# REQUEST FOR PROPOSAL

## FOR

## FOOD/BEVERAGE CONCESSION CONSULTING SERVICES

March 30, 2017

PORT OF OAKLAND

AIRPORT PROPERTIES DEPARTMENT
OAKLAND INTERNATIONAL AIRPORT
9532 EARHART ROAD
OAKLAND, CA 94621

PORT OF OAKLAND

# REQUEST FOR PROPOSAL

The Port of Oakland (the "Port"), Oakland, California, is hereby soliciting competitive proposals for the above-mentioned consulting opportunity ("Proposal" or "Proposals"). The successful Respondent(s) will be required to furnish all labor, material, equipment, supplies, applicable taxes, insurance, bonding, and licenses to construct, maintain, and operate this consulting opportunity.

## Proposal Information

| | |
|---|---|
| **Proposal Title** | **Food/Beverage Concession Consulting Services at Oakland International Airport** |
| **Proposal Type** | **Airport Consulting Services** |
| **Proposal Issued** | **March 30, 2017** |
| **Issuing Department** | **Airport Properties Department; Aviation Division** |
| **Optional Pre-Proposal Tour of Food/Beverage Opportunities Locations** | **April 11, 2017 from 2:00 p.m. – 5:00 p.m.**<br>**Oakland International Airport**<br>**Shepard Glenn Conference Room A/B**<br>**1 Airport Drive, Oakland, CA 94621** |
| **Proposal Due Date** | **April 28, 2017 until 2:00 p.m.** |

## Instructions for Submitting Proposals

| | |
|---|---|
| **Submittal Address** | Port of Oakland<br>Airport Properties<br>Attn: Brandon J. Mark, Manager<br>9532 Earhart Road, Suite 201<br>Oakland, CA 94621 |
| **Submittal Copies** | One (1) Original clearly marked "Original", four (4) Copies each marked "Copy", and one electronic flash memory device connectable to a computer by USB port. |
| **Submittal Package and/or Envelope Requirements** | The Proposal package must be sealed and have the following information clearly marked and visible on the outside of the envelope and/or box:<br>• Proposal Title<br>• Name of Your Company<br>• Address<br>• Phone Number |
| **Late Submittals** | Proposals received after the time and date stated above shall be returned unopened to the Respondent. |

## How to Obtain Request for Proposal Documents

Copies of the Request for Proposal documents may be obtained at:

| Available | Location |
|---|---|
| **Yes** | Port of Oakland--Airport Properties Department<br>9532 Earhart Road, Suite 201<br>Oakland, CA 94621<br>Monday through Friday 9:00 AM to 4:00 PM |
| **Yes** | http://www.portofoakland.com/opportunities/bidsrfpsrfqs.aspx<br><br>Or navigate to the Port of Oakland's main website at: http://www.portofoakland.com/, then click on "Business" then on "Opportunities" and then on "Bids/RFPs/RFQs" to download the RFP. |

## Questions about the Request 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** | Brandon J. Mark<br>Fax: (510) 636-1216<br>Email: bmark@portoakland.com |
| **Question/RFI Due Date** | **April 17, 2017 until 3:00 p.m.**<br>Please submit questions or RFIs as soon as possible. No questions regarding any sections and/or attachments to this RFP 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. |
| **Question/RFI Response Date** | **April 21, 2017 before 5:00 pm**<br>All pertinent questions will be responded to **via addendum** emailed to all prospective Respondents who have registered on the Port's website and also will be placed on the Port's website. All prospective Respondents are encouraged to check the Port's website for any addenda; the Port is not responsible to make certain that all prospective Respondents receive directly from the Port via email a copy of the addenda. See the "How to Obtain Proposal Documents" section for our web address. All addenda must be acknowledged on the RFP Acknowledgement and Signature form. |

Once the RFP is issued, and until a recommendation for award is made to the Board of Port Commissioners (the "Board") at a public Board meeting (or in cases where a recommendation for award does not require a public Board meeting, when Respondents are notified by Port staff of the recommendation for award), each Respondent and its representatives, agents, and affiliates, shall not contact members of the Evaluation Committee, Port staff or the Board to discuss or ask questions about the contents of this RFP or the selection process. All questions shall be submitted in writing as described in this RFP. Any inappropriate contact by

a Respondent, its representatives, agents, and/or affiliates may result in the Respondents' Proposal being disqualified.

## 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 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.

Brandon J. Mark, IAP
Manager – Airport Properties
Oakland International Airport
Port of Oakland

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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<br>A. Chart for Submitting Data for Calculation of Preference Points<br>B. Local Participation Questionnaire<br>C. Monthly Utilization of Local and Small Business Enterprises<br>D. Final Utilization of Local and Small Business Enterprises | Yes<br>Attachment 5-A and 5-B are required with the Proposal.<br>(Note: If you are submitting a new Certification Application for preference points, then your completed application is due 7 business days prior to the Proposal due date.)<br>Attachments 5-C and –D are required after contract award final completion of the project. |
| 6 | Non-Discrimination and Small Local Business Utilization Policy Program Affidavit | Yes |
| 7 | City of Oakland City Charter §728 Living Wage Information<br>A. Employer Self-Evaluation for Port of Oakland Living Wage | No<br>(Attachment 7-A and 7-B are required after contract award.) |

| Title | | Must Be Returned with Proposal |
|---|---|---|
| | B. Certificate of Compliance—Living Wage | |
| 8 | Statement of Living Wage Requirements | Yes |
| 9 | Insurance Requirements (Incorporated into *Standard Professional Services Agreement*) | No |
| 10 | Insurance Acknowledgement Statement | Yes |
| 11 | Standard Professional Services Agreement | Yes<br>(Note: If awarded the consulting opportunity, the successful Respondent will execute a revised version of the Port's standard Professional Services Agreement, which will be consistent with the provisions of this RFP.) |
| 12 | Existing Host Space/Use Permit | No |

# I. Project Overview

The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (the "Port") is soliciting proposals for Food/Beverage Concession Consulting Services (the "Services") for its Food/Beverage Concession Program at Oakland International Airport (the "Airport" or "OAK"). This Request for Proposals ("RFP") will result in the award of a Professional Services Agreement to provide consulting services for the Airport's upcoming 2018 Food/Beverage Concession Program Opportunities in accordance with the terms and conditions of the Professional Services Agreement attached to this RFP as **Attachment 11**.

The Port's objectives in utilizing the proposed Food/Beverage Concession Consulting Services are to supplement staff efforts to:

- Identify the best management alternative;
- Recommend preferred Business Terms for the 2018 Food/Beverage Concession Program Opportunities;
- Analyze Financial Projections/Proposed Revenue Scenarios for the 2018 Food/Beverage Concession Program Opportunities;
- Prepare RFP documents, contracts and Exhibits for the 2018 Food/Beverage Concession Program Opportunities; and
- Manage the solicitation and award process; and
- Assist with community outreach to expose the 2018 Food/Beverage Concession Program Opportunities to the widest possible audience.

The existing Food/Beverage Concession Program includes 16 locations occupying 21,000± square feet in two terminals and generating $34± million in gross receipts for Calendar Year 2016:

**Terminal 1:**
Pre-Security Bar & Restaurant (935 SF)
Specialty Coffee: 2 Locations (904 SF & 517 SF)
Restaurant & Bar (3,904 SF)
Quick Serve (655 SF)
Bar & Light Menu (1,223 SF)

**Terminal 2**
Pre-Security Specialty Coffee (395 SF)
Restaurant & Bar: 2 Locations (1,320 SF & 1,356 SF)
Multi-Concepts Space: 2 Locations (5,850 SF & 2,322 SF)
Specialty Coffee: 2 Locations (661 SF & 468 SF)
Bar & Light Menu (440 SF)
Quick Serve (582 SF)

For all interested Respondents, there will be one (1) opportunity to tour the Airport and see the existing Food/Beverage Concession Program locations; see date/time listed in **Proposal Information** section.

### About the Port of Oakland

The Port was established in 1927 and oversees the Oakland seaport, the Airport, Commercial Real Estate, and 20 miles of waterfront. The Oakland seaport is the third busiest container port in California and one of the top ten container ports in the U.S.; OAK is the second busiest San Francisco Bay Area airport serving over 12.5 million passengers annually; and the Port's real estate holdings include commercial developments such as Jack London Square and hundreds of acres of public parks and

conservation areas. Together, through Port operations and those of its tenants and users, the Port supports nearly 73,000 jobs in the region and over 827,000 jobs across the United States. The Port is an independent department of the City of Oakland. Current information about the Airports passenger traffic can be found at:

http://oaklandairport.com/airport_stats.shtml

## II. Scope of Services

The Port has identified five primary tasks to reach its objectives as outlined above.

### TASK 1. RECOMMENDATION OF PREFERRED MANAGEMENT PLAN

Evaluate existing Port/OAK operations, financial and human resources and then recommend a preferred management direction – Developer/Manager, Prime Concessionaire, Direct Agreements, or Hybrid. Provide analysis of pros and cons of each approach specific to OAK operations.

### TASK 2. BUSINESS TERMS

Recommend business terms for incorporation in the 2018 Food/Beverage Concession Program Opportunities Request for Proposal documents, including:

- Length of term (years)
- Pricing
- Minimum investment requirements
- Privileges and uses (including lists of required, permitted, and prohibited food/beverage products and merchandise)
- Mid-term refurbishment investment requirements
- Minimum rents
- Percentage rents (including stepped rents, if appropriate)
- Environmental opportunities including FOG (fats, oils, grease) reuse, potential LEED certification of tenant improvements and operations, ambient energy use, etc.

In addition, the successful Respondent should become familiar with the Port's labor and local business goals and how they relate to the Port entering into agreements with Concessionaires, including:

- ACDBE participation goals and reporting requirements
- Living wage requirements
- Labor Peace Rule
- Labor Pool Program
- Subcontracting/local participation requirements
- Other subleasing and/or local participation goals or requirements

### TASK 3. SALES AND REVENUE PROJECTIONS

Refine the financial projections for the 2018 Food/Beverage Concession Program Opportunities for each management plan alternative, projecting gross sales, net rental revenue, sales per enplaned passenger, and revenue to the Port.

### TASK 4. ASSIST WITH DRAFTING THE CONCESSION LEASE/MANAGEMENT AGREEMENT, AND FOOD/BEVERAGE CONCESSION PROGRAM PROPOSAL PACKAGE

Assist in preparation of the 2018 Food/Beverage Concession Program Opportunities Request for Proposals package consisting of a front-end request for proposals and a form of Space/Use Permit,

lease, concession agreement and/or Management Agreement/Sublease Agreement. For reference and review, **Attachment 12** is the existing *Space/Use Permit for Food, Beverage, Retail and Duty Free Concession* between Host International, Inc. and the Port dated July 18, 2006.

**TASK 5. SOLICITATION AND AWARD PROCESS**

Assist with Outreach and Pre-Proposal Conference planning; selection of Evaluation Panel; award of the 2018 Food/Beverage Concession Program Opportunities; preparation of background letters, information, and/or presentations for the Board (applicable to both closed and public meetings); and, attendance at Board Meetings if necessary.

**PROJECTED TIME LINE AND LENGTH OF CONTRACT**

TASKS 1, 2 and 3 must be completed within sixty (60) calendar days of mutual execution of the Professional Services Agreement, but in no event later than June 30, 2017.

TASK 4 must be completed by no later than September 30, 2017.

TASK 5 must be completed by no later than December 14, 2017.

Proposed Consulting Services may extend up to and including the May 31, 2018 expiration date of the existing Host *Space/Use Permit*.

It is anticipated that some of the tasks will be on-going and require updates to proposed business terms, financial projections, proposal materials, etc., which may require extension(s) to the above stated deadlines. Any such extension(s) must be documented by a written, mutually-executed amendment to the Professional Services Agreement.

The initial term of the Contract shall commence upon execution of the Professional Services Agreement and terminate on May 31, 2018; however, the contract may be extended by the Port for up to an additional six (6) months, on a month-to-month basis, at the costs quoted in the successful Respondent's Proposal.

## III. Qualifications and Experience

Respondents (specifically, the Business that will be contractually bound under the Professional Services Agreement with the Port) will be deemed nonresponsive and rejected without any further evaluation if they, as a Business, do not meet the following qualifications:

a) The Respondent must demonstrate three (3) years' airport concession consulting experience at an airport with at least three (3) million enplanements per year; and

b) The Respondent or its key personnel or their sub-consultant(s) that will be assigned to the project must have at least three (3) years' experience related to airport food and beverage concessions consulting projects with a minimum of two separate clients.

## IV. 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 (NDSLBUP):

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

   - Non-Discrimination policy which all Suppliers (Respondents) must adhere to, by providing the enclosed "Non-Discrimination and Small Local Business Utilization Policy Program Affidavit" **(Attachment 6)** with their proposals
   - Preference points to small local businesses who qualify under the Port's definition of a small local business. In order to qualify for preference points, Suppliers (Respondents) must be either certified by the proposal due date or download a Certification Application

at: http://www.portofoakland.com/srd/ and submit it along with any supporting documentation to the Port's Social Responsibility Division seven (7) business 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

Suppliers 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://srd.portofoakland.com/ to ensure their certification has not expired and must 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 Suppliers (Respondents) must still provide proof of adhering to the Port's Non-Discrimination policy by submitting the NDSLBUP Program Affidavit.

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 NDSLBUP, contact Lila Zinn, Contract Compliance Supervisor, (510) 627-1485, at the Port's Social Responsibility Division, or fax requests to (510) 451-1656.

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 9**, and must provide proof of insurance at the time of project award. Respondents must include a statement **(Attachment 10)** 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. 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, 2016 is at least $12.93 with credit given to the employer for the provision to covered employees of health benefits, and $14.86 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 7-A)** and Certificate of Compliance—Living Wage **(see Attachment 7-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 reviewing the Port's Living Wage program and compliance, by submitting the Statement of Living Wage Requirement **(Attachment 8)** with their proposal.

4. Port's Standard Professional Services Agreement:

Submission of a proposal will confirm that the Respondent fully understands the provisions of the Port's Standard Professional Services Agreement **(Attachment 11)** which will be revised as necessary to be consistent with the provisions of this RFP, and will execute such revised agreement if awarded the contract. Any objections to any provisions in the Port's Standard Professional Services Agreement and/or this RFP must clearly be identified in your proposal. Changes are discouraged.

## V. Submission Requirements

The Port will not scheduled a Mandatory Pre-Proposal Meeting for this RFP/consulting opportunity. Any questions and/or RFIs concerning this RFP should be addressed as covered in the Introduction section (Page 3 of 4).

Please respond to the following eight (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 Proposal to a reasonable number of pages (excludes the required attachment forms provided with this RFP).

**Submittal Format:**

There is no minimum or maximum number of pages for your Proposal, although it should be contained in a reasonable number of pages to fully respond to this RFP and printed on 8½" x 11" paper with no smaller than 10 point font. Each section shall be labeled according to the sections below. All Proposals must be bound.

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 management personnel, and a brief history of your Company. Provide a brief statement of who is authorized to submit the Proposal on behalf of your Company. Please make sure that person signs and dates the statement. If your company is making any exceptions to the Port's Standard Professional Services Agreement **(Attachment 11)** and/or this RFP, they must be clearly set forth in your proposal and noted in this section. Exceptions are discouraged and may result in lower evaluation points during the Port's evaluation of your proposal.

2. **Knowledge and Experience:** Provide relevant information about your Company's knowledge and experience, including a list of at least two (2) or more projects (in similar size and scope to this RFP), with brief descriptions that demonstrate your Company's experience. Also, provide the names of key personnel who will be assigned to do the work under this project and provide their relevant experience.

3. **Client References**: Provide names, addresses and contact information for at least two (2) current clients. Provide the size and scope of each project and a brief description of the projects applicable to each client. Please make sure all contact information is current. By providing such information, you authorize the Port to contact such clients.

4. **Plan and Approach**: Provide an overview describing the general approach, services to be provided, and methodology of your Company's ability to fulfill the general functions and provide the various tasks outlined in the Scope of Services section and as required in this RFP. Your services can be above and beyond the requirements listed in the "Scope of Service" section.

   The Proposal should demonstrate experience – including specific examples – of providing local community, small business and/or ACDBE outreach and education to potential concessionaires; specifically, the realities of doing business in an airport environment.

