the Premises is hereby expressly waived by the Operator. The Port shall not be liable in any way in connection with any action it takes pursuant to this subsection. The Operator's liability shall survive the Port's re-entry, the institution of summary proceedings, and the issuance of any warrants with respect thereto.

20 DEFAULT, AND REMEDIES.

20.1 Events of Default. The occurrence of any of the following shall constitute an "Event of Default" or "Default" by Operator:

a) The failure to provide, voluntary abandonment, discontinuation, cessation or material deterioration of the Services during the Operating Term which, in the opinion of the Director or the Designee, results in the failure to provide Services of the duration, quality or standards required to be performed by the Operator under this Agreement, which failure is not cured within five (5) days after Port's written demand; provided, however, that if Operator has received three (3) notices under this subparagraph within a period of 180 days, commencing on the date of Operator's receipt of the first such notice, then Operator shall have no right to correct a failure described in any subsequent notice given by Port to Operator under this subparagraph within such 180 day period, even if all of the prior failures were corrected by Operator within the five (5) day cure period.

b) The filing by the Operator of a voluntary petition in bankruptcy, or failure by the Operator to lift any execution, garnishment or attachment, or to obtain the dismissal of a bankruptcy proceeding commenced involuntarily against the Operator within thirty (30) days after filing thereof or assignment by the Operator for the benefit of creditors, or the entry by the Operator into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Operator in any proceeding instituted under the provisions of the Federal Bankruptcy Act, as amended, or under any similar acts which may hereafter be enacted.

c) The occurrence of any act which results in the suspension or revocation of the rights, powers, licenses, permits and authorities necessary for Operator to conduct and operate the Services.

d) Receipt of more than ten (10) complaints within any twelve (12) month period concerning major service deficiencies in the Services, with the determination of a complaint being deemed a "major service deficiency" being in the sole discretion of the

Port. Operator shall have the right to contest any complaint by providing to Port within five (5) days after being notified of the complaint such evidence as Operator may have to demonstrate that the complaint was not justified. The determination of whether a complaint was justified shall be in the sole discretion of the Port.

e) The filing of any lien or sequestration or attachment of or execution or other levy on Operator's interest in this Agreement, the Premises or on Operator's equipment, if any, located on the Maritime Park Area and Operator fails to obtain a release of such interest or property within thirty (30) days after the filing or attachment, or prior to sale pursuant to such levy, whichever first occurs.

f) The Director's or the Designee's determination that there is a reasonable probability that Operator's financial condition is impaired and Operator cannot provide adequate assurances that any conditions giving rise to the impairment of financial condition can be removed within thirty (30) days of receipt of Port's demand for same.

g) Failure to obtain and maintain in effect any of the insurance referenced in Sections 13 or 14.

h) If any of the representations or warranties contained in Section 21 are untrue in any material respect, or if Operator breaches any of its covenants contained in Section 21.

i) Any transfer or assignment of this Agreement or subcontracting of any of the Services other than in compliance with Section 25.

j) Breach of or failure to comply with Operator's obligations contained in Section 24.1, Section 29 or Section 33.

k) Any breach or failure described as an Event of Default or Default by any provision of this Agreement other than this Section 23.1.

l) Failure by the Operator to observe or perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, other than those specifically referred to above in this subsection 23.1, for a period of fifteen (15) calendar days after written notice specifying such failure and requesting that it be remedied has been given to the Operator by the Port; provided, however, such failure shall not constitute an Event of Default hereunder if such failure stated in the notice can be corrected, but not within the applicable period, and corrective action is instituted by the Operator within the applicable period and diligently pursued until such failure is corrected, provided that if the cure period is longer than thirty (30) calendar days after the date of such written notice, the Operator shall obtain the prior written consent of the Port.

20.2 Remedies For Default. Upon the occurrence of an Event of Default, Port shall have the following rights and remedies, in addition to all other rights and remedies provided in this Agreement or by law, to which Port may resort cumulatively or in the alternative, and Port may assert them against the Operator and/or any general partner or joint venture partner, jointly and severally:

a) The Port may enter into a new agreement with another operator that will occupy the Premises for all or any part of the unexpired portion of the Operating Term of this Agreement in which event Operator shall be liable in addition to accrued liability hereunder, for the difference between the payments the Port is obligated to pay the new operator and the payments the Port would have been obligated to pay the Operator under this Agreement for the unexpired portion of the Operating Term (not to exceed the notice period required for the Operator to terminate this Agreement without cause pursuant to Section 22.2 above). The Port has the sole and absolute discretion with respect to the selection of a new operator and the use of the Premises.

b) In the Event of Default under this Agreement, the Port may, after providing written notice to the Operator of the Event of Default, cure the default at any time through any action deemed appropriate by the Port for the account and at the expense of the Operator. The Operator shall reimburse the Port for any amounts expended by the Port in connection with the cure, together with interest thereon for each day from the date of advance by Port until paid by Operator at the rate of five one hundredths percent (.05%), but not to exceed the maximum rate of interest permitted by law, and any penalties thereon as may be established by Port ordinance. Such cure shall not constitute a waiver of the Port's rights with respect to that or any other Event of Default, unless otherwise expressly stated in writing by the Port.

c) The Operator shall pay the Port such sums as the court which has jurisdiction thereover may adjudge as reasonable attorney's fees with respect to any lawsuit or action instituted by the Port to enforce the provisions of the Agreement in which the Port is the substantially prevailing party.

d) The Port shall not be liable for any damage, including, but not limited to, loss of profit and the Operator shall not make a claim of any kind whatsoever against the Port, its agents or representatives, by reason of any action taken pursuant to this Section 23.

e) At Port's election, Port may keep this Agreement in effect and enforce all of its right and remedies under this Agreement, including the right to withhold compensation and other fees as they become due, and at Port's option, but without any obligation to do so (implied from any of its obligation under this Agreement), Port may, after first giving Operator written notice as provided in Section 23.2(b) above, make such payment or perform such other act to the extent Port may deem appropriate. All sums so paid by Port and all costs in connection therewith shall be due and payable by Operator to Port (except where otherwise expressly provided in this Agreement) within ten (10) days of Port's written demand for payment of same, together with interest and penalties thereon from date of advance by Port at the rate provided in Section 23.2(b) above, plus costs as may be awarded by a court of competent jurisdiction.

f) Port shall not be liable to Operator for any damage to, or for any diminution or deprivation of Operator's rights hereunder on account of the exercise of

any authority granted to Port in this Agreement. Operator shall be liable to the Port for the Port's expense for re-entering or repossessing the Premises, and making any necessary repairs to the Premises, for all of the expenses to obtain a new operator and for the costs of operating or engaging a third party to operate the Services for the unexpired portion of the Operating Term (not to exceed the notice period required for the Operator to terminate this Agreement without cause pursuant to Section 22.2 above) to the extent such costs exceed the expenses that would have been paid had the Operator not defaulted.

20.3 Act of Termination. In the event Operator ceases to provide the Services at the Maritime Park Area, this Agreement shall not terminate, unless Port gives Operator written notice of its election to terminate this Agreement. No act by or on behalf of Port intended to mitigate the adverse effect of such breach shall constitute a termination of Operator's obligation to render Services hereunder and use the Premises, unless Port gives Operator written notice of termination.

21 COMPLIANCE WITH LAWS, RULES, POLICIES AND REGULATIONS.

21.1 Agreement to Comply. Operator covenants and agrees to observe and comply with (and to cause any assignee or subcontractor authorized under Section 25 below to comply with) all present and future Laws (as hereafter defined), subject to the limitations in the last sentence of Section 10.1 above, and all rules, regulations and policies of Port, including without limitation, all safety, security and operations directives of the Director or the Designee, which now exist or may hereafter be promulgated from time to time governing conduct on and operations at the Maritime Park Area or the use of facilities at the Maritime Park Area (hereafter collectively the "Maritime Park Area Rules, Policies and Regulations"). The Port shall not have any duty or obligation to Operator to enforce the Maritime Park Area Rules, Policies and Regulations or the terms and conditions in any permit, lease or other agreement against any third party, and the Port shall not be liable to Operator for violations of same by third parties, their employees, contractors, agents, invitees or licensees. Operator further covenants and agrees to observe and comply with (and to cause all of its assignees or subcontractors authorized under Section 25 below to comply with) any and all valid and applicable requirements of all duly-constituted public authorities (including, without limitation, the Department of Transportation, the Department of Homeland Security, the Federal Maritime Commission, and the Transportation Security Administration). Operator agrees to pay or reimburse Port for any civil penalties or fines which may be assessed against Port as a result of the violation by Operator or any such assignee or subcontractor of any of the foregoing requirements, which payment shall be made by Operator within fifteen (15) days from receipt of Port's invoice for such amount and documentation showing that payment of such penalty or fine is Operator's responsibility hereunder. Operator shall not be obligated to make a payment to Port under this Section 24.1 if such payment would duplicate a payment for the same violation that has already been made by Operator to the Port under Section 33.1(a) below.