As part of its Proposal, Respondent should review and evaluate the business/commercial sections* of the existing Host *Space/Use Permit* (**Attachment 12**) and provide high-level comments and suggested revisions and/or updates to the Port's existing form of *Space/Use Permit.*

*At 100+ pages, the Host/Port *Space/Use Permit* has substantial "boilerplate" sections dealing with insurance, indemnification, labor, assignment and subletting, default, etc.; the Respondent does not need to review, evaluate and/or comment on these type of sections in its Proposal.

5. **Proposed Costs:** Provide all costs for the Proposal on the Proposal Worksheet and attach any proposed fee schedule. It is important that Respondent provide a fee schedule so that the Port can evaluate the Proposal.

6. **Debarment Statement:** 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 Company 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 Company. The Port must review the reason and duration for the debarment before it can determine if your Company can be considered for this consulting opportunity.

7. **Litigation Information:** Provide information describing any litigation, arbitration, investigations, or any other similar actions that your Company, the principals, the directors, and employees have been involved in during the last five (5) years relating to your Company's services. Please list (a) name and court case identification number of each case, (b) jurisdiction in which it was filed, and (c) outcome of litigation (e.g. whether the case is pending, a judgment was entered, a settlement was reached or the case was dismissed). The Port will review the reason and timing of the action before it can determine if your Company can be considered for this consulting opportunity. Failure to provide the litigation information may disqualify your Proposal.

8. **Required Forms and Adherence to Port Policy Requirements:** The Respondent must fill out all the forms included in this RFP (listed under the "Attachments" section and marked with a "Yes" in the column titled "Must Be Returned with Proposal"), and return them with your Proposal. By returning the listed forms, your Company is supporting and agreeing to the Port Policy Requirements (listed in section IV "Port Policy Requirements" of this RFP). Failure of the Respondent to provide any of the forms listed in this RFP may result in your Proposal being rejected for non-responsiveness. These required forms will not count against the maximum page count (indicated above) for your Proposal.

## VI. Evaluation Criteria

Prior to award of this consulting opportunity, the Port must be assured that the Respondent selected has all of the resources required to successfully perform under the Professional Services Agreement. This includes, but is not limited to, personnel with skills required, equipment/materials and financial resources sufficient to provide services called for under this consulting opportunity. If during the evaluation process, the Port is unable to assure itself of the Respondent's ability to perform under the Professional Services Agreement, 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 consulting opportunity, 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 |
|---|---|---|
| | Adherence to Port Policy and Other Requirements and Debarment Statement<br>Proposals from companies who have not or will not adhere to the Port Policy and Other Requirements or who have been debarred and have not provided sufficient reasons/justification for the Port to review the circumstances surrounding the debarment will not be forwarded to the evaluation committee for review. (Items 6 and 8 of the Submission Requirements section.) | Pass/Fail |
| 1 | Company Information, Client References, Litigation and Other Information, and Required Forms<br>Respondent's capacity to provide professional service as evidenced by past performance, company information, reference checks, litigation and other information, and required forms. (Items 1, 3, 7, and 8 of the Submission Requirements section.) | 15% |
| 2 | Knowledge and Experience<br>Respondent's knowledge and experience in providing Concession Consulting Services as evidenced from your response to item 2 of Submission Requirements section. | 20% |
| 3 | Plan and Approach<br>As evidenced from your response to item 4 of the Submission Requirements section, including, but not limited to, demonstrating experience in providing community outreach to potential concessionaires, and providing high-level comments and suggested revisions and/or updates to the Port's existing *Space/Use Permit*. | 25% |
| 4 | Proposed Costs<br>As evidenced from your response to item 5 of the Submission Requirements section, and as provided on the Proposal Worksheet. | 25% |
| 5 | Non-Discrimination and Small Local Business Utilization Policy<br>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 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 (at the discretion of the Evaluation Committee) for the top scoring Respondent(s). If interviews are to take place, the Port will notify the top scoring Respondents. Interview details and scoring requirements will be provided to selected Respondents prior to the interviews.

## VII. Additional Provisions

The terms "Company", "Consultant", "Contractor", "Respondent", "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 (i) 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 (ii) 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 RFP 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 consulting opportunity. 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.

Notwithstanding Respondent's identification of information it believes should be exempted from disclosure, the Port reserves the right to independently determine whether any document is subject to public disclosure and to make such information available to the extent required by applicable law, without any restriction.

### D. Indemnification

If Respondent is selected, it will be required to agree to the indemnification clause contained in the Port's Standard Professional Services Agreement. **See Section 5** of the Port' Standard Professional Services Agreement **(Attachment 11)**.

### 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; 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 RFP. The Port, at its sole discretion, 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 retains the right to award this consulting opportunity in part or in total to the Respondent(s) of its choice, and to decide to undertake the consulting opportunity or to terminate the consulting opportunity at any time prior to award of the consulting opportunity and approval of a Professional Services Agreement.

## 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 Proposal to this RFP and attending any 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 Professional Services Agreement.

## 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 Respondent waives the right to bring legal proceedings challenging the Board's 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 services 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. 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 at any time before the deadline for submission of a Proposal.

## R. Acceptance

Any Proposal received shall be considered an offer that 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 Proposal 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 contract that shall commence upon execution of the Professional Services Agreement and terminate on May 31, 2018; however, the contract may be extended by the Port for up to an additional six (6) months, on a month-to-month basis, at the costs quoted in the successful Respondent's Proposal.

## U. Contract Termination

The Port may terminate the agreement (and or contract) with the Respondent on thirty (30) days' written 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 that contends or claims that the Port's proposed award of the subject contract fails to comply with the Port's rules and regulations or with law must file a protest in accordance with the provisions set forth below:

1. Any protest must be submitted in writing to John Betterton, Secretary of the Board, and received by the Port no later than 5:00 p.m. by the third (3rd) business day following publication of the identity of the apparent successful proposer (or of Notice of Intend to 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 referencing the specific portion of the solicitation document that forms the basis for the protest, and 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 credible evidence.

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

PORT OF OAKLAND

# Non Collusion Declaration

## RFP: Food/Beverage Consulting Services

(To Be Executed By Respondent 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 Respondent has not directly or indirectly induced or solicited any other Respondent to put in a false or sham proposal, or that anyone shall refrain from proposing; that the Respondent 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 Respondent, 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 Respondent 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 Respondent 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

### RFP: Food/Beverage Consulting Services

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.

_____
Signature

_____
Print Name

_____
Title

_____
Date

PORT OF OAKLAND

# RFP Acknowledgement and Signature Form

## RFP: Food/Beverage Consulting Services

The undersigned having carefully examined the location of the proposed work, the local conditions of the place where the work is to be done, and the RFP, 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.
3. I represent that I am familiar with Sections 1090 and 87100 et seq. of the California Government Code, and that I do not know of any facts that constitute a violation of said sections in connection with the proposal.

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 Worksheet**

## RFP: Food/Beverage Consulting Services

| Task | Estimated Hours | Hourly Rate (Supervisory) | Hourly Rate (Staff) | |
|---|---|---|---|---|
| TASK 1 | | | | |
| TASK 2 | | | | |
| TASK 3 | | | | |
| TASK 4 | | | | |
| TASK 5 | | | | |

[this is a placeholder sample of a way to have them present rates and potential total cost]

PORT OF OAKLAND

# Non-Discrimination and Small Local Business Utilization Policy

**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 (i.e. mentoring, intern programs, job fairs, community rehabilitation groups and re-entry programs) 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-A. 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.

3. Attachment 5-C and 5-D, Monthly and Final Utilization of Local and Small Business Enterprises are required after contract award. Attachment 5-C is required after contract award and a final report attachment 5-D, is required after completion of the project.

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 wishing to obtain credit for their local office, for the purpose of this project shall utilize personnel from this local office. Additionally, mail, correspondence and telephone calls will be made to this local office.

To obtain credit for these factors and for any preference points on this RFP, consultants or any team member must be certified by the proposal due date or submit an application:

- 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 Social Responsibility Division (SRD) at (510) 627-1627 or email SRDAdmin@portoakland.com. Firms certified by the Port of Oakland do not need to submit proof of certification.

(Please note Port certification must be current and not expired to count for preference points. Certification is valid for a two-year period.)

For questions or assistance regarding this section, contact Lila Zinn (510) 627-1485, or lzinn@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

# Monthly Utilization of Local and Small Business Enterprises

| PRIME CONTRACTOR | BUSINESS ADDRESS | CONTRACT BID AMOUNT | DATE OF THIS REPORT |
|---|---|---|---|
| | | | |

| PORT PROJECT NAME | PORT PROJECT NUMBER | WORK AUTHORIZATION # | TOTAL CONTRACT AMOUNT INCLUDING CHANGE ORDERS | PROJECT COMPLETION DATE |
|---|---|---|---|---|
| | | | | |

| (1) Name and Address of Small/Local Firm [Prime, Subcontractor, Supplier or Trucking Broker] | (2) Description of Work Performed and or Materials Supplied | (3) Prime and Sub(s) Original Bid Amount | (4) Port Certification Number | CONTRACT PAYMENTS | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | (5a) * LIABE Dollars | (5b) * LBABE Dollars | (5c) * SBE Dollars | (5d) * VSBE Dollars | (6) Date Work Completed | (7) Date of Final Payment |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| **TOTAL** | | | | **$** | **$** | **$** | **$** | | |

List all certified local/small prime and subs regardless of tiers through out the life of the project, whether or not firms were listed on the original bid. Xerox this page if additional sheets are needed.
If actual sub dollars were different than the approval amount at time of award, provide comments on back of form. List actual amount paid to each sub at the above chart.

***** LIABE (Local Impact Area Business Enterprise), LBABE (Local Business Area Business Enterprise), SBE (Small Business Enterprise), and VSBE (Very Small Business Enterprise).

| I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE, TRUE AND CORRECT | | |
|---|---|---|
| **AUTHORIZED CONTRACTOR REPRESENTATIVE SIGNATURE and TITLE** | **BUSINESS PHONE NUMBER** | **DATE** |
| | | |

**Distribution:** **Original – SRD** **Copy To – Engineering Construction / Resident Engineer**

**Instructions--Monthly Utilization of Local and Small Business Enterprises**

(I) Enter the project information requested on the first two rows on page 00816-1 (Prime Contractor, Business Address, Contract Bid Amount, etc.)

(II) Provide the following information **for each portion of the contract work performed by (and for each amount of materials supplied by) a Port-certified small and/or local business**, including the prime contractor if the prime is a Port-certified small/local business:

Column 1: Name and address of the firm performing work and/or supplying materials.
Column 2: Description of the work performed and/or materials supplied by said firm.
Column 3: For subcontractor, supplier or trucker: dollar amount of the bid submitted by the firm to prime bidder, as listed in the Subcontractor and Supplier List Form submitted by prime bidder with its bid. If the subcontractor, supplier or trucker was not listed in the Subcontractor and Supplier List Form, enter "0". For small/local prime bidder: dollar amount of the prime bidder's bid excluding all subcontractor/supplier/trucking broker bid amounts, as listed in the Subcontractor and Supplier List Form.
Column 4: Port Certification Number of firm. (Port-certified small/local subcontractors, suppliers and truckers should provide their certification number to the Prime Bidder and notify Prime Bidder in writing with the date of the decertification if their status changes during the course of the project.)
Columns 5a-5d Enter the dollar amount of the work performed and/or materials supplied by the firm in either Column 5a, 5b, 5c or 5d, depending on the firm's certification status. Firm certification status must be certified and determined at the time of bid by Port of Oakland. The certified firm is issued a letter by the Port of Oakland that states their certification status as well as the expiration date of the certification. Firms' certification status may be obtained by accessing the Port of Oakland website **(http://www.portofoakland.com/srd/)** or by calling (510) 627-1419. Refer to the following table for a description of the certification status:

| Certification Status | Description |
|---|---|
| LIABE (Local Impact Area Business Enterprise) | firm located in Oakland, Alameda, Emeryville, or San Leandro |
| LBABE (Local Business Area Business Enterprise) | firm located in Alameda County or Contra Costa County |
| SBE (Small Business Enterprise) | business with 3 year average annual gross revenue not to exceed $14,000,000 |
| VSBE (Very Small Business Enterprise) | business with 3 year average annual gross revenue not to exceed $3,500,000 |

If the firm was decertified before completing its portion of the work of this contract, enter the dollar amount of ALL work performed/ materials supplied by the firm, INCLUDING WORK PERFORMED/MATERIALS SUPPLIED AFTER THE DATE OF DECERTIFICATION. **If the amount listed in Column 5 differs from the amount listed in Column 3, provide an explanation in the 'COMMENTS' section as provided.**

Column 6: Date on which the firm listed in Column 1 completed the work described in Column 2.
Column 7: Date on which prime contractor made the 'final payment' for the work described in Column 2 to subcontractor/supplier/trucking broker.

(III) In the 'TOTAL' row, enter the column sums of the dollar amounts listed in Columns 5a through 5d.

(IV) The authorized contractor representative shall certify the information supplied by signing in the space provided. **Per Port of Oakland provisions, Final Payment WILL NOT be made until this form is properly filled out and submitted to the Port of Oakland.**

| **COMMENTS:** |
|---|
| |
| |
| |

PORT OF OAKLAND

# Final Utilization of Local and Small Business Enterprises

| PRIME CONTRACTOR | BUSINESS ADDRESS | CONTRACT BID AMOUNT | DATE OF THIS REPORT |
|---|---|---|---|
| | | | |

| PORT PROJECT NAME | PORT PROJECT NUMBER | WORK AUTHORIZATION # | TOTAL CONTRACT AMOUNT INCLUDING CHANGE ORDERS | PROJECT COMPLETION DATE |
|---|---|---|---|---|
| | | | | |

| (1) Name and Address of Small/Local Firm [Prime, Subcontractor, Supplier or Trucking Broker] | (2) Description of Work Performed and or Materials Supplied | (3) Prime and Sub(s) Original Bid Amount | (4) Port Certification Number | CONTRACT PAYMENTS | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | (5a) * LIABE Dollars | (5b) * LBABE Dollars | (5c) * SBE Dollars | (5d) * VSBE Dollars | (6) Date Work Completed | (7) Date of Final Payment |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| **TOTAL** | | | | **$** | **$** | **$** | **$** | | |

List all certified local/small prime and subs regardless of tiers through out the life of the project, whether or not firms were listed on the original bid. Xerox this page if additional sheets are needed.
If actual sub dollars were different than the approval amount at time of award, provide comments on back of form. List actual amount paid to each sub at the above chart.

***** LIABE (Local Impact Area Business Enterprise), LBABE (Local Business Area Business Enterprise), SBE (Small Business Enterprise), and VSBE (Very Small Business Enterprise).

| I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE, TRUE AND CORRECT | | |
|---|---|---|
| **AUTHORIZED CONTRACTOR REPRESENTATIVE SIGNATURE and TITLE** | **BUSINESS PHONE NUMBER** | **DATE** |
| | | |

**Distribution:** **Original – SRD** **Copy To – Engineering Construction / Resident Engineer**

**Instructions--Final Utilization of Local and Small Business Enterprises**

(I) Enter the project information requested on the first two rows on page 00816-1 (Prime Contractor, Business Address, Contract Bid Amount, etc.)

(II) Provide the following information **for each portion of the contract work performed by (and for each amount of materials supplied by) a Port-certified small and/or local business**, including the prime contractor if the prime is a Port-certified small/local business:

Column 1: Name and address of the firm performing work and/or supplying materials.

Column 2: Description of the work performed and/or materials supplied by said firm.

Column 3: For subcontractor, supplier or trucker: dollar amount of the bid submitted by the firm to prime bidder, as listed in the Subcontractor and Supplier List Form submitted by prime bidder with its bid. If the subcontractor, supplier or trucker was not listed in the Subcontractor and Supplier List Form, enter "0". For small/local prime bidder: dollar amount of the prime bidder's bid excluding all subcontractor/supplier/trucking broker bid amounts, as listed in the Subcontractor and Supplier List Form.

Column 4: Port Certification Number of firm. (Port-certified small/local subcontractors, suppliers and truckers should provide their certification number to the Prime Bidder and notify Prime Bidder in writing with the date of the decertification if their status changes during the course of the project.)