As used in this Agreement, "**Laws**" shall mean all present and future federal, state and local statutes, ordinances and regulations and Port ordinances applicable to Operator, the Premises, the Services or the Maritime Park Area and judicial interpretations thereof, including but not limited to, the security mandates, rules, regulations referenced in Section 33.1 below, the

Americans with Disabilities Act of 1990, all acts and regulations relating in any way to worker's compensation, sales and use tax, social security, unemployment insurance, hours of labor and overtime, wages, working conditions, the Immigration Reform and Control Act of 1986, Section 7583 of the California Business and Professional Code, the Charter of the City (including without limitation Section 728 entitled "Living Wage and Labor Standards at Port-Assisted Businesses"), the Oakland Municipal Code (including without limitation Section 5.52 thereof), all Environmental Laws (as defined in Section 12.2(a)(2) above, and the Maritime Park Area Rules, Policies and Regulations (as defined in this Section 24.1).

If Operator fails to comply with any applicable Laws, the Port may suspend this Agreement until compliance is attained or may perform the Services, including without limitation, the functions of the Supervisor, with its own forces or with hired personnel, and may deduct the cost of these Services from monies otherwise due Operator under the terms of this Agreement. The Port will determine in its reasonable discretion whether Operator has complied with its obligations under this Section 24 and under Section 33 below, and whether the Port will provide Services in lieu of Operator. Operator shall also be subject to any Administrative Fees levied against the Port as a result of Operator's failure to comply with its obligations under this Section 24 or under Section 33 below.

22 TRANSFER AND ASSIGNMENT.

22.1 Assignment or Subcontracting. Operator shall not sell, assign or transfer this Agreement or any of its rights and obligations hereunder or permit any such sale, assignment or transfer to occur by operation of law, or subcontract for the performance of any of the Services to be provided by it hereunder, without the Port's prior written approval, which approval must be evidenced by resolution adopted by the Board of Port Commissioners and may be granted or withheld by Port in the exercise of its sole discretion and subject to payment by Operator of all administrative expenses incurred by the Port for the processing of such assignment or transfer.

22.2 Transfer of Control. For purposes of Section 25.1 above, an assignment shall include, if the Operator is a corporation (except if Operator is a corporation whose stock is publicly traded), the issuance or the sale, transfer or other disposition of a sufficient number of shares of stock in the Operator to result in a change in control of the Operator or if the Operator is a partnership, joint venture, or other entity other than a corporation, a transfer of an interest or interests in the partnership, joint venture or other entity (or in any of the general or joint venture partners or members thereof) which results in a change in control of any such entity, or if the Operator is a joint venture, any transfer that would violate the Operator's obligations under Section 36.12 below.

23 JOINT AND SEVERAL LIABILITY.

The obligations and liabilities of the Operator and its general partners or joint venture partners under or arising under this Agreement are joint and several.

24 GOVERNING LAW.

The Port and the Operator agree that the law governing this Agreement shall be that of the State of California.

25 FEES AND TAXES.

Operator agrees timely to pay all applicable fees, taxes, and other charges levied by any governmental entity upon any right or interest granted to Operator by this Agreement or upon the exercise of any such right or interest, including the City of Oakland business licensing fees and taxes, if applicable. In the event that any provision of this Agreement causes the imposition of a possessory interest tax, Operator shall immediately notify the Director and provide a copy of all documents received by the Operator relative to such impositions. The Port agrees to pay on behalf of Operator whatever possessory interest tax may be imposed, provided, however, that the Port reserves the right to challenge the imposition of such a possessory interest tax. Operator agrees to reasonably cooperate with the Port in making necessary investigations and in preparing and presenting necessary documentary and oral evidence in connection with whatever challenge to such tax imposition the Port may deem appropriate.

26 COVENANT AGAINST CONTINGENT FEES; IMPROPER INFLUENCE.

Operator warrants that no person or agent has been employed or retained to solicit or obtain the Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency of Operator. For breach or violation of this warranty, the Port, as its option, may deduct from the Management Fee or payment of Reimbursable Expenses or otherwise recover from Operator, the full amount of the contingent fee, or may exercise any other legal or equitable remedy available to it.

Operator warrants that neither Operator nor any person nor agent acting on Operator's behalf shall exert improper influence to solicit or obtain Port contracts. In addition Operator warrants that neither Operator nor any person nor agent acting on Operator's behalf shall exert improper influence to extend or prevent termination of this Agreement. "Improper influence", as used in this Section, means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act as an agent regarding a Port contract, including this Agreement, on any basis other than the merits of the matter.

Operator's breach of any of its obligations under this Section 29 shall constitute an Event of Default and may result in any or all of the following:

- (i) Port's immediate termination of this Agreement, and
- (ii) an assessment of an Administrative Fee as specified in Exhibit "D".

"Bona fide agency," as used in this Section means an established commercial or selling agency, retained by Operator for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

“Contingent fee,” as used in this Section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract.

27 CONSENTS AND APPROVALS; NOTICES.

Written notices to the Port hereunder shall be given by personal delivery, or by registered or certified mail or overnight courier service, with all postage or freight charges prepaid, and addressed to Director of Maritime, Port of Oakland, 530 Water Street, 6th Floor, Oakland, CA 94607, with copies to Port Attorney, Port Attorneys Office, 530 Water Street, 4th Floor, Oakland, CA 94607, attention Danny Wan, Port Attorney, or to such other address or addresses as the Port may designate by written notice to Operator.

With a copy to: _____

The giving of any such notice by the Director or the Designee shall be effective upon receipt, and Operator shall not question the authority of the Director or the Designee to give any such notice.

28 WAIVER OF DAMAGE

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officers, agents or employees. It is understood that Operator shall take such steps as Operator may consider necessary to protect Operator's trade equipment and other personal property from any damage that may be caused to same in the event of any failure or interruption of such utility service. Whenever the Port shall find it necessary for the purpose of making repairs or improvements to any utility supply system it shall maintain, it shall have the right to suspend temporarily the delivery of gas, electricity, water or other utility service, or any thereof, but in all such cases (except in the event of an emergency) reasonable notice of such suspension will be given to Operator.

The Port and its Board of Port Commissioners and its officers, employees and agents shall not be liable to Operator or to any third party claiming through Operator for any loss of business or any indirect, incidental, special or consequential damages or lost profits arising out of or relating to this Agreement or the operation of Operator at the Maritime Park Area or for any other cause.

29 NO ADVERTISING

Operator shall not display any advertising on the Premises or the Maritime Park Area.

30 NON-DISCRIMINATION PLAN FOR EMPLOYMENT.

Operator shall comply with Exhibit "K", entitled NON-DISCRIMINATION PLAN FOR EMPLOYMENT, which is attached to and made a part of this Agreement.

31 AGREEMENT ADDENDUM.

Operator shall comply with Exhibit "L", entitled AGREEMENT ADDENDUM, which is attached to and made a part of this Agreement.

32 MISCELLANEOUS.

32.1 Lost And Found Articles. All articles found by the Operator, its agents or employees, or which are found by patrons and given to the Operator, shall be turned over to the Maritime Park Area Lost and Found Department as lost and found items. The Operator, its agents and employees shall have no right to reclaim said articles. Lost and found articles while in possession of the Operator, its agents and employees, that cannot be accounted for, will be reimbursed by Operator to the Port at the fair market value of the articles, as reasonably determined by the Port, or replaced at the Operator's sole expense.

32.2 Entire Agreement; Amendments; Conflict with Exhibits. This Agreement, together with the exhibits and attachments hereto, which are hereby incorporated into this Agreement by this reference, constitutes the entire agreement between the parties with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements made with respect to such subject matter are merged herein. Except as otherwise specifically provided in this Agreement, this Agreement may be altered or amended only by written instrument executed by all of the parties hereto. In the event

of an express conflict between an Exhibit to this Agreement and this Agreement, the provisions of this Agreement shall prevail.

32.3 Waiver and Severability. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such enforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such provisions within the limits of applicable law or applicable court decisions.

32.4 Jurisdiction and Venue.

a) Operator hereby consents to the jurisdiction of the State of California Superior Court of the County of Alameda and of the Federal District Court for the Northern District of California with respect to any action instituted by Port and arising against Operator under this Agreement, and waives any objection which it may have at any time to the laying of venue of any such action brought in any such court, waives any claim that such action has been brought in an inconvenient forum and further waives the right to object, with respect to such action, that such court does not have any jurisdiction over Operator. Operator further irrevocably consents to the service of process by certified or registered mail (airmail if overseas) or the equivalent (return receipt requested), or the service of process in any other manner permitted by law, in any action instituted by Port and arising against Operator under this Agreement. Port agrees to serve such process on Operator's registered agent under California law if the name and address of Operator's current registered agent in California has been provided to Port in advance and in writing.

b) In addition to the foregoing, pursuant to California Code of Civil Procedure, Section 416.10, Operator hereby designates the following person as its agent for service of process:

32.5 Headings. The article and section headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision of this Agreement.

32.6 Time of Essence. Time is expressed to be of the essence of this Agreement.

32.7 Successors and Assigns. The Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.

32.8 Consents. Except as otherwise expressly provided herein, if certain action may be taken only with the consent or approval of the Port, or if a determination or judgment is

to be made by the Port, such consent or approval may be granted or withheld, or such determination or judgment shall be made, in the sole discretion of the Director or the Designee.

32.9 Force Majeure. Neither party shall be liable by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, except for strikes by its own employees, riots, insurrections, fires, floods, storms, explosions, earthquakes, acts of God, war, terrorist attacks, governmental action (unless arising out of a party's breach of applicable Laws), or any other similar cause that is beyond the reasonable control of such party, or if such failure or delay was caused by the other party's failure to fulfill its obligations under this Agreement ("Force Majeure"). If any event of Force Majeure occurs, the party delayed or unable to perform shall give immediate notice to the other party and shall re-commence performance at the earliest possible time.

32.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any counterpart of this Agreement shall be validly and effectively delivered if delivered by telefacsimile transmission.

32.11 No Recourse. No recourse under or upon any obligation, covenant or agreement contained in this Agreement, or any other agreement or document pertaining to the operations of Operator hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or under any judgment obtained against Port, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Agreement, shall be had against any member (including, without limitation, members of Port's Board and its citizens advisory committees), director, officer, employee, representative, contractor, or agent, as such, past, present and future, of Port, either directly or through Port or otherwise, for any claim arising out of this Agreement or the operations conducted pursuant to it, or for any sum that may be due and unpaid by Port. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any Port member, director, officer, employee, representative, contractor, or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of this Agreement or the operations conducted pursuant to it, or for the payment for or to Port, or any receiver therefor or otherwise, of any sum that may remain due and unpaid by Port, is hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement.

32.12 Guaranty. If a third party or third parties joined in the Operator's Proposal as a guarantor, then such third party or third parties, as applicable, shall execute and deliver to the Port the Guaranty in the form attached hereto as Exhibit "M" at the same time that this Agreement is executed and delivered by Operator to the Port.

32.13 WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, OPERATOR AND PORT DO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATED TO, ARISING OUT OF OR IN CONNECTION WITH THE TERMS, CONDITIONS AND COVENANTS OF THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement for Maritime Park Area Parking Management Services to be executed the day and year first above written.

CITY OF OAKLAND,
a municipal corporation,
acting by and through its
Board of Port Commissioners,

By: _____
J. CHRISTOPHER LYTLE
Executive Director

Operator Name:

Attest:

By: _____
Its: _____

By: _____
Print Name and Title
(If Corporate, Secretary, Assistant
Secretary, Chief Financial Officer, or
Assistant Treasurer)

Approved as to form and legality this _____ day
of _____, 201____.

DANNY WAN, Port Attorney

THIS AGREEMENT SHALL NOT BE
VALID OR EFFECTIVE FOR ANY
PURPOSE UNLESS AND UNTIL SIGNED
BY THE PORT ATTORNEY.

Port Resolution No.

**PORT OF OAKLAND
MARITIME PARK AREA CONTRACT SECURITY SERVICES
EXHIBIT “A”**

SCOPE AND SERVICE REQUIREMENTS

**PORT OF OAKLAND
MARITIME PARK AREA CONTRACT SECURITY SERVICES**

EXHIBIT “B”

HOURLY RATE OF COMPENSATION

**PORT OF OAKLAND
MARITIME PARK AREA CONTRACT SECURITY SERVICES**

EXHIBIT “C”

REIMBURSEMENT PROCESS

REIMBURSABLE EXPENSES

Only the following expenses shall constitute Reimbursable Expenses under the Agreement:

1. Telephone charges, to the extent they are to be reimbursed by the Port pursuant to Section 10.3 of the Agreement.
2. The cost of fueling the service vehicle described in Section 11.1(a) of the Agreement.
3. The cost of insuring, operating and maintaining the service vehicle described in Section 11.1(a) of the Agreement, not to exceed \$10,000 in any year of the Operating Term.

In the event of a disagreement between the parties, the Port retains sole authority to determine whether and in what amount a proposed expense is a Reimbursable Expense.

REIMBURSEMENT PROCESS

Reimbursement by the Port will be made monthly according to the following process:

1. Operator shall submit to the Port an original copy of a valid, complete Monthly Reimbursable Expense Report for the Services, including the original receipt for all Reimbursable Expenses for which reimbursement is sought, no later than the tenth (10th) calendar day of the month (or first day thereafter which is not a holiday) following the month to which the Report relates. The Operator shall provide the Port with all receipts and supporting documentation at the time the Operator provides the Port with the Monthly Report. Operator may note certain Reimbursable Expenses for which receipts were not available for such report and agrees to provide the Port with estimates or actual expense amounts, the estimated date for delivering the receipt and the reason for delay if such delay is greater than 60 days from the date of expenditure. The Operator acknowledges that the Port will not reimburse such Reimbursable Expenses until the Port is provided with supporting documentation, including the original receipt, in a form reasonably acceptable to the Port to evidence the fact of such expenditure by the Operator. Operator agrees that any such subsequent submission of receipts shall clearly note which Monthly Management Report that the Reimbursable Expense relates, and the amount to date that has been submitted for that month. The Port agrees to allow the Operator to provide such receipts following the submission of the Monthly Report; provided, however, that the Port does not have to accept any receipts that are submitted more than 60 days from the date of expenditure.

2. Port shall accept or reject the Monthly Report within thirty (30) business days of its receipt and shall pay to Operator all Reimbursable Expenses for which supporting documentation has been submitted within thirty (30) business days of accepting the Monthly Report, subject to the limitations contained in this Agreement.

3. If the Port shall reject the Monthly Report, the Port shall notify the Operator of the reasons for its rejection and the items the Port considers inaccurate, incomplete or illegitimate. The parties shall promptly resolve any such questions and disputes in good faith.

The Port, at its sole discretion, may deduct from its payment, any disputed amounts and any amounts owed to it by the Operator, in which event Port shall provide Operator with written notice itemizing those deductions. The Port retains the right to randomly verify that for any reimbursement, actual payment to the vendor or third party has been made and any failure to provide such verification or any evidence that such payments have not been made may result in the assessment of an Administrative Fee as specified in Exhibit "D", or the exercise of any of the Port's other rights under the Agreement.

THIRD PARTY VENDORS

For any contracts for Reimbursable Expenses over \$5,000 or any recurring contract for Reimbursable Expenses with the same vendor for services or products purchased which aggregate more than \$15,000 within a period of twelve (12) consecutive months:

1. The Operator will select vendors from an approved vendor list provided by the Port; and

2. Operator will provide the Port with no fewer than three Proposals from vendors on the list of approved vendors and the Port will select the best responsive Proposal.

The Port will not reimburse Operator for any invoiced expense(s) unless Operator provides to the Port original invoices and such invoices are approved by the Port. The Port's approval of such invoices shall be evidenced only by the signature of the Director or the Designee.

ADMINISTRATIVE FEES

The Operator's failure to timely submit complete and accurate Monthly Reports may result in the assessment of Administrative Fees as provided for in Exhibit "D". In addition, any overstatement or understatement in any of the reports, bills or statements for reimbursement by the Operator to the Port may result in the assessment of Administrative Fees as provided for in Exhibit "D", or the exercise of any of the Port's other rights under the Agreement.