Columns 5a-5d Enter the dollar amount of the work performed and/or materials supplied by the firm in either Column 5a, 5b, 5c or 5d, depending on the firm's certification status. Firm certification status must be certified and determined at the time of bid by Port of Oakland. The certified firm is issued a letter by the Port of Oakland that states their certification status as well as the expiration date of the certification. Firms' certification status may be obtained by accessing the Port of Oakland website **(http://www.portofoakland.com/srd/)** or by calling (510) 627-1419. Refer to the following table for a description of the certification status:

| Certification Status | Description |
|---|---|
| LIABE (Local Impact Area Business Enterprise) | firm located in Oakland, Alameda, Emeryville, or San Leandro |
| LBABE (Local Business Area Business Enterprise) | firm located in Alameda County or Contra Costa County |
| SBE (Small Business Enterprise) | business with 3 year average annual gross revenue not to exceed $14,000,000 |
| VSBE (Very Small Business Enterprise) | business with 3 year average annual gross revenue not to exceed $3,500,000 |

If the firm was decertified before completing its portion of the work of this contract, enter the dollar amount of ALL work performed/ materials supplied by the firm, INCLUDING WORK PERFORMED/MATERIALS SUPPLIED AFTER THE DATE OF DECERTIFICATION. **If the amount listed in Column 5 differs from the amount listed in Column 3, provide an explanation in the 'COMMENTS' section as provided.**

Column 6: Date on which the firm listed in Column 1 completed the work described in Column 2.

Column 7: Date on which prime contractor made the 'final payment' for the work described in Column 2 to subcontractor/supplier/trucking broker.

(III) In the 'TOTAL' row, enter the column sums of the dollar amounts listed in Columns 5a through 5d.

(IV) The authorized contractor representative shall certify the information supplied by signing in the space provided. **Per Port of Oakland provisions, Final Payment WILL NOT be made until this form is properly filled out and submitted to the Port of Oakland.**

| **COMMENTS:** |
|---|
| |
| |
| |

PORT OF OAKLAND

# Non-Discrimination and Small Local Business Utilization Policy Program Affidavit

## RFP : Food/Beverage Concession Consulting Services

I hereby certify that I_____(Legal Name of Respondent/Supplier/Consultant/Contractor), shall carry out applicable requirements 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 Small Local Businesses do not exist.

Upon execution of an Agreement, the selected consultant will be required to complete Small and Local 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.

_____
Signature

_____
Print Name

_____
Title

_____
Date

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, 2016, $14.86 without health benefits or $12.93 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 $1.93 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 Professional Services 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 herby 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 $12.53 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

## RFP: Food/Beverage Concession Consulting Services

I hereby certify that I_____(Legal Name of Respondent/Supplier/Consultant/Contractor), has reviewed the Living Wage Requirements, included herein as Attachment 7 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.

_____
Signature

_____
Print Name

_____
Title

_____
Date

All of the Port's Insurance requirements are incorporated into the Professional Services Agreement **(Attachment 11)** attached to this Request for Proposal.

PORT OF OAKLAND

# Insurance Acknowledgement Statement

## RFP: Food/Beverage Concession Consulting Services

I hereby certify that _____ (Legal Name of Respondent) agrees to meet all of the Port's Insurance requirements 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

**ATTACHMENT 11**

# PROFESSIONAL SERVICES AGREEMENT

**Between**

**CITY OF OAKLAND, A MUNICIPAL CORPORATION,**
**ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS**
**as the "Port of Oakland"**

**And**

**«CONSULTANT»**

**Food/Beverage Concession Consulting Services**

**(Contract No. _____)**

**Dated**

**«EffectiveDate»**

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**PROFESSIONAL SERVICES AGREEMENT**

**«CONSULTANT»**
**(«Services»)**

---

**THIS PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is entered into on_____, between the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (hereinafter "Port of Oakland' or "Port"), and **«CONSULTANT»** ("Consultant"), identified on Appendix D, who agree as follows:

## 1. SCOPE OF PROFESSIONAL SERVICES.

The Consultant shall perform all services described in Appendix A ("Services"), for the compensation set forth in Appendix B ("Payment"), which appendixes are attached and made a part of this Agreement. All Services whenever performed shall be deemed performed under this Agreement, and all compensation paid to Consultant on account of the Services performed shall be deemed payments as set forth in Appendix B.

## 2. EFFECTIVE DATE.

This Agreement shall become effective upon its execution by the Consultant and by the Port (including approval by the Port Attorney).

## 3. STANDARD OF PERFORMANCE.

The Consultant represents that it possesses all necessary training, licenses and permits to perform the Services, and that its performance of the Services will conform to the standard of practice of a professional that specializes in performing professional services of a like nature and complexity of the Services.

## 4. SUBCONSULTANTS.

The Consultant shall perform the Services using the persons and subconsultants listed in Appendix A, if any. The Consultant shall hire only qualified persons or firms who are experienced in performing work of a like nature and complexity as the Services, and who agree to be bound to the terms of the Agreement to the extent of this scope of services. The Consultant may substitute personnel or subconsultants prior to any such subconsultants commencing work only upon the Project Manager's written consent, which may be withheld or delayed in the Port's discretion.

The Port of Oakland, as a Department of the City of Oakland, participates in the California Public Employees' Retirement System ("CalPERS"), and the use of any consultant or sub-consultant (and their employees) who have retired from a CalPERS agency shall be in compliance with applicable CalPERS rules and regulations.

## 5. INDEMNIFICATION AND LIABILITY.

5.1 To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782, 2782.6 and 2782.8), the Consultant shall defend (with legal counsel chosen or

approved by the Port Attorney), indemnify and hold harmless the Port and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its Subconsultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, paralegal and attorneys' fees (including costs attributable to in-house paralegals and attorneys), Port staff costs, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise from or relate to, directly or indirectly, in whole or in part, from: (1) the Services under this Agreement, or any part thereof, or (2) any negligent act or omission of Consultant, any Subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee, but shall apply to all other Liabilities.

5.2 The Consultant shall defend (with legal counsel chosen or approved by the Port Attorney), indemnify and hold harmless the Indemnitees from all loss, cost, damage, expense, liability or claims, in law or in equity, including paralegal and attorneys' fees (including costs attributable to in-house paralegals and attorneys), Port staff costs, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by Port, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement.

## 6. NOTICES.

The Port and the Consultant shall provide notices to the other in the form of a writing, sent by facsimile and by U.S. Mail. If to the Port, it shall be addressed to the Project Manager (identified on Appendix E) at:

**Port of Oakland**
**530 Water Street**
**Oakland, CA 94607**

or to such other place as the Port may by such similar notice in writing designate. If to the Consultant, the same shall be addressed to the individual and address noted on Appendix D hereto or to such other place as the Consultant may by such similar notice in writing designate.

## 7. INSURANCE.

At its own expense, the Consultant shall maintain in force during the term of this Agreement the insurance type(s) and in the amount(s) required by Appendix C hereof.

## 8. INDEPENDENT CONTRACTOR.

The Consultant shall at all times herein be deemed an independent contractor wholly responsible for the manner in which it performs the Services under this Agreement, and fully liable for the acts and omissions of its employees, subconsultants and agents. Under no circumstances shall this Agreement be construed as creating an employment, agency, joint venture or partnership relationship between the Port and the Consultant, and no such relationship shall be implied from performance of this Agreement. The terms in this Agreement referring to direction from the Port shall be construed as providing for direction as to policy and the result of services only, and not as to means and methods by which such a result is obtained. The Consultant shall pay all taxes (including

California sales and use taxes) levied upon this Agreement, the transaction, or the Services and/or goods delivered pursuant hereto without additional compensation, regardless of which party has liability for such tax under applicable law, and any deficiency, interest or penalty asserted with respect thereto. The Consultant represents that it will collect, report, and pay all sales and or use taxes to the State Board of Equalization. Upon full payment, the Consultant will issue the Port a receipt pursuant to California Revenue and Taxation Code Section 6203, relieving the Port of all liability for any tax relating to the scope of this Agreement. The Consultant shall pay all other taxes including but not limited to any applicable City of Oakland business tax, not explicitly assumed in writing by the Port hereunder. The Consultant shall comply with all valid administrative regulations respecting the assumption of liability for the payment of payroll taxes and contributions as above described and to provide any necessary information with respect thereto to proper authorities.

**9. CONFLICT OF INTEREST; CONFIDENTIALITY.**

9.1 The Consultant 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.

9.2 The Consultant represents that it has completely disclosed to Port all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of Port, or other officer, agent or employee of the Port or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for termination of this Agreement by the Port for cause. The Consultant agrees to comply with all conflict of interest codes adopted by the City of Oakland and Port of Oakland and their reporting requirements.

9.3 The Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, the Consultant represents to and agrees with the Port that the Consultant has no present, and will have no future, conflict of interest between providing the Port the Services hereunder and any interest the Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the Port, as determined in the reasonable judgment of the Port. The provisions of this Section 9 shall remain fully effective indefinitely after termination of Services to the Port hereunder.

9.4 The Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, the Consultant may have access to private or confidential information which may be owned or controlled by the Port and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Port. The Consultant agrees that all information disclosed by the Port to or discovered by the Consultant shall be held in strict confidence and used only in performance of the Agreement. The Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the Port's interests where such confidential information could be used adversely to the Port's interests. Consultant agrees to notify the Port immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of the Services required under, or in connection with this Agreement.

9.5 Any publicity or press releases with respect to the Project or Services shall be under the Port's sole discretion and control. The Consultant shall not discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without the Port's prior written consent. The Consultant shall have

the right, however, without Port's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform the Services under this Agreement.

9.6 The provisions of this Section 9 shall remain fully effective indefinitely after termination of Services to the Port hereunder.

## 10. SUSPENSION AND TERMINATION OF SERVICES.

(i) The Port may direct the Consultant to suspend, delay or interrupt Services, in whole or in part, for such periods of time as the Port may determine in its sole discretion. The Port may issue such directives without cause. The Port will issue such directives in writing. Suspension of Services shall be treated as an excusable delay. (ii) The Port may terminate performance of the Services under this Agreement in whole, or from time to time in part, for default, should the Consultant commit a material breach of this Agreement, or part thereof, and not cure such breach within ten (10) calendar days of the date of the Port's written notice to the Consultant demanding such cure. In the event the Port terminates this Agreement for default, the Consultant shall be liable to the Port for all loss, cost, expense, damage and liability resulting from such breach and termination. (iii) Port may terminate performance of the Services under this Agreement in whole, or from time to time in part, for convenience, whenever the Port determines that such termination is in the Port's best interests. In the event the Port terminates this Agreement for convenience, the Consultant shall be entitled to recover its costs expended up to the termination plus reasonable profit thereon to the termination date, but may recover no other cost, damage or expense.

## 11. OWNERSHIP OF WORK PRODUCT.

Any interest (including copyright interests) of the Consultant or its subcontractors or subconsultants, in studies, reports, memoranda, computational sheets, drawings, plans or any other documents (including electronic media) prepared by the Consultant or its subcontractors or subconsultants in connection with the Services, shall become the property of the Port. To the extent permitted by Title 17 of the United States Code, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the property of the Port. With Port's prior written approval, the Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities.

## 12. AUDIT/INSPECTION OF RECORDS.

12.1 The Consultant shall maintain all documents and records prepared by or furnished to the Consultant during the course of performing the Services for at least three (3) years following completion of the Services, except that all such items pertaining to hazardous materials shall be maintained indefinitely. Such records include, but are not limited to, correspondence, internal memoranda, calculations, books and accounts, accounting records documenting its work under its Agreement, and invoices, payrolls, records and all other data related to matters covered by this Agreement. Consultant shall permit the Port to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any federal agency having an interest in the subject of Agreement shall have the same rights conferred to the Port by this section. Such rights shall be specifically enforceable.

12.2 The Consultant shall maintain full and adequate records in accordance with the Port's requirements to show the actual costs incurred by the Consultant in the performance of this Agreement. If such books and records are not kept and maintained by the Consultant within a radius of fifty (50) miles from the offices of the Port at 530 Water Street, Oakland, California, Consultant shall, upon request of the Port, make such books and records available to the Port for inspection at a

location within said fifty (50) mile radius or the Consultant shall pay to the Port the reasonable, and necessary costs incurred by the Port in inspecting the Consultant's books and records, including, but not limited to, travel, lodging and subsistence costs. The Consultant shall provide such assistance as may be reasonably required in the course of such inspection. The Port further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the Port, and the Consultant 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 or within three (3) years after any pending issues between the Port and the Consultant with respect to this Agreement are closed, whichever is later.

12.3 If the Consultant's books and records have been generated from computerized data, the Consultant agrees to provide the Port or its representative extracts of data files in a computer readable format on data disks, e-mail with attached files or suitable alternative computer data exchange formats. The Consultant should not charge the Port for the reasonable use of the Consultant's photocopying machine while conducting the audit, nor for any cost of retrieving, downloading to diskette, and or printing any records or transactions stored in magnetic, optical, microform or other media.

12.4 The Consultant agrees to toll (a) commencing on the first day of any examination during the Inspection Period and ending four (4) years thereafter, all applicable periods of any statutes of limitations with regard to any matter arising out of the Inspection Period examination; (b) commencing on the first day of any audit conducted by or on behalf of the Port of the Consultant's books, records or data with respect to this Lease (an "**Audit**") and ending four (4) years after the date that the Port delivers to the Consultant a written copy of the Port's final findings on the Audit, all applicable periods of any statutes of limitations with regard to any matter arising out of the Audit; and (c) with respect to any claim or right or cause of action of the Port not addressed in the immediately preceding clauses (a) or (b), and regardless of whether or not the Port commences an Audit, commencing on the day such claim right or cause of action arises, and ending four (4) years thereafter, all applicable periods of any statutes of limitations with regard to such claim, right or cause of action.

## 13. NON-DISCRIMINATION.

The Consultant acknowledges that it has received and reviewed a copy of the most current version of the Port of Oakland's Discrimination Complaint Procedures/Unlawful Harassment Policy and Complaint Procedures. The purpose of these procedures is to provide an effective and expedited system of resolving allegations of employment discrimination and prevention of unlawful harassment in the workplace. The Consultant shall not discriminate against or harass any employee or applicant for employment 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. Consultant shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: hiring, upgrading, recruitment, advertising, selection for training, including apprenticeship, demotion, transfer, compensation, lay-off or termination, or any other term or conditions of employment.

## 14. FEDERAL AIP GRANT COMPLIANCE.

By executing this Agreement, Consultant agrees and certifies that Consultant will comply with the FAA Airport Improvement Program (AIP) provisions set forth below and Consultant shall also include each of these provisions in all of its contracts and subcontracts related to this Agreement. For purposes of Sections 15-19, Consultant is sometimes hereinafter referred to as "Contractor" and the Port is sometimes hereinafter referred to as "Sponsor".

## 15. GENERAL CIVIL RIGHTS PROVISIONS.

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

## 16. COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS.

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

16.1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

16.2. **Non-discrimination:** The Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

16.3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

16.4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

16.5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the Non-discrimination provisions of this Agreement, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- Withholding payments to the Contractor under the Agreement until the Contractor complies; and/or

- Cancelling, terminating, or suspending an Agreement, in whole or in part.

16.6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs 16.1 through 16.5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

## 17. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES.

During the performance of this Agreement, the Contractor, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq*., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq*.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq*.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against

minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**18. FAIR LABOR STANDARDS ACT.**

This Agreement incorporates by reference the provisions of 29 U.S.C. §201, et seq (the Federal Fair Labor Standards Act or "FLSA"), and its implementing regulations, with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping and child labor standards for full and part time workers. The Consultant has full responsibility to monitor compliance to the referenced statute and regulation. The Consultant must address any claims or disputes that arise from this requirement directly with the US Department of Labor – Wage and Hour Division.

**19. OCCUPATIONAL SAFETY AND HEALTH ACT.**

This Agreement incorporates by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Consultant must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Consultant retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 U.S.C. §651, et seq; 29 CFR Part 1910). Consultant must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**20. DISPUTES.**

Consultant shall continue its work throughout the course of any dispute, and Consultant's failure to continue work during a dispute shall be a material breach of this Agreement.

**21. FORUM**

This Agreement has been entered into in, and shall be governed by and construed in accordance with, the laws of the State of California, without regard to principles of conflict of law. All disputes shall be determined solely by the state and federal courts in Alameda County, California, and [party] consents to the exclusive jurisdiction of such courts with respect to any action connected with this Agreement.

**22. NO THIRD PARTY BENEFICIARIES.**

Except as expressly provided in this Agreement, nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement. Time is of the essence in the performance of this Agreement.

## 23. ATTORNEYS' FEES

If Consultant or the Port commences any action or proceeding against the other arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

## 24. NO WAIVER.

The granting of any progress payment, and any inspections, reviews, approvals or oral statements by any Port representative, or certification by any governmental entity, shall in no way limit the Consultant's obligations under this Agreement. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of this Agreement, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of the Port and Consultant.