**PORT OF OAKLAND
MARITIME PARK AREA CONTRACT SECURITY SERVICES**

EXHIBIT “E”

AUDIT MANUAL

[To Be Provided By Operator Pursuant To Section 6.3 of the Agreement]

**PORT OF OAKLAND
MARITIME PARK AREA CONTRACT SECURITY SERVICES**

EXHIBIT “F”

OPERATIONS AND PROCEDURES MANUAL INFORMATION

The Operator shall provide an Operations and Procedures Manual (“Manual”) to the Port for the Port’s review and approval. The Operator shall develop the Manual based upon its best judgment and provide to the Director within thirty (30) days from the Commencement Date of the Agreement.

Additionally, the Manual will provide basic guidance on policies, practices, and procedures covering all aspects of the management and operation of the Services, including but not limited to the standards of performance. This Manual shall be kept current by the Operator throughout the Agreement, and shall be revised as approved by the Director. The Manual, including all revisions as approved by the Director, will be incorporated into and made a part of this Agreement, subject to the provisions of Section 8.1 of the Agreement.

The purpose of this Exhibit is to provide structured information to assist in the development of the Manual. However, this material is not all inclusive and shall not be construed to mean that the only topics included below need to be covered. The Manual shall provide all information needed or desired for employee education on their duties and responsibilities established or directed in writing by the Director, including, but not limited to following items:

Company creed;

Operational overview;

Operational policies and procedures;

Organizational chart;

Staffing chart;

Position descriptions;

Personnel training and policies;

Primary operating procedures;

Two-way radio operations and communication etiquette

Administrative reports;

Financial, Auditing and accounting procedures (when applicable);

Home office information;

Facility location;

Emergency procedures;

Other operating procedures.

In addition, the Manual shall specify the manner in which the Operator shall maintain full and adequate records in accordance with Port requirements to show the actual costs incurred by the Operator in the performance of the Agreement, including employee timecards and payroll receipts.

REVISIONS TO THE MANUAL

The provisions of the Manual may be modified and revised as necessary to reflect changes in the operating environment. All Manual revisions shall be subject to the approval of the Director or the Designee, prior to incorporation into the Manual.

The Director or the Designee may propose a revision to the Manual, and shall initiate an intended revision by sending such intended revision to the Operator. The Port and Operator shall review such intended revision as needed to accurately reflect the change(s) to the operating environment. All revisions to the Manual shall be reviewed and signed by both the Port and the Operator. Each revision to the Operations Manual shall have a revision number and date.

**PORT OF OAKLAND
MARITIME PARK AREA CONTRACT SECURITY SERVICES**

EXHIBIT "G"

PERSONNEL

Operator shall control the conduct, demeanor, and appearance of its officers, agents, and employees. Such officers, agents and employees shall be trained by operator to render a high degree of courteous and efficient service to the public, and it shall be the responsibility of Operator to maintain close supervision over such persons to assure the continuation of the highest standard of service. If, in the opinion of the Director, any such officer, agent or employee of the Operator fails to conform to such standard of service, the Operator shall remove such officer, agent or employee from the Maritime Park Area and shall not reassign that person to the Maritime Park Area without the written consent of the Director.

Operator shall verify the right of all its employees to work in the United States in compliance with the requirements of the Immigration Reform and Control Act of 1986. Port reserves the right to inspect the employment eligibility verification forms (Form 1-9 OBM No. 1115-0236, or any revised version) completed by Operator's employees who are employed at the Maritime Park Area. A list of the names and duty hours, of each employee shall be supplied to the Director on a weekly basis, and promptly updated when changes occur. The Operator shall inform all employees in writing upon hiring that their employment is at will and that their employment may terminate at the conclusion of this Agreement.

The Operator shall select and appoint at least two (2) Supervisors whose only responsibility shall be the management of the Services at the Maritime Park Area. Operator shall submit the qualifications and experiences of the Supervisors to the Director for his or her approval.

Supervisors

A Supervisor shall be in complete charge of the Operator's operations at the Maritime Park Area and shall be a qualified and experienced Supervisor vested with full power and authority in respect to the conduct of the Operator's operation hereunder. A Supervisor shall be available during regular business hours (i.e., Monday through Sunday 0430-2130 hours).

The Supervisors must be a highly qualified and experienced manager who is knowledgeable of current security enforcement laws, charged with responsibility and authority by Operator in respect to the method, manner, and conduct of the Services. The Supervisors must have at least five (5) years experience managing or supervising a security guard operation with eight (8) or more employees on a multi-shift operation.

The Supervisors shall maintain continuing liaison with the Director to ensure complete understanding of the Maritime Park Area's operational and security policies and assure the selection, training, and operation of an efficient and effective contract security force to implement and support such policies. The Supervisors' duties will include but not be limited to the following, consistent with the requirements of this Agreement:

1. Implement a staff training program and the development of training and operational manuals covering all related aspects of the Services. The Supervisors shall establish performance criteria and job descriptions for all staff and make such available to the Port when requested to do so.
2. Develop, as necessary, all forms for use in all aspect of the Services subject to Port approval, for such items as daily incident reports, application, accident report forms, complaint report forms and other forms that are deemed necessary to facilitate efficient management of the Services.
3. Perform or designate assistant supervisory personnel to perform the following duties: a) fully supervise the Operator's employees; b) require all staff to be properly trained, follow rules of conduct and be properly dressed and otherwise prepared and suitable for their assigned duties; c) provide the Port with a weekly staff schedule by assignment in advance, a schedule of all other staff assigned to the Services and schedule of hours of operation.; d) monitor hours of staff to assure that time card and schedules are accurate and in accordance with approved schedules; e) daily inspection of all equipment used for operations; (f) report or correct any problems in accordance with the requirements of this Agreement; g) discipline or dismiss employees who fail to perform in compliance with the highest industry operating standards; h) develop and update, for Port approval, a comprehensive maintenance checklist and schedule to be followed by the Operator by no later than sixty (60) days following the Commencement Date of this Agreement; j) by no later than ninety (90) days following the Commencement Date of this Agreement, develop a service quality survey to be administered to Maritime Park Area tenants on routine basis to determine the acceptance and performance of Operator and its employees and provide results of survey information to the Port when requested; and k) perform other field supervision activities as required.
4. Provide an approved means of responding to emergencies and public needs on a twenty four (24) hour per day basis through the use of Supervisors, and/or other designated on-call staff personnel.
5. Ensure that the Director is fully briefed on all breach of security matters and emergency incidents which have or will result from the operation of the security force or which come to the attention of any member of the security force and related to the Maritime Park Area security operation.
6. Remain readily available or designate a Supervisor to remain on call so that all shifts and personnel will have the ability to receive personal direction, review, and inspection of the Director or the Designee during emergency situations.

SUPERVISION

One Supervisor shall be on duty Monday through Sunday, 0430-2130 hours, and the scheduled working hours of Supervisors shall not overlap. In addition, a Supervisor shall be available for immediate consultation with Port representatives for the remaining seven (7) hours of the Services day. A Supervisor must supervise the daily shift operation of all guard personnel so assigned. Supervisors will report directly to the Operator.

GUARD PERSONNEL QUALIFICATIONS

Security guard personnel shall be recruited, selected, and assigned to assure the most dependable and efficient security force capable of implementing all facets of the Oakland Maritime Park Area Security Plan, a copy of which will be provided to Operator. Such guards shall be able to understand written and oral instructions in English, to communicate commands, directions and customer information in English, and to interact in a professional and courteous manner with Maritime Park Area staff, customers and other users of the Maritime Park Area. Guard candidates will receive preliminary screening at the Operator's office and selected personnel will then be directed to the Director at the Maritime Park Area to perform and carry out Operator's responsibilities under the Agreement.

Operator shall confirm a ten (10) year continuous history of employment, with no more than a two (2) month gap in such history on all guard candidates prior to final selection. In addition, Operator shall conduct and obtain a five (5) year verifiable background check on all guard candidates prior to final selection, in order to properly screen guard candidates and to qualify for issuance of a Maritime Park Area ID Access badge as needed. Operator shall retain all such information for the duration of the Operating Term and shall submit all such supporting background information to the Director upon termination of this Agreement. Such information on active duty guards will also be made available upon request during the Operating Term. Operator shall conduct initial start-up and annual Department of Motor Vehicle (DMV) checks on all guard personnel having assignments which include driving responsibilities. Any guard assigned to driving responsibilities must possess and maintain a valid State of California driver's license for the duration of the driving assignment. The Operator shall provide to the Director a copy of the complete DMV check on each guard providing any Services prior to start-up assignment and annually on that guard's start-up date. Operator shall confirm that each guard candidate possesses and maintains a valid security guard license issued by the California Department of Consumer Affairs Bureau of Security and Investigative Services and any other licenses required by Section 3.2(a) of the Agreement for the duration of the assignment. The Operator shall provide to the Director a copy of such license(s) for each guard prior to assignment to render any of the Services under this Agreement.

Any guard assigned to traffic control at the Maritime Park Area shall not also be employed at the Maritime Park Area by any other concession, vendor, permittee or licensee of the Port operating at the Maritime Park Area or by any Airline operating at the Maritime Park Area, in order to prevent any conflict of interest in the guard's duty to provide the Services.

TRAINING

Prior to the Commencement Date, Operator shall cause all of its guards and Supervisors who are to be involved in providing the Services to attend a training program, and all other guards, supervisors and/or managers subsequently employed by Operator during the Operating Term hereof to provide the Services shall also attend such a program. This program shall be for the purposes of guard training, orientation and trial operation of the Services. The program content shall satisfy the requirements of attached Exhibit "H" and shall be subject to review and approval by the Director. System requirements, operating characteristics, customer service, work specifications and performance standard operating procedures and an employee disciplinary code

shall be more specifically set forth in Operator's Operations and Procedural Manual which shall be reviewed and approved by the Director or the Designee pursuant to Section 8.1 of the Agreement. Operator shall provide on-going training on a semi-annual basis to its employees with respect to public relations, guard patrol procedures, safety, and other related operations. Operator shall ensure that each employee completes traffic enforcement training according to the training program that has been reviewed and approved by the Director or the Designee. Failure of the Operator to meet the training schedule, including the failure to ensure that all employees complete traffic enforcement training shall result in the assessment of an Administrative Fee, as specified in Exhibit "D".

SUPERVISOR & SECURITY GUARD PERFORMANCE STANDARDS

To assure quality service and a stable level of operations, the Supervisors and all guards providing any of the Services are expected to capably fulfill the responsibilities and duties described in this Agreement.

Operator shall provide to the Director an annual evaluation of the Supervisors based on the following criteria:

1. Implementation of Operator's general operational policies and procedures.
2. Administration of applicable requirements of this Agreement.
3. Knowledgeable in Security procedures, patrolling, record keeping and traffic control (pedestrian and vehicular).
4. Ability to function under stressful conditions.
5. Ability to recognize unusual or abnormal conditions or behavior and respond appropriately.
6. Ability to be assertive and apply effective procedures to a variety of situations.
7. Resolution of any staff shortages prior to any impact on the provision of the Services by the Operator.
8. Ability to supply reporting, accounting and statistical data required by this Agreement.
9. Ability to prepare, review, revise and sign all schedules, reports and forms, or other required documents used in any and all aspects of the Maritime Park Area Security Service operation.

STAFFING

The Operator will hire and retain employees as may be necessary to manage and provide the Services in a cost effective, efficient manner providing quality customer service. This provision will apply at all times during the Operating Term. The Port retains the right to determine staffing levels and schedules based on operational needs. The Operator shall ensure that minimum staffing levels and schedules are met at all times. For the Services and in the event the Port requests additional services and staffing, pursuant to Section 4.4, the Operator shall only staff, and the Port shall only reimburse, such Services and additional services with the appropriate personnel. Operator will have the option at its expense to provide and pay for higher level staffing in lieu of failing to meet staffing requirements.

The bi-monthly staffing schedule shall be provided to the Director on every other Wednesday of each month. In addition, Operator shall provide a monthly employee roster. Failure to provide such reports shall result in the assessment of an Administrative Fee as specified in Exhibit "E".

The Port shall have a right to review all of Operator's employees assigned to provide the Services.

For holidays, special events and other situations, the Port may request and the Operator will provide and supervise additional staff as may be needed in addition to the staffing plan. The Operator will respond to Port's request within 72 hours.

EMPLOYEE REQUIREMENTS

All employees, while on or about the Maritime Park Area and acting within the course and scope of employment by Operator, shall be clean, neat in appearance, and uniformly attired, and shall behave courteously. No such personnel shall use improper language or act in a loud, offensive, or otherwise improper manner. Operator shall act to prevent the wrongful acts and omissions of its employees on or about the Maritime Park Area. Operator shall act to ensure that minimum performance standards set forth in this Agreement and as directed by the Director or the Designee shall be met at all times. Operator shall control the conduct, demeanor, and appearance of its agents, employees, and officers at the Maritime Park Area. Operator shall act to prevent its employees from violating any of the following:

1. Failing to maintain a neat personal appearance;
2. Failing to behave courteously;
3. Failing to possess proper photo ID at all times while at the Maritime Park Area;
4. The use, possession or being under the influence of any alcoholic beverage or prohibited substance while on duty or at the Maritime Park Area;
5. Use of profane or vulgar language directed to or at the public, Maritime Park Area personnel, or those designated by the Operator to supervise the Services;
6. Failure to perform functions of a security guard at the Maritime Park Area as set forth in this Agreement;
7. Smoking, eating or littering while on duty or at the Maritime Park Area;
8. Any "clocking" in or out using another employee's card or identification;
9. Providing services or working for another entity, including the Operator, other than the Services for the Port while on duty;
10. Supervisor not available at the Port's request;
11. Solicitation of passengers for sale of goods or services, or for tips or other unauthorized exchange of money;
12. Providing false information to passengers;
13. Failing to operate a vehicle in a safe manner;
14. Failing to comply with posted speed limits and traffic control signs;
15. Soliciting or accepting tips or gratuities in any form or manner;
16. Permitting or giving consent to Maritime Park Area users to leave vehicles unattended or to load or unload at areas not designated by the Port for that purpose; and
17. Failure to follow other Maritime Park Area Rules, Policies and Regulations.

TIME CLOCKS AND BREAKS

The Operator shall install and maintain a computerized time clock or similar device ("Time Clock") to record the time each employee employed by the Operator in order to provide any of the Services' reports to duty, takes breaks and leaves work, which record must be maintained by Operator. The Port will make the final decision regarding the Time Clock placement. The Operator shall be responsible for the cost, of maintenance and replacement of the Time Clock.

The Operator shall comply with electronic patrol monitoring system procedures to be promulgated by the Director. The Operator shall cooperate with the Port in determining the placement of such monitoring system devices.

Guards may take a one-half hour lunch the pay for which time shall not be paid by the Port. Guards may take one fifteen (15) minute break in each of the first and second four (4) hour periods of a shift, the pay for which shall be paid by the Port pursuant to Section 4 of this Agreement. During lunch periods and breaks Operator shall formally relieve that employee with another uniformed guard acceptable to the Director or the Designee. Operator shall ensure that continuous patrol activity as required by this Agreement is maintained during all lunch and break periods.

TERMINATION OF EMPLOYEE

The Operator shall inform all employees in writing upon hiring that their employment is at will and that their employment may terminate at any time. Upon termination of any employee, Operator shall be responsible for returning to Port any Maritime Park Area identification badges and any Maritime Park Area parking cards within 24 hours of such termination. Failure to return such items to the Port shall result in the assessment of an Administrative Fee as specified in Exhibit "E". In addition, the Operator shall be responsible for the cost of replacement for any lost Maritime Park Area identification badges, keys or Maritime Park Area parking cards which shall be \$25 per item.

DRUG AND SUBSTANCE ABUSE TESTING

The Operator will maintain a drug-free workplace. The Operator, at its own expense, shall institute a mandatory, random drug and substance abuse testing program for all personnel assigned to provide the Services. The Operator shall retain the expert services of a local, certified and licensed testing facility. All testing will be done at the Maritime Park Area. The program must be in place prior to the Commencement Date and maintained in force thereafter, throughout the entire Operating Term of the Agreement.

PERSONNEL RECORDS

The Operator shall keep accurate and detailed records on personnel and staffing for examination by the Port upon two (2) days written request to the Operator. This shall include, but not limited to, name and address changes, date of hire, salary and benefits paid, training received and performance reviews. These records shall be maintained and made available upon request for the

entire duration of this Agreement, and thereafter for three (3) additional years, or such longer period required by Section 6.2 of the Agreement.