## 25. STATUTES OF LIMITATION.

As between the parties to this Agreement, any applicable statute of limitations for any act or failure to act shall commence to run on the date of the Port's issuance of the final Certificate for Payment, or termination of this Agreement, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.

## 26. COVENANT AGAINST CONTINGENT FEES:

25.1. The Consultant warrants that no person or agency 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. For breach or violation of this warranty, the Port, at its option, may annul the Agreement or deduct from the contract price or otherwise recover from the Consultant the full amount of the contingent fee.

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

25.3. As used in this Section, "bona fide employee" means a person, employed by the Consultant and subject to the Consultant's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain the Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

25.4. As used in this Section, "contingent fee" 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.

25.5. As used in this Section, "improper influence" means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter.

**27. SEVERABILITY.**

Any provision or portion thereof of this Agreement prohibited by, or made unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof of this Agreement, which shall be enforceable to the fullest extent permitted by law and construed to give effect to fullest extent possible the intent of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms to the greatest extent permitted by applicable law.

**28. COMPLIANCE WITH LAWS.**

27.1. The Consultant represents that it will comply with all applicable laws, ordinances, general rules or regulations, permits, or land use restrictions or limitations at any time applicable thereto of any public or governmental authority, including the City and the Port, including but not limited to The Charter of the City (including without limitation Section 728 entitled "Living Wage and Labor Standards at Port-Assisted Businesses" and Port Ordinance No. 3666 entitled "An Ordinance Establishing a Living Wage Requirement") in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. The Consultant shall comply with all security requirements imposed by authorities with jurisdiction over the Project (including, but not limited to, Federal Aviation Administration, U.S. Department of Transportation, and other government agencies), and will provide all information, work histories and/or verifications as requested by such authorities for security clearances or compliance.

27.2. The Consultant further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations, consistent with the standard of care in this Agreement.

27.3. The Consultant, as a condition of execution of this Agreement certifies under penalty of perjury and as a condition of payment of its invoice(s) for service provided under this Agreement as follows:

a. All Employees, as defined respectively under Port Ordinance No. 3666, and Section 728 of the Charter of the City of Oakland (Hereinafter "Living Wage laws"), as amended from time to time, engaged in Covered Activities (as defined in the respective Living Wage laws) shall be compensated in compliance with the requirements of the respective and applicable Living Wage laws;

b. Claims, records and statements relating to the Consultant's compliance with the Living Wage laws are true and accurate, and are made with the knowledge that the Port will rely on same, and that they are submitted to the Port for the express benefit of Consultant's employees engaged in Covered Activities;

c. Should the Living Wage laws not apply to the Consultant at the time this

Agreement is entered into, but thereafter become applicable, Consultant will comply with all of its obligations under the respective Living Wage laws, when applicable; and

d. All terms used in this Section 28.3 and not defined shall have the meaning ascribed to such terms in the respective applicable Living Wage laws.

**29. AGENT FOR SERVICE OF PROCESS.**

Pursuant to California Code of Civil Procedure, Section 416.10, the Consultant hereby designates an agent for service of process as identified in Appendix D hereto.

The Consultant may at any time designate a new agent for service in the State of California by providing written notice, duly executed in the same manner as this Agreement, of the full name and address of its new agent. Unless otherwise agreed in writing by the Port of Oakland, no attempt to revoke the agent's authority to receive service shall be valid unless Port of Oakland has first received a duly executed designation of a new agent meeting the requirements of California law.

**30. DEPARTMENT OF INDUSTRIAL RELATIONS REQUIREMENTS.**

Effective March 1, 2015, if the services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to California Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

In addition, the Contractor and any subcontractors who will be performing the public works aspect of this project are required by law to be licensed and regulated by the Contractor's State License Board. The Contractor must be properly licensed for the particular public works aspects called for in this Agreement and must agree to comply with all applicable laws, regulations and requirements for public works of improvement.

**31. ENTIRE AGREEMENT.**

This Agreement and any written modification shall represent the entire and integrated agreement between the parties hereto regarding the subject matter of this Agreement, shall constitute the exclusive statement of the terms of the parties' agreement, and shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification. All prior negotiations are merged into this Agreement and shall be inadmissible in any enforcement of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day first mentioned above.

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

By _____

**J. CHRISTOPHER LYTLE**
Executive Director

Date: _____

**«CONSULTANT»**
a _____ corporation,

By _____
*Authorized Signature*

_____
Print Name and Title
(If Corporate: Chairman, President or Vice President)

Date: _____

Attest _____
*Authorized Signature*

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

Date: _____

Approved as to form and legality this _____ day of _____ 2017.

_____
**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. «Resolution»**

**P.A.#: 2017 -_____**

## APPENDIX A –SERVICES

This is an appendix attached to, and made a part of, the Agreement dated «EffectiveDate» between the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners ("Port") and «CONSULTANT» (" Consultant") for the provision of professional services.

**SCOPE OF WORK**

**APPROVED SUBCONSULTANTS**: Consultant shall use only the following personnel and subconsultants in performing Services.

_____
_____
_____

**TERM OF AGREEMENT**:

A. The term of this Agreement shall be for _____year(s) commencing _____and terminating _____.

B. The Port has the option of extending the Agreement for an additional *[no. of years]* in *[no. of years]* increments as authorized by the Executive Director, provided, however, that there shall be no increase in the maximum compensation payable hereunder.

## APPENDIX B – PAYMENT

This is an appendix attached to, and made a part of, the Agreement dated **«EffectiveDate»** between the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners ("Port") and **«CONSULTANT»** ("Consultant") for the provision of professional services.

**1. Basic Services.** The Port will pay the Consultant for Basic Services, a maximum compensation of **«Compensation»**, which sum includes costs for reimbursable expenses as identified below. Such payment shall be full compensation for all Basic Services required, performed or accepted under this Agreement. If the Port and the Consultant previously executed a purchase order for services within the scope of the Services of this Agreement, then the services performed and the compensation paid under that purchase order shall be subject to the terms of this Agreement and the previous payments deemed payments against the Agreement Price established in this Appendix. Such maximum compensation may only be increased as follows:

☐ With the prior written approval of the Executive Director for an additional amount not to exceed the limit authorized by the Board in Resolution No. «Resolution». Increase in maximum compensation with additional changes in scope of work shall be documented by a supplemental agreement to this Agreement.

☐ With the prior written approval of the Executive Director for an additional amount not to exceed the limit authorized by the Port's Purchasing Ordinance. Increase in maximum compensation with additional changes in scope of work shall be documented by a supplemental agreement to this Agreement.

☐ With the adoption of authorizing resolution by the Board of Port Commissioners.

**2. Payment Schedule.** Progress payments for Basic Services for each phase of the work shall be made as follows:

☐ upon completion of the work ☐ as invoiced

☐ monthly ☒ as set forth in the attached schedule.

**3. Reimbursable Expenses.** Reasonable expenses to be reimbursed upon approval of Project Manager.

☐ Yes

The Port will pay Consultant for "Costs and Reimbursable Expenses" as set forth below. All costs not listed will not be allowed.

3.1 Travel Costs. Consultant shall obtain written approval of the Port Project Manager for all travel costs prior to submitting the invoice for reimbursement of these costs. The Port Project Manager will review and determine, in the Port's sole discretion, whether the travel costs are reasonable and reimbursable based on the Port's Travel Authorization

and Reimbursement Policy/Administrative Policy No. 406. (The Port will provide a copy of AP 406 to Consultant upon request.) The reasonable expense of travel costs incurred by Consultant when requested by Port to travel to a location more than 50 miles from either the project site, the Consultant's office(s), or the Port's office, incurred.

3.2 Delivery Costs. Courier services and overnight delivery costs incurred.

3.3 Reproduction Costs. Reproduction and postage costs of required plans, specifications, bidding and Contract Documents, if any, incurred.

☐ No

☐ **Limits:**

**4. Invoices.** All payments shall require a written invoice from Consultant in a form acceptable to Port. Port shall make payment on approved amounts within each invoice within 30 days of receipt. **Original invoices shall be sent to PORT OF OAKLAND, Accounts Payable, P.O. Box 28413, Oakland, CA 94604.**

## APPENDIX C - INSURANCE

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

**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 $25,000 per occurrence unless otherwise approved by Port Risk Management.
- **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.
- 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, except $5,000,000 for vehicles operating in the South Field, the Aviation Operating Area ("AOA"), or any active airfields of the Oakland International Airport.
- **Deductible/Self-Insured Retention:** Not more than $25,000 per accident unless otherwise approved by Port Risk Management.
- **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.
- **Definition of "Covered Operations**" shall include All work performed by Consultant or its contractors or subcontractors.

**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 $25,000 per occurrence for Employer's Liability unless otherwise approved by Port Risk Management.
- 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**

- **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 $100,000 per claim unless otherwise approved by the Port Risk Management.
- **Additional Term:** 2 years after completion and acceptance of the Services.
- If the Services involve software or technology services, Technology Liability coverage, including coverage for privacy liability.
- If the Services involve outsourced technology or internet services, Network and Media Liability coverage.

**Other Insurance Requirements:**

- **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

**APPENDIX D**

**CONSULTANT AND CONSULTANT'S NOTICE ADDRESS**

**Full Legal Name of Consultant:** **«CONSULTANT»**

**Corporate Address:**

**Form of Business Entity (Check one)**

- ☐ **Sole proprietorship**
- ☐ **Corporation: State of _____**
- ☐ **Partnership: ☐ General ☐ Limited**
- ☐ **Limited Liability Company**
- ☐ **Other: _____**

**If Corporation: (*Required Information)***
**Agent for Service of Process (Name and Address)**

**Contact Individual / Position:**

**Telephone No.:**

**Facsimile No.:**

**E-Mail Address (if any):**

**Website (if any):**

**Tax Identification No.:**

**APPENDIX E**

**PROJECT MANAGER**

***Division Director***

***Technical Manager***

**ATTACHMENT 12**

# SPACE/USE PERMIT
# FOR
# FOOD, BEVERAGE, RETAIL AND DUTY FREE CONCESSION

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# SPACE/USE PERMIT

For the better promotion of commerce and navigation and the development of the Port of Oakland and Metropolitan Oakland International Airport for the benefit of the public, the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners, herein referred to as the "Port", by its execution hereof, hereby authorizes the person or entity identified in Paragraph A below, hereinafter referred to as "Permittee," to conduct business and/or occupy space at Metropolitan Oakland International Airport, hereinafter referred to as the "Airport," for the purposes and on the terms and conditions hereinafter stated in this Space/Use Permit ("Permit") dated July 18, 2006.

As used in this Permit, the term "Port" shall mean Port of Oakland, which consists of the Port Department of the City of Oakland ("City"), under the exclusive control and management of the Board of Port Commissioners (the "Board"). In any case under this Permit that Port may or shall take any action, Port's Director of Aviation (sometimes hereafter the "Director") is authorized to take such action unless this Permit provides for action by the Board or by resolution or ordinance, and except as otherwise provided now or hereafter by law, the Charter of the City, or by resolution or ordinance of the Board.

Paragraph A. **Permittee**. The name, address, telephone number, e-mail address, fax number and contact of the Permittee hereunder are as follows:

| | | |
|---|---|---|
| Name: | Host International, Inc. | |
| Address: | 6600 Rockledge Drive<br>Bethesda, Maryland 20817 | |
| Telephone: | 240-694-4100 | Contact: Patrick Banducci |
| E-Mail: | pat.banducci@hmhost.com | |
| Fax Number: | 240-694-4640 | |

Paragraph B. **Use and Operation.**

Paragraph B.1 Permitted Uses. The permitted uses (the "Permitted Uses") include only the following: the right to sell food, beverages and/or retail in the Assigned Space (as defined in Paragraph D below), as more particularly shown opposite each Concession Unit described on attached Exhibit "5" (each a "Concession Unit"). References in this Permit to "retail" shall include, without limitation, in-bond duty free merchandise. The Permitted Uses for each Concession Unit shall be specific to that Concession Unit, and the Permittee shall not, without the prior written consent of the Port, granted pursuant to the last paragraph of this Paragraph B.1, use that Concession Unit for the Permitted Uses authorized for any other Concession Unit. In addition, Permittee will have the non-exclusive right to provide food and beverages to meetings and events in the Tower Lounge located on the 8th floor of the Terminal 1 Air Traffic Control Tower, as long as that Air Traffic Control Tower remains in its present

location and the Tower Lounge continues to be used for meetings and events. Permittee is only authorized to conduct at the Airport, and only from the Assigned Space as described in Paragraph D below, the Permitted Uses and no other business or uses. The Permitted Uses do not permit Permittee to have access to the air operations area of the Airport. Permittee shall not engage in any activity on the Airport outside of the Assigned Space for the recruitment or solicitation of business, except that after the commencement of the Interim Term or the Primary Term (as defined in Paragraph C below), Permittee shall have the right, substantially in accordance with Permittee's transition plan attached hereto as Exhibit "2" (the "Transition Plan"), to operate food, beverage and/or retail carts outside of the Concession Units in locations in Terminal 1, Terminal 2 and Terminal 2 Extension (as defined in Paragraph D.1 below) approved in writing by the Director, until the Director notifies Permittee in writing that he or she has determined that sufficient Concession Units in Terminal 1, Terminal 2 and Terminal 2 Extension, respectively, have opened to permit the elimination of such food, beverage and/or retail carts.

In the event Permittee desires to use a Concession Unit for any purpose other than the Permitted Uses for that Concession Unit, Permittee may submit a request to the Director, and the Director may, in his or her sole and absolute discretion, approve or deny such request in writing. Any such decision shall be final and binding on Permittee. Without limiting the generality of this Paragraph B.1 or any of the requirements set forth in Permittee's Proposal incorporated as part of this Permit, as provided in Paragraph M below, Permittee shall not operate any Concession Unit under any name or brand, other than a name or brand specifically permitted or required herein, or as otherwise approved in writing by the Director. The Director has no authority to approve any use of the Assigned Space, or of any Concession Unit included therein, for any use that is not for a food and beverage or retail purpose.

Paragraph B.2 No Exclusivity . Permittee acknowledges and agrees that except for its exclusive use of the Assigned Space, to the extent provided in Paragraph D.1 below, Permittee has no exclusive rights to conduct the business of the Permitted Uses in the existing terminals at the Airport and that Port may arrange with others for similar activities in such terminals or at other locations at the Airport. Permittee shall have no right to occupy space or conduct business in any future terminal additions or unit terminals developed by Port during the Term of this Permit.

Paragraph B.3 Storage Maximum. Permittee shall use no more than fifteen (15%) of the square footage in each Concession Unit for storage.

Paragraph B.4 Pricing.

(a) Permittee shall price its products in accordance with the Airport Pricing Policy. For the purposes of this Permit, the Airport Pricing Policy shall mean establishing prices that are no more than 15% higher than prices charged by comparable food and beverage businesses located off-Airport, and no more than 10% higher than prices charged by comparable retail and newsstand business located off-Airport, in each case excluding sale or promotional prices. "Comparable" shall mean (1) if Permittee is a licensee of a restaurant concept, then the pricing comparison shall be to the other restaurants with the same concept operated by the licensor or other licensees in the nine (9) county San Francisco Bay Area, (2) if

Permittee operates food and beverage units that are not operated under license or franchise agreements, or that do not have other locations in the nine (9) county San Francisco Bay Area, pricing will be compared to restaurants with a similar style of service and menu, located in shopping centers or commercial districts in the nine (9) county San Francisco Bay Area, or (3) if Permittee operates a retail store or newsstand, pricing will be compared to shops with a similar style of service located in shopping centers or commercial districts in the nine (9) county San Francisco Bay Area.

(b) Permittee's initial proposed pricing and menus (if a food and beverage location) for each Concession Unit, which have been approved by the Director, is attached hereto as Exhibit "4". No changes to these menus or prices may be made without the prior written consent of the Manager of Airport Properties. Any proposed changes to these prices must be submitted to the Port in writing, along with supporting documentation to show comparability. The Port shall consider such request and supporting data, and may conduct its own price comparisons with such off-Airport restaurants and shops as the Port considers necessary. For the purposes of this Paragraph B.4(b), the decision of the Manager of Airport Properties with respect to changes to Permittee's menu's or prices shall be final and binding on Permittee.

(c) Preprinted Prices. When an item is prepriced, neither Permittee nor its subtenants will charge a price higher than the preprinted price.

(d) Survey Procedure.