EMPLOYEE UNIFORMS

Employees must be uniformed and must wear name tags at all times while on duty. The Supervisor shall not be required to wear a uniform or name tag unless otherwise required by the Operator. Uniform and equipment standards shall be as specifically approved by the Director. The Operator shall provide and maintain in good condition all uniforms at its own expense. The Operator shall furnish all uniforms to all guards in sufficient quantity to assure an official appearance for all personnel. Shirts and blouses shall all be the same color and style, and shall have a company identification patch sewn on. In addition, all of Operator's employees except day guard shift shall wear similar style uniforms for such shift. Operator shall also provide boots and safety equipment required by State of California standards, including without limitation, reflective traffic jackets, flash lights, rain gear and safety reflective vests. Each employee shall wear in plain view an employee identification number and/or name tag. In addition, Operator shall issue a company photo identification badge to each employee which shall be produced upon request at all times while on-duty. All uniforms shall be without tears and holes or excessive unsightly repairs. Any violations for employees' failure to wear approved uniform and equipment, or for failure of all employees on a shift to wear similar style uniforms approved by the Director, shall result in the assessment of an Administrative Fee as specified in Exhibit "D".

EMPLOYEE PARKING

Parking for the Operator's employees providing the Services will be in the park's Public Parking Lot or other area designated by the Port. Employees are to park in this area only, unless other provisions are arranged by the Port.

NO SOLICITATION OF TIPS

Guards shall neither solicit tips or gratuities nor accept tips or gratuities from anyone at the Maritime Park Area.

**PORT OF OAKLAND
MARITIME PARK AREA CONTRACT SECURITY SERVICES**

EXHIBIT “H”

TRAINING MANUAL INFORMATION

The Operator will ensure that all employees are fully trained for their duties. The Operator will establish a formal employee training program specific to the Services. The program content shall be subject to review and approval by the Director. Operator will provide scheduled on-going training on a semi-annual basis to its employees in safety, on-the-job behavior requirements, conduct, operational rules, proper dress and employee attitude, public relations, driver safety and other operations and safety procedures.

TRAINING MANUAL

The Operator shall provide a Training Manual to the Port for the Port’s review and approval (“Manual”). The Operator shall develop the Manual based upon its best judgment and provide the Manual to the Director for Port review and approval within thirty (30) days from the Commencement Date.

GENERAL TRAINING REQUIREMENTS

The purpose of this Exhibit is to effectively and efficiently provide an outline of training areas to assist in the development of the Maritime Park Area Security Service training program (“Training Program”). However, this material is not all inclusive and shall not be construed to mean that the only task included below need to be covered. It will be the Operator’s responsibility to certify to the Port completion of each training area. A copy such certifications will be kept on file in the Maritime Park Area Security Office. In addition, the Operator shall provide on a quarterly basis a report on the Training Program, including the status of each employee’s training. Failure to provide such reports shall result in the assessment of an Administrative Fee, as specified in Exhibit “D”.

Operator shall provide to the Director evidence all guard personnel are properly registered with the State of California and have received all State of California required security training prior to assignment to the Maritime Park Area in form and substance acceptable to the Director.

The Training Program shall have its goal to train each security guard in the following general areas:

- (A) DUTIES AND FUNCTIONS OF A SECURITY GUARD,**
- (B) PATROL PROCEDURES,**
- (C) REPORT WRITING,**
- (D) PUBLIC RELATIONS,**
- (E) SEARCH AND SEIZURE PROCEDURES AND ARREST LAW,**
- (F) AUTHORITY AND JURISDICTION OF LOCAL ENFORCEMENT AGENCIES,**

- (G) TRAFFIC CONTROL,**
- (H) CIVIL DISTURBANCE PROCEDURES,**
- (I) SAFETY PROCEDURES,**
- (J) TELEPHONE AND RADIO COMMUNICATIONS,**
- (K) RESPONSE TO AND PRESERVATION OF CRIME SCENE.**

SPECIFIC TRAINING AREAS

- (A) HUMAN RESOURCES: OPERATOR SHALL ISSUE AND SHOW TO EACH OF ITS EMPLOYEES ASSIGNED TO THE MARITIME PARK AREA THE FOLLOWING:**
 - i. Employee Handbook,
 - ii. Drug Free Work Place Policy,
 - iii. Non Discrimination and Harassment Policy, and
 - iv. Orientation Film.
- (B) CONDUCT AND CUSTOMER SERVICE**
 - i. Personal Appearance and Dress Requirements,
 - ii. Safety,
 - iii. Customer Service,
 - iv. Negotiation,
 - v. Non-resistance,
 - vi. Translations,
 - vii. Personality Types,
 - viii. Strategies,
 - ix. Dealing with angry people,
 - x. Empathy and sympathy
 - xi. When Driver or Pedestrian do Not Understand
 - xii. Organization and Customer Service Expectations
 - xiii. Interpersonal Relations
 - xiv. Awareness of Self and Others
 - xv. Communication Process and Active Listening
- (C) FIRST AID**
- (D) RADIO PROCEDURES**
 - i. Protocol
 - ii. Phonetic Alphabet
 - iii. 10 Codes
 - iv. Vocabulary
 - v. Practical
 - vi. Brevity Codes:
 - A. Brevity codes as follows should be used only when communication with other safety and security personnel. The brevity codes may not used when communicating with FAA control tower.
- (E) TRAFFIC ENFORCEMENT AND CONTROL**
 - i. Radio Transmissions
 - ii. Suspicious Packages
 - iii. Suspicious Bags
 - iv. Suspicious Vehicles

- v. High Visibility Clothing
 - vi. Assuming and maintaining a Traffic Direction and Control Position
 - vii. Signals and Commands
 - A. To stop traffic
 - B. To start traffic
 - C. Right turns
 - D. Left turns
 - E. Emergency vehicles
 - viii. Signaling Aids
 - A. The whistle
 - B. One long blast
 - C. Two short blasts
 - D. Several short blasts
 - ix. Voice
 - x. Flashlight
 - xi. Temporary Traffic Control Devices
- (F) CONFLICT AND STRESS MANAGEMENT**

ADMINISTRATIVE TRAINING

Administrative and supervisory personnel shall be trained and receive materials addressing the following areas:

- (A) ORGANIZATION**
- (B) WRITTEN DIRECTIVES**
- (C) RECORDS**
- (D) CODE OF CONDUCT**
- (E) ETHICS**
- (F) DISCIPLINARY PROCEDURES**
- (G) GRIEVANCES**
- (H) APPEARANCE AND DEMEANOR**
- (I) ISSUED EQUIPMENT**
- (J) DEATH/NOTIFICATION**
- (K) OFF DUTY EMPLOYMENT**
- (L) ADDRESS AND TELEPHONE**

**PORT OF OAKLAND
MARITIME PARK AREA CONTRACT SECURITY SERVICES**

EXHIBIT “I”

INSURANCE REQUIREMENTS

This is an exhibit attached to, and made a part of, the Contract dated «**EffectiveDate**» between the City of Oakland acting through its Board of Port Commissioners (“Port”) and «**ConsultantnaMe**» (“Consultant”) for the provision of professional services as defined and required by the Agreement (hereinafter “Services”).

Operator at its expense shall procure and maintain during the Operating Term insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Operator, his agents, representatives, employee or subcontractors. Original insurance certificates, specific to the Services, must be submitted prior to the Commencement Date of the Agreement.

1. Commercial General Liability Insurance

- **Coverage:** Standard ISO Commercial General Liability form.
- **Limits:** \$1,000,000 per occurrence; \$2,000,000 annual general aggregate; \$2,000,000 products and completed operations aggregate; \$1,000,000 each offense for personal and advertising injury.
- **Deductible/Self-Insured Retention:** Not more than \$1,000,000 per occurrence.
- **Additional Insured:** The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.
- Cross liability/separation of insureds.
- Endorsements to include Assault & Battery coverage; Care, Custody & Control liability for property to be guarded; coverage for use of firearms, Security Errors & Omissions Liability (alternatively, Security Errors & Omissions Liability can be covered separately as described in Item 4 below – Professional Liability Insurance).
- Waiver of subrogation in favor of additional insured.
- If the Services involve construction activities, completed operations coverage must remain in force until at least 5 years after completion and acceptance of the Services.

2. Business Automobile Liability Insurance

- **Coverage:** Standard ISO Business Automobile Liability form for all owned, non-owned and hired automobiles.
- **Limits:** \$1,000,000 each accident.
- **Deductible/Self-Insured Retention:** Not more than \$1,000,000 per accident.
- **Additional Insured:** The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.
- Waiver of subrogation in favor of additional insured.

3. Workers' Compensation and Employer's Liability Insurance

- **Coverage:** Statutory Workers' Compensation and Side B Employer's Liability form.
- **Limits:** Statutory for workers' compensation and \$1,000,000 per accident, \$1,000,000 bodily injury each employee, and \$1,000,000 policy limit for bodily injury by disease, for Employer's Liability.
- **Deductible/Self-Insured Retention:** Not more than \$1,000,000 per occurrence for Employer's Liability.
- Waiver of subrogation in favor of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.

4. Professional Liability Insurance, if not otherwise included in the Commercial General Liability Insurance described in Item 1 above.

- **Coverage:** For errors and omissions arising out of the Services.
- **Limits:** \$1,000,000 per claim and annual aggregate.
- **Deductible/Self-Insured Retention:** Not more than \$25,000 per claim.
- **Additional Term:** 2 years after completion and acceptance of the Services.
- Security Errors & Omissions Liability

Other Insurance Requirements:

- **Capital Improvement Projects are subject to conversion to PLIP.** The Port reserves the right (but shall not have an obligation) to include this contract in an owner controlled Professional Liability Insurance Program (PLIP), or to purchase project specific or wrap up insurance when the services provided by the Consultant support a capital improvement project. In the event that a PLIP program is instituted, the Consultant and its independent contractors shall comply with the requirements of the PLIP program, as that program is generally described in Port's Project Insurance Manual, which are available in the office of the Port Attorney, as such may be modified from time to time. Consultant's obligations under this subsection shall be specifically enforceable. Notwithstanding the foregoing, the Port makes no representations or warranties that it will obtain the insurance authorized by this subsection, and Consultant expressly disavows reliance on any such representations or warranties.
- **Notice of Cancellation.** Consultant or Consultant's agent must provide 30-days prior written notice to the Port Risk Management Department of any insurance policy cancellation, except 10-days prior written notice for non-payment of premium.
- **Proof of Insurance/Insurer Rating.** Consultant must deliver to the Port Risk Management Department, prior to the commencement of the Services, certificates of insurance evidencing all required insurance and additional insured status for the Port. All required insurance shall be provided by insurance companies with current A.M. Best ratings of A- VII or better. Upon failure to so file such insurance certificate, the Port may without further notice and at its option either (1) exercise the Port's rights; or (2) procure such insurance coverage at the Consultant's expense and the Consultant shall promptly reimburse the Port for such expense (Services may be interrupted without proper

evidence). In addition to the certificate of insurance, Consultant shall provide copies of the actual insurance policies if requested by the Port.

- Please send certificates and other required insurance information to:
Port of Oakland
Attn: Risk Management Dept.
530 Water Street
Oakland, CA 94607
Fax: (510) 627-1626
Email: risktransfer@portoakland.com

**PORT OF OAKLAND
MARITIME PARK AREA CONTRACT SECURITY SERVICES**

EXHIBIT “J”

**FORM OF PERFORMANCE BOND
(NOT USED)**

**PORT OF OAKLAND
MARITIME PARK AREA CONTRACT SECURITY SERVICES**

EXHIBIT “K”

NON-DISCRIMINATION PLAN FOR EMPLOYMENT

I. NON-DISCRIMINATION POLICY

Operator will issue a policy statement delineating the policy of the Operator regarding its commitment to equal employment opportunity and non-discrimination, and such policy will be fully implemented. A statement similar to the following is recommended:

Equal Employment Opportunity Statement

It is the policy of Operator, personally subscribed to and supported by its principals, that there shall be no unlawful discrimination against an employee or applicant for employment on the basis of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation. This policy includes, but is not limited to, the following: hiring, upgrading, recruitment, recruitment advertising, selection, training, demotion, transfer, compensation, lay-off or termination, or any other term or condition of employment. To implement this policy, Operator has a nondiscrimination program which is supported by all of Operator’s managers and supervisors, and which Operator shall fully implement as appropriate during the Operating Term. To assure that equal opportunity and non-discrimination efforts are properly carried out, Operator at all times shall have an Equal Employment Coordinator; provided, however, that the principals of Operator shall be responsible for proper implementation of the Non-Discrimination Plan. Notwithstanding any provisions of this Plan to the contrary, Sections II-V of this Plan shall not become applicable unless and until the Operator has 15 or more employees.

II. RESPONSIBILITIES AND DUTIES OF EQUAL OPPORTUNITY COORDINATOR

In addition to the Equal Employment Opportunity Coordinator’s regular duties, it is the Coordinator’s responsibility to: (1) develop equal opportunity and non-discrimination procedures and communication techniques; (2) assist supervisors and managers in identifying and solving problems relating to equal opportunity; (3) maintain an open-door policy to all employment problems which may be raised by employees or applicants for employment; (4) design and implement a system of periodic monitoring and reporting Operator’s equal opportunity efforts, including monitoring of selection procedures and regular review and validation of any selection requirements and tests which are found to impact adversely on any person belonging to any of the protected classes; (5) keep informed, and keep senior management informed, on equal opportunity developments; (6) act as a liaison with equal opportunity agencies; (7) ensure that all managers and supervisors comply with this policy and

implement Operator's non-discrimination program; (8) train employees, including supervisory and management personnel, to create a favorable climate for an effective equal opportunity program; (9) ensure that all of the Operator's facilities are desegregated; (10) conduct a periodic audit to ensure notices are properly displayed; (11) review the qualifications of all employees to ensure that all employees are given full opportunity for promotions or transfer; (12) encourage employees including to participate in all company-sponsored social and recreational events, educational and training programs; (13) communicate to supervisors that their performance is being evaluated on their equal employment opportunity and non-discrimination efforts and results as well as other criteria; (14) ensure that supervisors take action to prevent discriminatory harassment of employees.

III. COMMUNICATION OF POLICY

Operator is desirous of ensuring that all employees and other persons are fully informed of its commitment to equal opportunity. Accordingly, Operator will undertake the following steps to disseminate the policy both internally and externally:

Internal Dissemination

- A. Operator's Equal Employment Opportunity/ Non-Discrimination Policy shall be contained in Operator's policy guide books or employee handbook, whichever may exist.
- B. Operator shall publicize at least once each year its EEO Policy in newsletters and/or magazines which are intended for the general reading of management and employees.
- C. A policy statement and Federally-required Equal Employment Opportunity notice will be posted on Operator's bulletin boards in areas where employees or applicants congregate.
- D. Operator shall communicate to all employees its EEO Policy and program through regular meetings during which managers and supervisors will discuss Operator's EEO policies and programs, individual responsibilities and review progress.
- E. Applications for employment shall include a statement regarding non-discrimination.

External Dissemination

- A. Recruiting services through which Operator hires, and each labor union or workers' representative with which it has a collective bargaining agreement or other employment-related contract, shall be informed through meetings or by written notification of the Operator's policies regarding equal opportunity. Operator will encourage the above actively to recruit and refer diverse applicants.
- B. All advertisements for employment will state that Operator is an equal opportunity employer.
- C. When employees are featured in marketing campaigns, employee handbooks or similar publications under Operator's control, diverse employees will be pictured where practicable.
- D. An Equal Opportunity Clause will be inserted by Operator in all future labor union agreements, purchase orders and all other contracts relative to this Agreement.

Operator's non-discrimination plan compliance will be updated and revised periodically (at least annually) in light of experience, revised laws and regulations and their interpretations, and better

understanding of effective approaches which will assure truly equal opportunity for all. The initial set of goals and timetables established pursuant to this Plan shall be forwarded to the Executive Director within 90 days after Operator's execution of the Agreement. Each updated plan will be forwarded to the Executive Director within 30 days after their adoption. Each updated plan shall be consistent with the goals and objectives of this Plan.

Any questions relating to details of this Plan should be referred to Operator's Equal Employment Opportunity Coordinator.

**PORT OF OAKLAND
MARITIME PARK AREA CONTRACT SECURITY SERVICES**

EXHIBIT “L”

AGREEMENT ADDENDUM

Operator shall incorporate the following statutory provisions into all agreements with contractors performing construction under the Lease to which this Exhibit is attached:

1. **Resolution of Construction Claims.** Contractor and Operator shall resolve construction claims pursuant to the procedures established in Public Contract Code Section 20104.

2. **Workers' Compensation Certificate.** Contractor shall secure workers' compensation coverage for its employees pursuant to Labor Code Section 3700. By executing this Agreement, Contractor certifies that Contractor is aware of the provisions of Section 3700 of the Labor Code, and Contractor will comply with such provisions before commencing the performance of the work of this Agreement.

3. **Prevailing Wages.** Contractor shall pay prevailing wages on all public works projects in excess of \$1,000, pursuant to Port Ordinance 1606.

4. **Bonds.** Contractor shall obtain bonds in accordance with the provisions of Port Ordinance 1606.

5. **Working Hours Restriction.** Contractor shall adhere to the eight-hour workday/forty-hour workweek restriction and payment of overtime requirements of Labor Code Section 1810, et seq.