(i) Price Checks. Permittee shall conduct a price check on each of its Concession Units annually. To accomplish this, Permittee shall conduct a price check on one fourth of its total Concession Units each calendar quarter-year, at a minimum, and all reports must be presented to Port quarterly. Surveys of product items determined by Port will be performed by Permittee on each of Permittee and its authorized sublessee's Concession Units to ensure pricing is in accordance with this Permit and the Airport Pricing Policy. Port, at its option, may develop the list of Concession Units chosen for each price check and each chosen Concession Unit will be given the list of categories of product to be checked. Permittee and its authorized sublessees can be requested at any time to produce a list of product sizes, brands and prices presently being sold in their Concession Unit. Port can review the list and select the items to be checked on a particular price check. Port may choose to select all items for any particular price check.

(ii) Spot Surveys. Additionally, Port may request Permittee to conduct "spot" or random surveys of the approved local comparison locations and the prices charged at the Airport periodically to ensure compliance with the Airport Pricing Policy.

(e) Failure to Adhere to the Airport Pricing Policy. Permittee or its authorized sublessee will be given one (1) week to correct any price overage discrepancies shown in any survey or customer complaint provided by Port to Permittee, or to submit written justification for retaining current prices for these items. In response to Permittee's or its authorized sublessee's written justifications, Port will determine whether overages must be eliminated, and if so, Permittee or its authorized sublessee must reduce prices within three (3)

days of the date of Port's decision. Port reserves the right to have selected tenants conduct and complete a price compliance survey on selected products or other inventories at Port's sole discretion. This price compliance survey must be completed and submitted to Port within two (2) weeks of receipt of Port's written request. Port will not unreasonably withhold its consent to a request for a price increase and will respond to such requests within twenty-one (21) days of the date such request is submitted in writing by Permittee to Port's Director. If Port does not respond within said twenty-one (21) day period, the Permittee may implement the requested price increase, subject to Port's right to require rolling-back the price to the previous price at any time.

Paragraph C. **Term**. The Term of this Permit shall consist of the Interim Term (as hereafter defined in this Paragraph C) and the Primary Term (as hereafter defined in this Paragraph C). The Term of this Permit shall commence on the date this Permit is executed by the Permittee and the Director and then signed by the Port Attorney, with the date of execution by the Port Attorney, as set forth in the signature block immediately following Paragraph Q below, being the Commencement Date, and shall expire on the expiration of the Primary Term, unless sooner terminated in accordance with the terms and provisions of this Permit. The Interim Term shall commence on the Commencement Date and shall expire at 11:59 PM on May 31, 2008. The Primary Term shall commence on June 1, 2008 and shall expire at 11:59 PM on May 31, 2018. Notwithstanding the commencement of the Term of this Permit on the Commencement Date, Permittee shall have no right to use or occupy any Concession Unit included in the Assigned Space until the Delivery Date (as hereafter defined in this Paragraph C) for that Concession Unit. The Delivery Date for a Concession Unit shall occur when the Port has provided written notice to the Permittee that Permittee may take possession of that Concession Unit pursuant to the terms of this Permit. The Port shall have no liability to Permittee arising out of any delay in the Delivery Date of any or all of the Concession Units, and no such delay shall extend the Term of this Permit. However, if the Delivery Date for a Concession Unit has not occurred by the Latest Date for Delivery for that Concession Unit, as set forth opposite that Concession Unit on attached Exhibit "5", then Permittee shall have the right, by written notice provided to the Port prior to the Delivery Date for that Concession Unit, to cause that Concession Unit (and its associated Minimum Annual Guaranty, as determined pursuant to Paragraph E below) to be deleted from this Permit as of the date of such written notice, in which event Port shall send to Permittee an amendment to the Permit showing the deletion of the Concession Unit from the Assigned Space, and this Permit shall be deemed amended thereby. Port may, from time to time prior to the commencement of the Primary Term, and shall after the Delivery Date for all Concession Units included in the Assigned Space has occurred, provide Permittee with a Revised Exhibit "5" showing the actual Delivery Date for each Concession Unit, and such Revised Exhibit "5" shall supersede and replace any prior Exhibit "5" attached hereto or provided by the Port.

Paragraph D. **Assigned Space to be Occupied; Common Areas.**

Paragraph D.1 Assigned Space – Initial Description. The Assigned Space is described on attached Exhibit "1". The Assigned Space is located in Terminal 1, Terminal 2 and the Terminal 2 Extension, as such terms are hereafter defined. As used in this Permit, Terminal 1 shall mean the existing terminal building at the Airport designated by Port as "Terminal 1", presently consisting of Buildings M-101, M-102 and M-103; Terminal 2 shall

mean the existing terminal building at the Airport designated by Port as "Terminal 2", presently consisting of buildings M-130 and M-152; and "Terminal 2 Extension" shall mean the improvements and extensions of Terminal 2 described on attached Exhibit "6", to be known as Buildings 367 and 368. Permittee shall have exclusive use of the Assigned Space, except to the extent otherwise provided in Paragraph I.3(c) below.

Paragraph D.2 Assigned Space – As-Built Condition.

Port shall have the right, at any time within one hundred twenty (120) days after the Rent Commencement Date (as defined in Paragraph E.3(a) below) applicable to a Concession Unit, to measure the "as-built" size of that Concession Unit. In determining such "as-built" size and in determining Permittee's responsibilities for the Assigned Space, the exact boundaries of each Concession Unit shall be deemed to be three (3) inches inside each wall separating that Concession Unit from the adjacent Concession Unit or the external terminal wall, and (b) with respect to the facade and/or wall on the front of a Concession Unit, separating that Concession Unit from the Common Areas in the terminal, the exact boundary shall be deemed to be the external face of the facade and/or wall. The Assigned Space does not include any storage and/or support space rented for additional consideration under a separate Space/Use Permit or other agreement with the Port.

If the Port exercises its rights under this Paragraph D.2, it shall notify the Permittee in writing of the "as-built" size of the Concession Unit. Permittee may at its expense within ten (10) days of its receipt of such written notice from the Port, have the Concession Unit remeasured and submit such remeasurement and/or its objections to the Port's remeasurement in writing to the Port. The Port shall in good faith review any such timely submittals and determine what changes, if any, it will make in the "as built" size of the Concession Unit, but the Port shall not be required to make any changes and the Port's decision shall be final and binding on Permittee. The Minimum Annual Guaranty (as defined in Paragraph E.1(a) below) applicable to that Concession Unit shall be recalculated by multiplying such "as-built" size, as determined by the Port pursuant to the foregoing provisions of this paragraph, by $75.00 per square foot, effective as of the Rent Commencement Date for that Concession Unit (as defined in Paragraph E.3(a) below), with any increase in the amounts that were previously payable by Permittee to Port for that calendar year due with the next installment or installments of the Rent payable to Port under Paragraph E below, and with any decrease in the amounts that were previously payable by Permittee to Port for that calendar year deducted from the next installment or installments of the Rent otherwise payable to Port under Paragraph E below.

Paragraph D.3 Common Areas.

Permittee shall have the right, in common with others authorized by the Port, to use all Common Areas (as hereafter defined in this Paragraph D.3); provided, however, that Port may, in its sole discretion, and without liability to Permittee, change the size or location of the Common Areas, including without limitation, converting Common Areas to leaseable areas and leaseable areas to Common Areas, and close Common Areas. Port may, in its discretion, maintain the Common Areas, establish and enforce Airport Rules, Policies and Regulations (as defined in Section 12 of Attachment "A" to this Permit) concerning the Common Areas, temporarily close portions of the Common Areas for maintenance purposes, and make changes to

the Common Areas, including without limitation, changes in the location of security check points, driveways, entrances, exits, parking spaces and the direction of the flow of traffic. As used in this Permit, "Common Areas" means all areas and facilities located within the Airport that are designated by Port from time to time for the general use and convenience of permittees, tenants and other occupants at the Airport, airline passengers and other visitors to the Airport, such as concourses, sidewalks, elevators, escalators, moving sidewalks, parking areas and facilities, restrooms, pedestrian entrances, driveways, loading zones and roadways.

In the event the Port makes a change to the Common Areas that the Port determines, in the exercise of its sole discretion, negatively impacts a Concession Unit's access and/or visibility so as to materially and adversely affect that Concession Unit's ability to generate Gross Receipts (as defined in Section 13(1) of Attachment "A" to this Permit), then the Port will exercise its rights under Paragraph H below with respect to that Concession Unit.

Paragraph E. **Rent**. In consideration for the rights granted hereunder by Port, Permittee hereby agrees to pay to Port monthly, in advance, on the first (1st) day of each calendar month during the Term hereof, one twelfth (1/12th) of the Minimum Annual Guaranty applicable to each Concession Unit, as set forth in Paragraph E.1 below. In the event the Rent Commencement Date for a Concession Unit shall commence or end on any day other than the first and last day, respectively, of a calendar month, such consideration due hereunder for a portion of such month shall be prorated on a per-diem basis, based on the number of days in that calendar month, and the first payment of the applicable Minimum Annual Guaranty for each Concession Unit shall be due on or before the Rent Commencement Date applicable to that Concession Unit. As additional consideration for the rights granted hereunder by Port, Permittee hereby agrees to pay to Port the Percentage Fees specified in Paragraph E.2 below and in accordance with the provisions of Section 13 of Attachment "A" to this Permit. Amounts payable by Permittee to Port under this Paragraph E shall collectively be referred to as "Rent".

Paragraph E.1 Minimum Annual Guaranty.

(a) The Minimum Annual Guaranty for each Concession Unit, is shown opposite that Concession Unit on said Exhibit "5" as such amount may be adjusted based on the "as built" condition of that Concession Unit, as provided in Paragraph D.2 above, and subject to further adjustment as provided in Paragraph E.1(b) below (the "Minimum Annual Guaranty").

(b) On the Initial Minimum Annual Guaranty Adjustment Date (as hereafter defined in this Paragraph E.1(b)), and on each subsequent anniversary of such Initial Minimum Annual Guaranty Adjustment Date, the Minimum Annual Guaranty applicable to each Concession Unit pursuant to Paragraph E.1 above, shall be increased (but not decreased) to eighty-five percent (85%) of the total Rent payable by Permittee to Port under Paragraph E above for such Concession Unit for the calendar year most recently ended prior to the Initial Minimum Annual Guaranty Adjustment Date, or the most recent anniversary thereof, as applicable. As used in this Permit, the Initial Minimum Annual Guaranty Adjustment Date for a Concession Unit shall occur on the July 1st immediately following the expiration of the first full calendar year that commenced on or after the Rent Commencement Date for such Concession Unit. Thus, for example, if the Rent Commencement Date for a Concession Unit occurred on

October 1, 2006, the Initial Minimum Annual Guaranty Adjustment Date for that Concession Unit shall occur on July 1, 2008, the adjustment shall be based on the Rent payable by Permittee to Port under Paragraph E for the calendar year ending December 31, 2007, and subsequent adjustments shall occur on July 1, 2009 and on each subsequent July 1st during the remainder of the Term.

Paragraph E.2 Percentage Of Gross Receipts. The percentage of Gross Receipts derived from Permittee's business at the Airport ("Percentage Fees") payable by Permittee for each Concession Unit is shown opposite that Concession Unit on said Exhibit "5"; provided, however, that Concession Units (excluding those with a Permitted Use for retail, or as a bar/cocktail lounge that does not sell food) that are neither Branded (as hereafter defined in this Paragraph E.2), nor operated by an ACDBE (as defined in Paragraph N below), shall be required to pay the Port an additional three percent (3%) of Gross Receipts from that Concession Unit; and further provided, however, that during that portion of the Interim or Primary Term that Permittee is authorized pursuant to Paragraph B.1 above to operate food, beverage or retail carts outside a Concession Unit in Terminal 1, Terminal 2 or Terminal 2 Extension, Permittee shall pay Port, in lieu of the Minimum Annual Guaranty and any other Percentage Fees payable on such Concession Units, Percentage Fees equal to fifteen percent (15%) of the Gross Receipts derived from the business conducted by Permittee from such carts. Except during that portion of the Interim or Primary Term governed by the second proviso in the immediately preceding sentence, Permittee shall subtract the amount of the monthly payment of the applicable Minimum Annual Guaranty from the applicable Percentage Fees payable to Port each month for each Concession Unit, and only the amount, if any, by which the applicable Percentage Fees for such Concession Unit exceeds the monthly payment of the applicable Minimum Annual Guaranty for such Concession Unit shall be paid to Port as Percentage Fees. For purposes of this Paragraph E.2, a Concession Unit shall be Branded only if it is a well recognized trade name (defined as appearing on at least one "Best of" list in a newspaper or Entertainment Guide published in the nine (9) county San Francisco Bay Area) which is currently doing business offering a standardized menu (in the case of food establishments) and trade dress in at least one (1) location in the nine (9) county San Francisco Bay Area, or if it does business under an established trade name which is currently doing business offering standardized menu (in the case of food establishments) and trade dress in at least fifteen (15) locations in the State of California, or in at least twenty-five (25) locations in the United States. A "location" means a unit serving and regularly accessible to the general public, excluding airports, sports venues, and theme parks or other gated facilities. Brands may be operated as owned businesses, licensees or franchises.

Paragraph E.3 Rent Commencement Date; Late Opening Charges; Prepayments.

(a) The Rent Commencement Date for each Concession Unit is the earlier of the date on which the Permittee's Work in that Concession Unit, as described in Section 1(2) of Attachment "A" to this Permit, is substantially complete and Permittee opens for business therein, or the Latest Opening Date for that Concession Unit, as set forth opposite that Concession Unit on attached Exhibit "5" (the "Latest Opening Date"). After the Rent Commencement Date for a Concession Unit has occurred, Permittee shall, promptly after Port's written request, execute and return to the Port a written acknowledgment of the Rent Commencement Date for that Concession Unit.

(b) In the event Permittee fails to open a Concession Unit for business on or before the Rent Commencement Date applicable to such Concession Unit, Port will incur substantial damages, the exact amount of which are extremely difficult to fix. Accordingly, for each day after the Rent Commencement Date of a Concession Unit until the day on which Permittee initially opens that Concession Unit for business, Permittee shall pay to Port Five Hundred Dollars ($500) (in addition to the Rent provided in Paragraph E above), as liquidated damages. The parties have agreed that this amount represents a reasonable approximation of the damages likely to be suffered by Port in the event Permittee shall fail to open a Concession Unit for business on or before the Rent Commencement Date for that Concession Unit. In the event a Concession Unit is not open for business on the date that is sixty (60) days after the Rent Commencement Date for that Concession Unit, Port shall have the option to remove that Concession Unit (and its associated Minimum Annual Guaranty) from the Assigned Space, exercisable by written notice to Permittee given before that Concession Unit is open for business. In the event a Concession Unit is removed from the Assigned Space pursuant to the foregoing provisions of this Paragraph E.3(b), the Port shall send to Permittee an amendment to this Permit showing the deletion of that Concession Unit from the Assigned Space, and this Permit shall be deemed amended thereby. Permittee shall be liable for all damages associated with such termination or removal, including Port's re-leasing costs, and for any Losses (as defined in Section 1(2)(d) of Attachment "A" to this Permit) arising under Section 1(2)(a) of Attachment "A" to this Permit.

(c) Notwithstanding anything in this Permit to the contrary, in the event Permittee shall fail to pay any Rent when due hereunder, the Port shall have the right to require Permittee to pay estimated monthly Rent (including the monthly installment of the Minimum Annual Guaranty and one month's Percentage Fees, and all other amounts payable by Permittee to Port in a calendar month under this Permit) one (1) month in advance of when such payment would otherwise be due. Such prepayment will be based on the highest monthly Rent previously due from Permittee under this Permit. Such right shall be exercised by a written notice from Port to Permittee, which notice may be given any time after such default by Permittee, regardless of whether the same is cured by Permittee. The provision of this Paragraph E.3(c) shall not limit the Port's rights under Section 19 of Attachment "A" to this Permit.

Paragraph E.4 Remitting Payments. All payments due under this Permit shall be remitted to: Port of Oakland, File No. 73752, P.O. Box 6000, San Francisco, California 94160-3752, or to such other address as shall be designated by Port by written notice to Permittee in accordance with the requirements of Section 24 of Attachment "A" to this Permit. All such payments shall be made in lawful money of the United States, without demand, set-off or deduction of any kind.