6. **Payroll Records.** Contractor and subcontractors shall maintain accurate payroll records and certify them upon request, pursuant to California Labor Code Section 1776.

7. **Apprentices.** Contractor shall adhere to the policies regarding hiring of apprentices, pursuant to California Labor Code Section 1777.5.

8. **Substitution of Securities for Retention** shall be permitted pursuant to Public Contract Code Section 22300, which is incorporated herein full by this reference.

9. **Antitrust Claim Assignment.** Contractor shall offer and agree to assign any antitrust claim governed by Public Contract Code Section 7103.5 to the Port.

10. **Licensed General Contractor.** Operator shall employ a licensed general contractor to do the work.

11. **Port of Oakland Maritime and Aviation Project Labor Agreement (“MAPLA”).** The Contractor, whether union or non-union, must comply with the Port of

Oakland Maritime and Aviation Project Labor Agreement, attached as Document 00823, and execute Document 00630, Letter of Assent. Non-union Contractors and subcontractors are not required to sign union agreements nor are their employees required to become union members to perform work on this Project. The Contractor further must cause all "Contractors" (as such term is defined in the Project Labor Agreement) that contract under Contractor on this Contract and are covered by the Project Labor Agreement, to comply with the requirements imposed on "Contractors" (as such term is defined in the Project Labor Agreement) under said agreement and to execute Document 00630, Letter of Assent.

**PORT OF OAKLAND
MARITIME PARK AREA CONTRACT SECURITY SERVICES**

EXHIBIT "M"

GUARANTY

WHEREAS, the City of Oakland, a municipal corporation doing business by and through its Board of Port Commissioners, hereafter referred to as "Port", and _____ hereafter referred to as "Operator", are about to execute a document entitled Agreement For Maritime Park Area Contract Security Services (the "Agreement") dated December 27, 2010, under which Operator will manage, operate and provide the Contract Security Services (as defined in the Agreement) at Oakland International Maritime Park Area; and

WHEREAS, the undersigned, hereinafter referred to as "Guarantors", have a financial interest in and/or will receive benefit from Operator, and

WHEREAS, Port would not execute the Agreement if Guarantors did not execute and deliver to Port this Guaranty.

NOW THEREFORE, for and in consideration of the execution of the Agreement by Port and as a material inducement to Port to execute said Agreement, Guarantors hereby jointly, severally, unconditionally and irrevocably guarantee the prompt payment by Operator of all sums payable by Operator under the Agreement and the faithful and prompt performance by Operator of each and every one of the terms, conditions and covenants of the Agreement to be kept and performed by Operator that arise during the Operating Term (as defined in the Agreement) of the Agreement.

It is specifically agreed and understood that the terms of the Agreement may be altered, affected, modified, waived or changed by agreement between Port and Operator, including, without limitation, the amount of compensation payable to Operator, the definition of Reimbursable Expenses, the Operating Term of the Agreement and the location of the Premises, and the Agreement may be assigned by Port or any assignee of Port without consent or notice to Guarantors and that this Guaranty shall thereupon and thereafter continue to guarantee the performance of the Agreement as so changed, modified, affected, altered or assigned, irrespective of the lack of prior notice to or consent by Guarantors.

In the event the Agreement is renewed and/or extended by the Port, this Guaranty shall also apply to the Agreement as so extended or renewed, notwithstanding any changes in the provisions thereof, with the same effect as if this Guaranty had been executed by the undersigned with reference to the renewed or extended Agreement at the time of said renewal or extension.

This Guaranty shall not be released, modified or affected by failure or delay on the part of Port to enforce any of the rights or remedies of the Port under the Agreement, whether pursuant to the terms thereof or at law or in equity.

No notice of occurrence, existence or continuance of any failure of performance or payment under the Agreement, or any other event of default or default by Operator under the Agreement need be given to Guarantors. It is specifically agreed and understood that the guarantee of the undersigned is a continuing guarantee under which Port may proceed forthwith and immediately against Operator or against one or more of the Guarantors following any breach or default by Operator or for the enforcement of any rights which Port may have as against Operator pursuant to or under the terms of the Agreement or at law or in equity.

Port shall have the right to proceed against any of the Guarantors hereunder following any breach or default by Operator without first proceeding against Operator or any of the remaining Guarantors and without previous notice to or demand upon either Operator or Guarantors. Each Guarantor further assents, without the requirement or condition that notice of any kind or nature be given to such Guarantor on account thereof, to (a) any failure to resort to or exhaust other rights, powers or remedies on the part of Port; (b) the acceptance by Port of (i) any prepayments or partial payments under the Agreement and (ii) any payment in full satisfaction of less than all of the amount due under the Agreement.

Guarantors, and each of them, hereby waive (a) notice of acceptance of this Guaranty, (b) demand of payment, diligence, presentation and protest, including, without limitation, of claims with a court in the event of receivership or bankruptcy of Operator, (c) notice of the reliance of Port upon this Guaranty; (d) any right to require the Port to proceed against the Operator or any other Guarantor or any other person or entity liable to Port, (e) any right to require Port to apply to any default any security deposit or other security it may hold under the Agreement, (f) any right to require Port to proceed under any other remedy Port may have before proceeding against Guarantors, (g) any right of subrogation, reimbursement, indemnification, and contribution, and (h) any other rights and defenses that are or may become available to Guarantors by reason of sections 2787 to 2855 of the California Civil Code. In addition, Guarantor agrees that the performance of any act or payment that tolls the statute of limitations applicable to the Agreement shall similarly operate to toll the statute of limitations applicable to Guarantors' liability hereunder.

Guarantors do hereby subrogate all existing or future indebtedness or other obligations of Operator to Guarantors to the obligations owed to Port under the Agreement and this Guaranty.

Each of the undersigned Guarantors that is a natural person represents and warrants to the Port either that: (a) he or she is currently unmarried, and covenants that if he or she marries, (i) recourse may be had against his or her separate property for all of such Guarantor's obligations under this Guaranty, and (ii) his or her spouse shall become a party to this Guaranty so that recourse may be had against such spouse's separate property and to their community property for all of such Guarantor's obligations under this Guaranty; or (b) he or she is currently married, and his or her spouse has executed this Guaranty as a Guarantor.

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The Guarantors agree to provide financial and other information about the Guarantors to the Port to the same extent that the Operator is obligated to provide such information under Section 21(f) of the Agreement.

This Guaranty and the liability of Guarantors hereunder shall not be subject to or contingent upon (a) the genuineness, validity, regularity or enforceability of the Agreement, or (b) any law, ordinance, rule, regulation, writ, order or decree now or hereafter in effect which might in any manner affect the Operator's obligations under the Agreement or any rights, powers or remedies of Port in respect thereof, or cause or permit to be invoked any alteration of time, amount or manner of payment or performance of any obligation of the Operator under the Agreement. Further, this Guaranty shall not be deemed discharged, impaired or affected by (x) the power or authority of Operator to enter into or to obtain the Agreement; (y) any subcontracting or assignment by Operator of its interest in the Agreement; or (z) the existence or non-existence of Operator as a legal entity.

All of the rights, powers and remedies of Port under the Agreement and this Guaranty are intended to be distinct, separate and cumulative, and none of such rights, powers and remedies therein and herein contained is intended to be exclusive of or a waiver of any other right, power or remedy therein or herein contained.

This Guaranty shall be governed by, and construed in accordance with, the laws of the State of California. Each provision hereof is intended to be severable. If any clause, phrase, provision or portion of this Guaranty or the application thereof is determined by a court of competent jurisdiction to be invalid or unenforceable under applicable law, the remaining clauses, phrases, provisions and portions of this Guaranty shall not be affected or impaired thereby, but each remaining clause, phrase, provision and portion shall be valid and be enforceable to the fullest extent permitted by law.

The term "Operator" whenever used in this Guaranty refers to and means the Operator named in the Agreement and also to any successor to the interests of the Operator authorized pursuant to the terms of the Agreement.

This Guaranty shall be binding on the Guarantors and their respective heirs, executors, personal representatives, successors and assigns.

In the event any action is brought by the Port against Guarantors or any of them to enforce the obligation of Guarantors hereunder, the unsuccessful party in such action shall pay to the prevailing party therein a reasonable attorney's fee which shall be fixed by the court.

IN WITNESS WHEREOF, each Guarantor hereby executes this Guaranty this ____ day of _____, 201__.

Attest:

_____, a

By: _____

Print Name and Title
(If Corporate, Secretary, Assistant
Secretary, Chief Financial Officer, or
Assistant Treasurer)

By: _____
Name: _____
Office: _____

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