Paragraph E.5 Tenant Infrastructure Fee. For Permittee's improvements, the annual Tenant Infrastructure Fee (calculated at the rate of $12 per square foot for each Concession Unit) is shown opposite that Concession Unit on attached Exhibit "5," as such amount may be adjusted based on the "as-built condition of the space determined pursuant to Paragraph D.2 above. The annual Tenant Infrastructure Fee ("TIA Fee") for each Concession Unit shall be payable in twelve equal monthly installments, with each installment payable on the same date as the payment of the monthly installment of the Minimum Annual Guaranty for that Concession Unit, as provided in Paragraph E above. The monthly installment of the TIA Fee

shall be subject to proration on a per-diem basis to the same extent that proration is provided for the monthly installment of the Minimum Annual Guaranty in Paragraph E above.

Paragraph F. **Performance Deposit**. Permittee shall maintain with the Port a performance deposit in the initial amount set forth on Exhibit 5, which shall be the sum of the performance deposits required for each Concession Unit, and complying with and subject to the provisions of Section 27 of Attachment "A" to this Permit, including without limitation the provisions of Section 27 of Attachment "A" relating to adjustments to the amount of Permittee's performance deposit (the "Performance Deposit"). The existence or amount of the Performance Deposit shall not limit Permittee's liability or the Port's rights in the event Permittee fails to make any payments to Port required by this Permit or to comply with any of Permittee's other obligations under this Permit.

Paragraph G. **Insurance Requirements**. Permittee shall maintain in force, commencing on the date provided in Section 17(1) of Attachment "A" to this Permit and thereafter during the Term of this Permit, Workers Compensation/Employers Liability, Comprehensive or Commercial General Liability Occurrence Form (CGL) Insurance insuring Bodily Injury and Property Damage Liability, and such other insurance required by this Paragraph G and Section 17 of Attachment "A" hereto, including:

1. **Comprehensive or Commercial General Liability insuring Bodily Injury and Property Damage Liability, including:**

| | |
|---|---|
| X | Premises and Operations |
| X | Blanket Contractual |
| X | Product Liability including Completed Operations |
| X | Broad Form Property Damage |
| X | Personal Injury |
| X | Independent Contractor's Coverage |
| X | Owned, Non-owned and Hired Automobile Liability |
| X | Fire Legal Liability ($100,000) |
| X | Builder's Risk – 100% of Replacement Cost Value |
| X | Contractor's Pollution Legal |
| X | Asbestos Removal |

with such coverage and limits as may be reasonably requested by the Port from time to time, but in no event for less than:.

| | |
|---|---|
| | One Million And 00/100 ($1,000,000.00) |
| X | Five Million And 00/100 ($5,000,000.00) |
| | Other: _____ |

2. **Permittee shall also provide to the Port evidence of:**

X Statutory Workers' Compensation coverage under California law.
X Employer's Liability coverage for no less than One Million Dollars ($1,000,000)

_____Endorsements evidencing Longshoreman and Harbor Workers' coverage and Jones Act coverage (if applicable).
___X___Subrogation Waiver.

**Evidence must show these endorsements:**

___X___Port of Oakland, its Board of Port Commissioners, Officers, Agents and Employees as Additional Insured **BY SIGNED ENDORSEMENT TO THE GENERAL LIABILITY POLICY.**
___X___Firm (unconditional) 30-day advance Notice of Cancellation
___X___Cross-Liability (Severability of Interest) Clause.
___X___Coverage is Primary & Non-Contributory.
___X___Deductibles or Self-Insured Retentions Over $10,000.00 **Must** be Approved by Risk Manager.

Original signature is required on additional insured endorsement; no copies, sign bys or facsimiles are acceptable. Written binders are acceptable as interim evidence. Operations or occupancy may be interrupted without proper evidence.
Send certificates to:

**Port of Oakland**
**Attn: Risk Management Department**
**530 Water Street**
**Oakland, CA 94607**
**Fax #: 510-627-1626**

Evidence of insurance coverage required by this Paragraph G or by Section 17 of Attachment "A" to this Permit is to be kept on file by Permittee with Port in accordance with the requirements of Section 17 of said Attachment "A".

Paragraph H. **Relocation, Expansion, Contraction; Future Terminal Building Additions.**

Paragraph H.1 Relocation, Expansion, Contraction.

(a) On the terms set forth in this Paragraph H.1, the Port may at any time, require that (i) Permittee relocate and surrender all or part of the Assigned Space (such change to the Assigned Space is hereafter referred to as a "Required Relocation"), and/or (ii) the Assigned Space be contracted or expanded (such change to the Assigned Space is hereafter referred to as an "Assigned Space Change"). Port shall give Permittee at least 180 days prior written notice (the "Change Notice") setting forth a description of the Required Relocation or the Assigned Space Change, as applicable, the approximate effective date thereof (the "Target Effective Date"), and the "Maximum Reimbursement Amount," if any (as may be authorized in writing by the Director in his or her sole discretion, if One Hundred Thousand ($100,000) Dollars or less, or if more, by the Board in its sole discretion and set forth in a resolution duly adopted by the Board), for Permittee's remodeling of the replacement Assigned Space or for

Permittee's expansion/contraction work, and with respect to a Required Relocation, the location of the on-Airport replacement Assigned Space, as conclusively determined by the Port. The Change Notice shall be given no less than three (3) months prior to the Target Effective Date.

(b) With respect to a Required Relocation, if the replacement Assigned Space or the Maximum Reimbursement Amount is deemed unsatisfactory to Permittee, then Permittee may cause all (but not less than all) Concession Units included in the Assigned Space that was the subject of the Required Relocation to be deleted from this Permit by giving written notice thereof to Port within sixty (60) days after the Change Notice is given. In the event Permittee timely gives such notice of deletion, then each such Concession Unit shall be deleted from the Permit on the Target Effective Date, and on such date, Permittee shall surrender each such Concession Unit in the condition required by Section 20 of Attachment "A" to this Permit as if this Permit had terminated on the Target Effective Date. If Permittee does not timely cause the Assigned Space that was the subject of the Required Relocation to be deleted from this Permit pursuant to the foregoing, Permittee shall surrender such Assigned Space and relocate to the replacement Assigned Space on a date (the "Surrender Date") determined by Port (which shall be no earlier than the Target Effective Date). On the Surrender Date, Permittee shall surrender such Assigned Space in the condition required by Section 20 of Attachment "A" to this Permit as if this Permit had terminated on the Target Effective Date. In the event of a relocation pursuant to this Paragraph H.1(b), Permittee shall refurbish, redecorate, and modernize the interiors and exteriors of the replacement Assigned Space, such that the replacement Assigned Space is of at least the same quality as the original Assigned Space. All such work shall be subject to all of the applicable requirements of this Permit, including without limitation, Section 1 of Attachment "A" to this Permit. If a Maximum Reimbursement Amount for the work has been established pursuant to Paragraph H.1(a) above, then once the remodeling of the replacement Assigned Space is completed, and Port has approved the work, Permittee must submit to Port (i) a certificate from Permittee's architect certifying that the remodeling was completed in strict compliance with the plans and specifications approved by Port, (ii) summary of all costs incurred, including copies of paid invoices and cancelled checks showing the costs actually paid by Permittee for the remodeling of the replacement Assigned Space and Permittee's out-of-pocket moving costs, and (iii) lien releases from all contractors, subcontractors, and materialmen entitled to payment in connection with the remodeling of the replacement Assigned Space. Following its review and approval of those submissions, Port will reimburse Permittee for all reasonable costs of remodeling the replacement Assigned Space and moving its merchandise and other personal property to the replacement Assigned Space from the original Assigned Space; provided that in no event will Port be obligated to reimburse Permittee for more than the Maximum Reimbursement Amount, if any, or to pay or reimburse Permittee for any other costs or expenses, including business interruption costs.

(c) With respect to an Assigned Space Change where the square footage of a Concession Unit originally included in the Assigned Space will be expanded or contracted by more than ten percent (10%), Permittee may cause such Concession Unit to be deleted from this Permit by giving notice thereof to Port within thirty (30) days after the Change Notice is given. In the event Permittee timely gives such notice of deletion, then such Concession Unit shall be deleted from the Assigned Space on the Target Effective Date, and on such date, Permittee shall surrender such Concession Unit in the condition required by Section 20 of Attachment "A" to this Permit as if this Permit had terminated on the Target Effective

Date. If Permittee does not timely cause the Concession Unit to be deleted from the Assigned Space pursuant to the foregoing, Permittee shall in accordance with all of the applicable requirements of this Permit, including, without limitation, Section 1 of Attachment "A" to this Permit, cause the Concession Unit to be expanded or contracted as described in the Change Notice on or before the Target Effective Date. If a Maximum Reimbursement Amount for the work has been established pursuant to Paragraph H.1(a) above, then once the expansion/contraction work is completed, and Port has approved the work, Permittee must submit to Port (i) a certificate from Permittee's architect certifying that the expansion/contraction work was completed in strict compliance with the plans and specifications approved by Port, (ii) summary of all costs incurred, including copies of paid invoices and cancelled checks showing the costs actually paid by Permittee for the expansion/contraction work, and (iii) lien releases from all contractors, subcontractors, and materialmen entitled to payment in connection with the expansion/contraction work. Following its review and approval of those submissions, Port will reimburse Permittee for all reasonable costs of the expansion/contraction work; provided that in no event will Port be obligated to reimburse Permittee for more than the Maximum Reimbursement Amount, if any, or to pay or reimburse Permittee for any other costs or expenses, including business interruption costs.

(d) Permittee shall maintain in a true and accurate manner and in accordance with generally accepted accounting principles, such original books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing an audit or examination of the expenditure of all funds for which reimbursement, if any, has been made by the Port pursuant to Paragraph H.1(b) or Paragraph H.1(c) above or Paragraph H.1(e) below. The Port shall have the right, upon three (3) business days notice, at any time until the expiration of 36 months after the last such reimbursement by the Port (or such longer period as is reasonably required for the Port to conclude an audit commenced within such 36 month period) to audit and copy such books and records and source documents relating to such expenditures. Such books and records shall be made available at the Assigned Space or at the offices of the Port; provided, however, that if such is not possible, Permittee shall pay for all reasonable and actual costs incurred by the Port in inspecting and auditing such books and records, including but not limited to travel, lodging and subsistence costs. If the Port determines within such audit period that any such reimbursement by the Port should not have been made to Permittee, then the amount of such improper reimbursement, plus the delinquency charge provided for in Section 26 of Attachment "A" to this Permit from the date of reimbursement to the date of repayment to the Port, shall be repaid by Permittee to Port promptly after Port's written demand.

(e) In addition to its other rights under this Paragraph H, the Port shall have the right to give a Change Notice under Paragraph H.1(a) above that requires one or more Concession Units to be deleted entirely from the Assigned Space, in which event the Assigned Space Change shall specify a 100% contraction in the size of the Concession Unit(s) described in the Change Notice. In that event:

(i) Each Concession Unit specified in such Change Notice shall be deleted from the Permit on the Target Effective Date specified in such Change Notice, and on such date, Permittee shall surrender each such Concession Unit in the condition required by

Section 20 of Attachment "A" to this Permit as if this Permit had terminated on the Target Effective Date; and

(ii) In lieu of payment of an amount not to exceed the Maximum Reimbursement Amount, after Permittee has fulfilled its obligations under (i) above, Port will pay Permittee an amount equal to the sum of the following:

(x) The hard construction costs of Permittee's Work in the Concession Unit(s) included in the Change Notice, determined under Section 2(b) of Attachment "A" to this Permit, multiplied by a fraction, the numerator of which is the number of full calendar months that remained in the Term of this Permit on the Target Effective Date, and the denominator of which is 120; plus

(y) If the Target Effective Date occurred after substantial completion of the Midterm Refurbishment in the Concession Unit(s) included in the Change Notice, the construction costs of such Midterm Refurbishment of such Concession Unit(s) determined under Section 2(3) of Attachment "A" to this Permit, multiplied by a fraction, the numerator of which is the number of full calendar months that remained in the Term of this Permit on the Target Effective Date, and the denominator of which is the number of full calendar months that remained in the Term of this Permit on the date of substantial completion of the Midterm Refurbishment of such Concession Unit(s).

(iii) Port shall not permit a Concession Unit deleted from the Assigned Space under this subparagraph (e) to be used for any of the Permitted Uses during the remainder of the Term of this Permit.

(f) With respect to a Required Relocation or Assigned Space Change where a Concession Unit has been deleted from the Assigned Space pursuant to the applicable provisions of Paragraph H.1(b) or (c) above, the Minimum Annual Guarantee applicable to that Concession Unit shall be deleted from this Permit effective on the applicable Target Effective Date. With respect to any other Required Relocation or Assigned Space Change, the applicable Minimum Annual Guaranty shall, effective on the applicable Surrender Date, in the case of a Required Relocation, and effective on the applicable Target Effective Date, in the case of an Assigned Space Change, be increased, or decreased, as the case may be, pro rata, to reflect the increase or decrease, as the case may be, in the size of each replacement or expanded or contracted Concession Unit compared to the Concession Unit included in the original Assigned Space, as determined by the Port.

(g) In the event of a Required Relocation or Assigned Space Change, the Port shall send to Permittee and Permittee shall execute and return to the Port an amendment to this Permit to reflect the Required Relocation or the Assigned Space Change.

Paragraph H.2 Future Terminal Buildings Additions. Permittee acknowledges that, in addition to the Terminal 2 Extension, the Port is planning to add additional terminal buildings and/or concourses after the Commencement Date and during the Term of this Permit. Should the additional terminal facilities result in the addition of five (5) or more net new aircraft boarding gates (excluding both the Terminal 2 Extension and any remotely loaded aircraft gates that process their passengers through Terminal 1, Terminal 2 or the Terminal 2 Extension) that are not located in Terminals 1, Terminal 2 or the Terminal 2 Extension (such additional five (5) or more net new aircraft boarding gates are hereafter the "New Aircraft Boarding Gates"), and if the number of enplaned passengers that boarded aircraft at the Airport using Terminal 1, Terminal 2 and the Terminal 2 Extension in any calendar year that commenced after passengers first started boarding aircraft using the New Aircraft Boarding Gates is less than the number of enplaned passengers that boarded aircraft at the Airport using Terminal 1, Terminal 2 and the Terminal 2 Extension in the calendar year prior to the calendar year in which passengers first started boarding aircraft using the New Aircraft Boarding Gates, as conclusively determined by the Port, then the Minimum Annual Guaranty shall be adjusted as follows: The Minimum Annual Guaranty for each of the Concession Units included in the Assigned Space shall be decreased, effective on each July 1st of the Term after the opening of the New Aircraft Boarding Gates, by the percentage set forth in a written notice provided by the Port to Permittee prior to each July 1st adjustment date, and conclusively determined by the Port, by (i) dividing the number of emplaned passengers that boarded aircraft from such New Aircraft Boarding Gates in the immediately preceding calendar year by the total number of emplaned passengers that boarded aircraft at the Airport in the immediately preceding calendar year, and (ii) by multiplying that result by 100.

Port and Permittee acknowledge and agree that except for the Assigned Space included in the Terminal 2 Extension, Permittee shall have no right to lease concession spaces in any future terminal buildings and/or concourses at the Airport.

Paragraph I. **OPERATION OF CONCESSION UNITS.**

Paragraph I.1 Management.

(a) Service Contracts and Subleases. All service contracts, as deemed necessary by Port to maintain operation of the Concession Units, entered into by Permittee with respect to its responsibilities shall: (a) be in the name of Permittee; (b) be assignable, at Port's option, to Port or Port's nominee; (c) include a provision for cancellation without payment of a fee or penalty by Port or Permittee upon not more than thirty (30) days written notice; and (d) shall require that all contractors provide evidence of sufficient insurance upon request. If this Permit is terminated, Permittee shall, at Port's option, assign to Port or Port's nominee all service agreements pertaining to the Concession Units, and if Port exercises this option, Permittee shall have no obligation under such service agreements that arise after the date of such assignment.

All subleases entered into by Permittee with an approved sublessee pursuant to Section 18 of Attachment "A" to this Permit shall be in a form acceptable to Port and shall provide for the continuation of such sublease directly with Port, at Port's option, exercisable by written notice by Port to such sublessee, if this Permit is terminated by Port pursuant to Section 19 of Attachment "A" to the Permit prior to the expiration of the Term of this Permit, and if Port

exercises this option, Permittee shall have no obligations under such sublease that arise after the date of such assignment. If the Permittee operates any Concession Unit included in the Assigned Space, then it must also operate all or a portion of Concession Unit F-2 and may not sublet the entire operation of such Concession Unit.

(b) Permittee Management Responsibilities and Subtenant Default. Permittee shall be responsible for managing all of its approved sublessees as requested by Port and for ensuring that all its approved sublessees adhere to the terms of this Permit. Permittee shall act in a fiduciary capacity, with respect to the proper protection of and accounting for Port's assets, and Permittee shall comply with the highest standards of ethics, integrity and honesty. Permittee shall deal at arm's length with all third parties, and Permittee shall serve Port's interests at all times. Permittee is responsible for ensuring that all of its approved sublessees adhere to proper cash-handling and tracing techniques, including without limitation any POS system and cash-handling criteria required by Port hereunder. Permittee shall, within thirty (30) days after written notice from the Port, ensure Permittee and Permittee's approved sublessees implement new procedures or revise existing procedures in such a manner as Port may reasonably require from time to time. In the event Permittee is not complying with existing procedures, the 30 day notice in the prior sentence shall not be applicable, and Permittee shall bring itself into compliance immediately. Permittee shall evaluate approved sublessees' revenue collection systems.

Permittee is responsible for terminating any approved sublease and/or license with approved sublessees, locking out an approved sublessee (if legally permissible), instituting suit for rent or for use or occupancy or proceedings for recovery of possession when (a) an approved sublessee defaults; or (b) Permittee is entitled to terminate an approved sublessee's sublease and/or license. All legal expenses incurred in bringing such action are Permittee's sole responsibility. Permittee shall not deduct from any amounts Permittee is obligated to pay Port, any rents, fees, or other income items any approved sublessee is obligated to pay pursuant to any sublease and/or license.

(c) Quality Assurance Audits. Permittee shall perform quality assurance audits on itself and its authorized sublessees on at least a quarterly basis, as described on attached Exhibit "14". Port reserves the right to prescribe and revise the audit criteria at any time. The purpose of said audits shall be to ensure consistent standards of customer service and quality among Permittee and Permittee's authorized sublessees.

(d) Sublessee Default. If a sublessee authorized under Section 18 of Attachment "A" to this Permit fails to open its Concession Unit or goes out of business, Permittee shall be obligated to promptly install temporary storefront barriers, curtains, display boxes or signage as directed by the Port, and if Permittee fails to promptly do so, the Port shall have the right, in addition to its other rights and remedies under this Permit, to do so at Permittee's expense.

Paragraph I.2 Personnel.

(a) Manager. The management, maintenance, and operation of all Concession Units on the Assigned Space shall be under the supervision and direction of an

active, qualified, competent, and experienced manager, who shall at all times be authorized to represent and act for Permittee. Permittee shall cause such manager to be assigned a duty station or office in the Assigned Space at which he or she shall be available during normal business hours, and Permittee will at all times during the absence of such manager, assign or cause to be assigned a qualified subordinate to assume and be directly responsible for the carrying out of the manager's supervising duties. Permittee will provide to Port and update as necessary, contact information for Permittee's managers to allow Port to contact them in emergencies or during non-business hours.

(i) Adequate and Competent Staff. Permittee shall employ and shall require its authorized sublessees to employ a sufficient number of properly trained personnel to manage and operate the Assigned Space at its maximum capacity and efficiency at all times that the Concession Units are opened for business. Sufficient number is a number, which consistently provides customers with no unreasonable delay or inconvenience, as determined by Port through the development of standards, in moving through point of sale or selecting products or service. All personnel shall be clean, neat in appearance and attired in proper uniform, if required, with name tag clearly visible. Permittee shall ensure that all employees of Permittee and Permittee's authorized sublessees conform to personal hygiene and food handling requirements established by the Airport Rules, Policies and Regulations and the Laws (as such terms are defined in Section 12(1) of Attachment "A" to this Permit), whichever is most stringent. Permittee must ensure that all employees can adequately communicate with customers and are professional and courteous in interactions with customers.

(ii) English Language. Permittee and Permittee's authorized sublessees understand and agree that its operation at the Airport necessitates contact with the public, both in the course of normal business operations and in rendering public services such as making reasonable change, giving directions, and providing general assistance to the public. Employees in positions that involve contact with the public must be capable of speaking and understanding the English language at a high level consistent with the effective and efficient performance of the duties of the position.

(iii)Por t Objections. Port shall have the right to object to the demeanor, conduct, and appearance of any employee of Permittee or Permittee's authorized sublessees or those doing business with them, subject to applicable Laws. Permittee shall take all steps reasonably necessary to remedy the cause of the objection. After written notice from Port, Permittee shall ensure the immediate removal from the Assigned Space or discipline in accordance with Permittee's or its authorized sublessee's employee discipline policy for any employee or other representative of Permittee or any of its authorized sublessees who participates in improper or illegal acts on the Airport, who violates any of the Airport Rules, Policies and Regulations or any provision of the Permit, or whose continued presence on the Airport is, in the opinion of Port, deemed not to be in the best interests of Port. However, in certain situations, Port shall have the right to request Permittee to take immediate action via a telephone call. Permittee shall not allow any of its or its authorized sublessee's agents, servants, contractors, or employees to conduct business in a loud, noisy, boisterous, offensive, or objectionable manner, and shall confine their business on the Airport to that of operating the Concession Units unless otherwise approved in writing by Port.

(iv) Port Not Liable for Employment Issues. This Permit is not one of agency by Permittee for Port, but one with Permittee engaged independently in the business of managing the Assigned Space on its own behalf. All employment arrangements and labor agreements are, therefore, solely Permittee's and its authorized sublessee's rights, obligations and liabilities, and Port shall have no obligations or liability with respect thereto. Permittee and Permittee's authorized sublessees shall defend, indemnify, and hold harmless, Port from any claims or causes of action of whatever nature that may be brought by present or former employees, present or former independent contractors, present or former labor unions, including any labor unions seeking to represent the employees or applicants for employment by Permittee or any of its authorized sublessees.

(b) Port Living Wage Requirements. Permittee shall comply with all of the provisions of Section 728 of the Charter of the City and Port Ordinance No. 3666 (the "Living Wage Law"). As a requirement of this Permit in addition to the Living Wage Law (the "Additional Requirement"), the Permittee shall provide or cause to be provided the same compensation, worker retention and other benefits required to be provided under the Living Wage Law to any employee of the Permittee or of any approved sublessee who works at a Concession Unit regardless of the number of employees the Permittee or such sublessee may employ. Any approved sublessee that (a) was a sublessee under the terms of any agreement that covered the subleased space that was effective immediately preceding the commencement of the Term of this Permit and (b) was not subject to or was otherwise exempt from the requirements of the Living Wage Law under such immediately preceding agreement, is exempt from the Additional Requirement.

Paragraph I.3 Quality of Products and Services.

(a) First Class. It is an express condition of this Permit that Permittee and Permittee's authorized sublessee conduct the Permitted Uses under this Permit in a first class, business like, safe, efficient, courteous and accommodating manner, in accordance with all of the requirements of this Permit, including without limitation, Paragraph I.3(b) below, and the Airport Pricing Policy, as provided in Paragraph B.4 above, so as to maximize Gross Receipts (as defined in Section 13 of Attachment "A" to this Permit). Port has foremost in mind providing the air traveler and the public with facilities, service, food and beverages and retail concessions of first class quality, commensurate with the trade accustomed to using facilities of this kind. Permittee must ensure that the air travelers and public are served and dispensed first class quality foods with adequate portions. Permittee must ensure that the air travelers and public are offered first class retail merchandise comparable to, or better than, that offered for sale in similar retail shops, department stores, or shopping malls in the nine (9) County San Francisco Bay Area offering like products. Permittee and its authorized sublessees shall ensure that a decor is established and maintained substantially in accordance with Port design and facility plan, that the Concession Units are maintained and operated in a first-class manner and that at all times the Assigned Space are kept in a safe, clean, orderly and inviting condition, satisfactory to Port. To accomplish these desires, Permittee must periodically review or cause to be reviewed, operations of Concession Units operated by Permittee and Permittee's authorized sublessees at the Airport.

(b) Adequate Products and Service. Permittee shall ensure that the air traveler and public are furnished adequate services, and that Permittee and Permittee's

authorized sublessees shall keep in stock and have ready for sale at all times of operation a wide-range stock of food and beverage products and other articles and goods for sale of first class character and quality in sufficient supply to meet the demand of customers at the Airport. Permittee must ensure the product variety is adequate for each Concession Unit. Permittee shall at all times maintain in stock the merchandise it is required to stock and sell, as described on attached Exhibit "3". Items such as gift items and souvenirs may be sold in a Concession Unit being used as a newsstand (Category 1 on attached Exhibit "3") provided such item(s) constitute not more than 10% of available floor area or linear display space in that Concession Unit. Operation of a duty free shop (Category 3 on attached Exhibit "3") in Concession Unit # R-3, as described on attached Exhibit "5," is mandatory.

If Port identifies any problem areas with respect to operation of a Concession Unit, including without limitation quality and quantity of products or services offered, including the selection of items offered being inadequate in general or in any particular location, Permittee shall be notified in writing by Port and shall correct, or cause to be corrected, such problem or problems within one (1) day, unless a longer period of time is required, but in no event shall the time-period extend beyond ten (10) days after transmission of written notice by Port, unless Port permits a longer period. Failure of Permittee to so correct problem areas constitutes a default under Section 19 of Attachment "A" to this Permit.

(c) Trends and Merchandising; Public Services. Permittee and Permittee's authorized sublessees shall employ attractive merchandising enticing customers to purchase food, beverages and retail products.. Permittee and Permittee's subtenants shall develop and implement creative and effective merchandising means within the Assigned Space, including without limitation, food and beverage displays; retail merchandise displays; display cases; promotional displays; attractive packaging; menu boards or table-top menus; and pictures of food, beverage and retail merchandise. Permittee shall use its highest and best efforts in its product assortment. Prices for all food and beverages, including alcoholic beverages, shall be displayed on menus or menu boards and available to all customers. All merchandise and other items used in Permittee or Permittee's authorized sublessees' operations shall conform in all respects to all applicable Laws and the Airport Rules, Policies and Regulations. All food, drinks, beverages, confections, retail merchandise and other items sold or kept for sale by the Concession Unit shall be of high quality, wholesome and pure, and must conform in all respects to applicable Laws and the Airport Rules, Policies and Regulations. Permittee and its authorized sublessees must adhere to the most stringent requirements in the foregoing. In addition, Port may require additional products that are in public demand to be added to Permittee's or its authorized sublessees' menus or retail stores. Permittee and its authorized sublessees' printed menus shall include the appropriate use of descriptive terminology that accurately describes the food or beverages being offered and that includes no false or misleading claims. In addition, Permittee shall render the following public services: make reasonable change, give directions, and assist the public generally. Permittee recognizes that the Airport is space constrained and in order to maximize space for Permittee's operations, areas normally designated for passenger seating have been removed. Permittee shall not restrict seating in any of its Assigned Space to "customers only" and shall not refuse seating to any passenger who fails to make a purchase. Permittee shall have the right, however, to only permit food purchased from Permittee or its authorized sublessees to be consumed on the Assigned Space. Permittee shall take all reasonable measures in every proper manner to maintain, develop, and increase the business conducted by it

at the Concession Units. Permittee will not divert or cause to be diverted any business from the Airport.

Port reserves the right, to the maximum extent permitted by law, to approve or disapprove all products, prices, and product displays. Permittee hereby affirms that Port, in its sole discretion, has the absolute right to require that Permittee and its authorized sublessees discontinue the sale of any product Port deems unsatisfactory, distasteful, or inappropriate for any reason, in its sole and absolute discretion, and to require Permittee and its authorized sublessees to modify product displays for any reason, and the failure of Permittee to comply therewith within one (1) day after transmission of written notice from Port constitutes a default under Section 19 of Attachment "A" to this Permit. Permittee is also responsible for notifying its authorized sublessees to coordinate seasonal promotions.

Port reserves the right to approve the pricing on all menu boards and printed menus used by Permittee and its authorized sublessees prior to their initial installation as part of the menu board design review.

Paragraph I.4 Franchise Standards. Where applicable to a Concession Unit, all franchise standards shall be met or exceeded. In the event of an express conflict between the terms of such franchise standards and the terms of this Permit, the terms of the Permit shall prevail. Permittee or its authorized sublessees shall provide Port with copies of a Concession Unit's franchise standards and related performance audit forms prior to such Concession Unit's opening date. Copies of inspections conducted by the franchisee, franchisor, or any mystery shopper service hired by the franchisee or franchisor shall be sent to Port within ten (10) days of receipt by Permittee or any of its authorized sublessees.

Paragraph I.5 Reports and Surveys. At Port's request, but no more often than once per quarter, Permittee shall meet with Port and make available for inspection all customer survey results, mystery shopper reports, health department reports, product pricing (conducted pursuant to Paragraph B.(4)), and any quality assurance audits (conducted pursuant to Paragraph I.1(c)), along with recommended corrective action if the survey shows corrective action is needed. If such information discloses any issue, in the sole discretion of Port, then Permittee must outline planned corrective action and discuss and disclose any additional available reports that measure the performance of each Concession Unit.

If Port conducts any customer satisfaction surveys, Port shall share results with Permittee, along with recommended corrective action, if appropriate. Permittee shall promptly undertake any such corrective action disclosed by either Permittee's or Port's surveys.

Permittee must submit to Port on a quarterly basis all reports detailing the results of all customer survey results, mystery shopper reports, health department reports, brand audits, and any other types of reports requested by Port.

Port reserves the right to audit Permittee and Permittee's authorized sublessees regarding compliance with this subsection.

Paragraph I.6 Advertised Sales or Promotions. Permittee or Permittee's authorized sublessees are required to participate in all advertised sales or promotions conducted

by Permittee's parent corporation, if any, its franchisor, if any, or its selected operating brands, including but not limited to television, newspaper, radio and print media sales and promotions. Permittee and its authorized sublessees are not required to participate in:

1. Liquidations, moving sales or closeouts or products or brands.

2. Internet promotions.

3. Specific mall-based advertisements.

Permittee or Permittee's authorized sublessees must make every reasonable effort to ensure that all corporate advertisements that list multiple locations will list the Concession Units as participating locations for promotions or sales. In the event that participation in a sale or promotion harms the Permittee, or Permittee believes that it is not appropriate for a location at an airport, the Permittee may request in writing to Port permission to not participate, which Port shall not unreasonably withhold. Permittee and Port agree to meet quarterly to review this requirement in light of all other revenue and customer service impacts.

Paragraph I.7 Credit/Charge Cards and Traveler's Checks. At all times during the Term of this Permit and any holdover period, Permittee and Permittee's authorized sublessees shall accept as payment for goods and services nationally recognized credit, debit or charge cards, including without limitation American Express, MasterCard, and VISA, as well as internationally recognized Traveler's Checks. Such cards shall be accepted for all purchases greater than five dollars ($5.00).

Paragraph I.8 Public Address System. Port shall have the right, in its sole discretion, to install one (1) or more public address system speakers in the Assigned Space for announcing flight arrivals and departures and other Airport information. Permittee or any of Permittee's authorized sublessees may only install a public address, paging, or other audio system on the Assigned Space with prior written approval of Port.

Paragraph I.9 Pay Telephones. Port shall provide for the installation of pay telephones as Permittee may reasonably desire within the Assigned Space, and Port will retain the income from such installations.

Paragraph I.10 Noise and Lights. No loudspeakers, televisions, video monitors, sound systems, audio players, radios, flashing lights or other devices shall be used in a manner so as to be heard or seen outside of the Assigned Space or a Concession Unit without the prior written consent of the Manager of Airport Properties.

Paragraph J. **Permittee's Operating Hours**. Commencing on the Rent Commencement Date for each Concession Unit included in the Assigned Space, Permittee will conduct the Permitted Uses from each Concession Unit diligently and continuously and will keep each Concession Unit open for business with an adequate staff seven (7) days per week, including holidays, during the hours for that Concession Unit shown on attached Exhibit "5", as they may be modified from time to time by written notice from the Manager of Airport Properties. Permittee may not vacate or abandon the Assigned Space at any time.

Paragraph K. **Administrative Fees**. The parties agree that Permittee's performance of its obligations under this Permit are extremely important to Port and that Permittee's failure to perform those activities will result in administrative and monitoring expenses to the Port and its staff. Therefore, the parties agree that the Administrative Fees described on attached Exhibit "7" are reasonable estimates of such expenses and shall be imposed on Permittee at the sole discretion of the Director or his or her designee for any of the violations described on said Exhibit "7". The Director may elect to waive an assessment of Administrative Fees for a particular violation, but no such waiver shall apply to prior or subsequent violations of the same or any other provision of this Permit, and such waiver shall not be deemed to set a precedent for further waivers. If the Permittee disputes the violation that resulted in the imposition of an Administrative Fee, it may submit, within ten (10) days of its receipt of written notice of the Administrative Fee, a written request for a review of such Administrative Fee, to the Airport General Manager pursuant to Article 11.3 of Port Ordinance No. 3549 (or any successor thereto), in which event the hearing procedures set forth in said Article 11.3 shall be applicable to Port and Permittee with respect to such Administrative Fee.

The Port's right to impose the foregoing Administrative Fees shall be in addition to and not in lieu of any and all of Port's rights under this Permit, in the Airport Rules, Policies and Regulations, or at law or in equity. Port's decision to impose an Administrative Fee on Permittee for one of the violations described on attached Exhibit "7" shall not preclude Port, in the event Permittee subsequently commits the same or a different violation, from exercising any of such other rights of the Port, including, without limitation, its right to terminate this Permit pursuant to Section 19 of Attachment "A" to this Permit. Port shall have no obligation to Permittee to impose Administrative Fees or fines on or otherwise take any action against any other tenant or permittee at the Airport.

During the term of this Permit the Director of Aviation may reasonably adjust upward the amount of the Administrative Fees set forth in Exhibit 7 by providing Permittee six months advance written notice.

Paragraph L. **Permittee's Due Diligence; No Representations or Warranties by Port**. Permittee acknowledges that it has conducted its own due diligence investigation of its prospects for successfully operating its Permitted Uses at the Airport, and has made its own determination of the accuracy of any information provided by Port with respect to the financial results of any prior operator of any similar business at the Airport, that Port has made no representations or warranties to Permittee with respect to any of such matters, and that all prior discussions between Port and Permittee with respect to such matters are superseded by this Permit pursuant to Section 40(8) of Attachment "A" to this Permit. In addition, Proposer must perform its own due diligence on all matters relating to the Assigned Space, including all technical and construction matters. Any "as-built" drawings, utility matrixes, or other technical information (including, but not limited to, architectural drawings or autoCAD or other computer files) provided by the Port may not be accurate or complete. Proposer's use of or reliance on any such information shall be at its sole risk, and the Port shall have no liability arising therefrom.

Paragraph M. **Permittee's Proposal**. Except as otherwise expressly provided on attached Exhibit "8", Permittee agrees to comply with all of the terms of Permittee's Proposal dated May 1, 2006 (the "Proposal"), a copy of which is incorporated herein and which forms a

part of this Permit; and provided further, however, that in the event any provision of the Proposal expressly conflicts with any other provision of this Permit, then the other provisions of this Permit shall prevail, and nothing contained in the Proposal shall eliminate the need for Permittee to obtain Port's approval or consent where such approval or consent is required by any other terms of this Permit or release Permittee from its obligation to comply with all applicable Laws (as defined in Section 12(1) of Attachment "A" to this Permit. Without limiting the foregoing, Permittee agrees that it will construct in Concession Units F-1 and F-12 the coffee facilities for the two high schools or other non-profits as described in the Proposal, and that it will provide the educational and training support to said high schools, or to such other educational or non-profit institutions in lieu thereof as may hereafter be designated by Port to Permittee in writing. Notwithstanding any provision of this Permit to the contrary, Port shall have the right, by written notice to Permittee, and without making any payment or reimbursement to Permittee, to delete Concession Units F-1 and/or F-12 from this Permit during the Term of any direct agreement between Port and such high schools or other non-profits covering such Concession Unit. Permittee represents and warrants to Port that it has obtained all license, franchise or other agreements necessary to operate Permittees' business for the Permitted Uses in accordance with the terms of the Proposal and this Permit, and Permittee covenants to keep all such license and concession agreements in full force and effect during the Term of this Permit.

Paragraph N. **Compliance with Port and Department of Transportation (DOT) Non-Discrimination In Contracting Requirements.** The Port strictly prohibits all unlawful discrimination and preferential treatment in contracting, subcontracting and purchasing, including the Permitted Uses or any subleasing, subcontracting or purchasing under this Permit (the "Port Non-Discrimination Policy"). Additionally, this Permit is subject to the requirements of the U.S. Department of Transportation's regulation, 49 Code of Federal Regulations Part 23 (the "ACDBE Rules"). Permittee shall comply with the Port Non-Discrimination Policy and the ACDBE Rules and shall not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with its performance under this Permit, the management of the Permitted Uses, subleasing, or purchasing. The Permittee shall cooperate with the Port in the Port's program of recruiting, training, providing technical assistance and holding workshops to ensure that contracting, subcontracting and purchasing opportunities available under this Permit are accessible and available to all qualified businesses owners, including Airport Concession Disadvantaged Business Enterprises, as defined in the ACDBE Rules ("ACDBE's"). In order to assure compliance with the Port Non-Discrimination Policy and the ACDBE Rules, the Permittee agree as follows:

(a) Permittee agrees that within 60 days after the expiration of each calendar quarter during the Term of this Permit, it will provide a report to the Port, in a form acceptable to the Port, describing the Gross Receipts in such calendar quarter of each such ACDBE described on attached Exhibit "9" (and each substitute ACDBE that may be obtained pursuant to subparagraph (c) below), in each case calculated in accordance with the requirements of this Permit.

(b) Permittee agrees that it will also submit within the same period described in subparagraph (a) above a quarterly report to the Port, in the form of the Sales Report required to be submitted by Permittee to Port pursuant to Section 13(3) of Attachment "A" to this

Permit, describing the Permittee's total Gross Receipts in such calendar quarter under this Permit, calculated in accordance with the requirements of this Permit.

(c) Permittee will have no right to terminate any ACDBE for convenience without the Port's prior written consent. If an ACDBE is terminated by the Permittee with the Port's written consent or because of the ACDBEs default, then the Permittee shall provide the Port with evidence satisfactory to the Port that Permittee will continue to comply with its non-discrimination obligations under this Permit, which evidence may include the substitution of the terminated ACDBE with another ACDBE.

(d) The Permittee's breach of its obligations under subparagraphs (a), (b) or (c) above shall be a Default by Permittee under Section 19(1) of Attachment "A" to this Permit and shall entitle the Port to exercise all of its contractual and legal remedies, including termination of this Permit.

Paragraph O. **Additional Terms and Conditions**. Permittee does hereby further agree to abide fully by all of the Additional Terms and Conditions set forth in Attachment "A" to this Permit, which is incorporated herein and which forms a part of this Permit; provided, however, that in the event any provision of Paragraphs A-Q of this Permit conflict expressly with the provisions of Attachment "A" to this Permit, then the provisions of Paragraphs A-Q of this Permit shall prevail.

Paragraph P. **Amendments**. Except as otherwise expressly provided in Paragraph C or Paragraph E.3(b) above, or in Section 37(1)(b) or Section 37(2)(c) or Section 38 of Attachment "A" to this Permit, amendments to this Permit may only be made by written agreement authorized by resolution or ordinance, as appropriate, duly adopted by the Board and executed by Permittee and Port.

Paragraph Q. Waiver of Jury Trial. **TO THE EXTENT PERMITTED BY LAW, PERMITTEE 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 PERMIT.**

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

By: _____
Executive Director

**PERMITTEE: HOST INTERNATIONAL, INC., a Delaware corporation**

By: _____
Name: CHRISTOPHER G. TOWNSEND
Title: Vice President

If corporation: Chairman, President or Vice President

Attest
By: _____
Name: Laura A. Bablin
Title: Secretary

If corporation: Secretary, Assistant Secretary, Chief Financial Officer, Treasurer or Assistant Treasurer

NOTE: Please also initial page A-72 of Attachment "A"

**THIS PERMIT SHALL NOT BE VALID OR EFFECTIVE FOR ANY PURPOSE UNLESS AND UNTIL IT IS SIGNED BY THE PORT ATTORNEY**

Approved as to form and legality this 3rd day of October, 2006.

_____
Port Attorney

Port Ordinance No. 06170
P.A. # 06-037

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA )
)
COUNTY OF _____ )

On _____, before me, _____,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared _____.
Name(s) of Signer(s)

☐ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____
Signature of Notary Public

Place Notary Seal Above

----------*OPTIONAL*----------

***Though the information below is not require by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document***

**Description of Attached Document**

Title or Type of Document:_____

Document Date:_____Number of Pages:_____

Signer(s) Other Than Named Above:_____

**Capacity(ies) Claimed by Signer**

Signer's Name:_____

☐ Individual
☐ Corporate Officer - Title(s):_____
☐ Partner -☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:_____

Signer is Representing:_____

| RIGHT THUMBPRINT OF SIGNER |
| --- |
| Top of thumb here |

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## ATTACHMENT "A"

## OTHER TERMS AND CONDITIONS OF SPACE/USE PERMIT

Section 1. **Construction of Improvements in Assigned Space.**

(1) Aside from any construction obligations described as "Port's Work", if any, in the Work Letter approved by Port when it approves Permittee's plans and specifications pursuant to Section 1(2)(c) below (the "Work Letter"), Port shall have no obligation to perform any construction work or improvements to prepare the Assigned Space for Permittee's Work described in the Work Letter.

(2) (a) Commencing on the Delivery Date for each Concession Unit, Permittee must, at Permittee's sole cost and expense (except as otherwise expressly provided in Section 2(g) below), construct, install and provide all of the "Permittee's Work" as described in the Work Letter in strict conformity with the Construction Schedule described therein, in this subsection 2(a), and in accordance with the Director's written instructions, if any. Permittee shall coordinate the timing of Permittee's Work with the Construction Schedule and Director's instructions so that Permittee's Work will not interfere with or cause a delay in any other construction activities authorized by the Port. Permittee shall be liable for any Losses (as defined in Section 1(2)(d) below) incurred by Port arising out of Permittee's breach of its obligations under this Section 1. The parties anticipate that Permittee will be required to perform Permittee's Work in phases, in order for Permittee to implement its Transition Plan. As to each Concession Unit, Permittee must diligently complete Permittee's Work and open that Concession Unit for business on or before the Rent Commencement Date applicable to such Concession Unit, all in accordance with the Work Letter and the other provisions of this Permit. In no event will Permittee be entitled to any financial contribution, loan guarantee, or other financial support from Port with regard to Permittee's Work.

Permittee further agrees that it will submit the following to Port for its approval pursuant to this Section 1(2), in accordance with the schedule set forth below:

> Conceptual and Transition Plan review within 60 days from the Commencement Date, for all Alterations in the Terminal 2 Extension, and prior to March 1, 2008, for all Alterations in Terminal 1 and Terminal 2.
>
> Schematic Design review within 30 days from approval of Conceptual and Transition Plan.
>
> 50% complete construction plans and specifications for Permittee's Work within 30 days from the Port's approval of Permittee's conceptual plan.
>
> 100% complete construction plans and specifications for Permittee's Work within 30 days from the Port's approval of Permittee's 50% complete construction plans and specifications.

Permittee further agrees to obtain the Port's written approval of Permittee's plans and specifications pursuant to Section 1(2)(c) below and all permits required by Section 1(2)(d) below prior to commencement of any of Permittee's Work, and to complete all of Permittee's Work in a Concession Unit in the Assigned Space prior to the Latest Opening Date for that Concession Unit, as set forth opposite that Concession Unit on attached Exhibit "5".

(b) The hard construction costs of Permittee's Work in the Concession Units must equal or exceed $12,957,279 for all Concession Units that will primarily serve food and beverages and $3,774,264 for all Concession Units that will be used for other Permitted Uses (each a "Minimum Investment Amount"), excluding any amount for which Permittee is reimbursed under Section 2(g) below. Such "hard construction costs" may include architectural and engineering fees, construction management costs and inspection costs associated with Permittee's Work, provided the credit for such costs against the applicable Minimum Investment Amount shall not exceed twenty percent (20%) of the applicable Minimum Investment Amount. Such "hard construction costs" may not include, by way of example but not by way of limitation, the cost of litigation, arbitration or other costs of any dispute, attorneys fees in preparing contracts, costs of insurance or insurance deductibles. Within one hundred twenty (120) days after substantial completion of Permittee's Work, Permittee must provide to Port an affidavit, signed by Permittee *and* any of the Permittee's general contractor, architect or construction manager, under penalty of perjury, stating the hard construction costs paid by Permittee to complete Permittee's Work, together with copies of paid invoices, cancelled checks and lien waivers substantiating the costs stated in the affidavit. Without limitation, hard construction costs do not include business interruption, inventory, pre-opening expenses, overhead, or debt service on any construction loan; or any charges paid by Permittee to any Affiliated Person (as hereafter defined), unless and to the extent such charges have been approved by Director. If the hard construction costs paid by Permittee to complete Permittee's Work do not equal or exceed the required Minimum Investment Amount for all food and beverage Concession Units and for all retail Concession Units, respectively, then Permittee must pay Port within sixty (60) days of substantial completion of Permittee's Work in the Concession Units an amount equal to the deficiency. Permittee shall maintain in a true and accurate manner and in accordance with generally accepted accounting principles, such original books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing an audit or examination of such hard construction costs. At any time, upon three (3) business days notice, Port or its representatives may audit and copy all of Permittee's books, records and source documents related to the hard construction costs paid by Permittee to complete Permittee's Work in the Concession Units. Such books and records shall be made available at the Assigned Space or at the offices of the Port; provided, however, that if such is not possible, Permittee shall pay for all reasonable and actual costs incurred by the Port in inspecting and auditing such books and records, including but not limited to travel, lodging and subsistence costs. If the audit reveals that the hard construction costs paid by Permittee were less than those stated in Permittee's affidavit, then Permittee must pay Port for the costs incurred by Port in connection with the audit plus any additional deficiency discovered between the hard construction costs paid by Permittee and the Minimum Investment Amount for all Concession Units, plus interest thereon at the rate provided in Section 26 below from the date of substantial completion of Permittee's Work in the Concession Units until payment has been received by the Port. As used in this Permit, "Affiliated Person" shall mean, with respect to Permittee, any person or entity directly or indirectly Controlling, Controlled by or under Common Control with

Permittee. As used in this Permit, "Control" (including the correlative meanings of the terms "Controlling", "Controlled by" and "under Common Control with", as used with respect to any person or entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such person or entity whether through ownership of voting securities, by contract or otherwise.

(c) Permittee shall not make or suffer to be made any alterations, additions, or improvements to the Assigned Space or any part thereof or attach any fixtures or equipment thereto, including Permittee's Work (collectively, "Alterations"), without Port's prior written consent. All Alterations shall be at Permittee's sole cost and expense. Without limiting the generality of the foregoing, the initial layout and design of all Alterations shall conform to the Port's established architectural design scheme for the Terminal Buildings, the provisions of the Port's tenant improvement guide or if none has been adopted by the Port, in accordance with tenant improvement standards adopted by the Port (such guide or standards are hereafter the "TI Guide"), and the Work Letter. Prior to the construction of any Alterations, Permittee shall pay the Port all applicable fees payable under all Port ordinances and resolutions, including without limitation Port Ordinance No. 3859 (or any successor thereto), and submit detailed plans and specifications to the Airport's Design Review Committee for written approval. Permittee shall include with its plans and specifications schematic renderings of the public concession area, materials, a color board(s) and a detailed layout of the overall merchandising plan. Port's approval rights will extend to and include architectural and aesthetic matters and Port reserves the right to reject any designs submitted and to require Permittee to resubmit designs and layout proposals until they meet Port's approval. In the event of disapproval by Port of any portion of the plans and specifications, Permittee will promptly submit necessary modifications and revisions thereof. No changes or alterations will be made in said plans or specifications after approval by Port without the prior written approval of the Director or his or her designee. Port agrees to act within a reasonable period of time upon such plans and specifications and upon requests for approval of changes or alterations in said plans or specifications. One copy of plans and specifications for all improvements or subsequent changes therein or alterations thereof will, within fifteen (15) days after approval thereof by Port, be signed by Permittee and deposited with Port as an official record thereof. Without limiting the requirements set forth above, Permittee acknowledges and agrees that Permittee may be required to obtain approvals for any desired Alterations from the Port's Engineering Permit Department. In the event that Permittee fails to submit plans and specifications which meet the approval of Port within thirty (30) days after the Commencement Date, Port may terminate this Permit. Nothing herein contained shall be construed to delay or otherwise affect the Commencement Date or the Rent Commencement Date.

All construction shall be in conformity with the Work Letter, the latest edition of the TI Guide, and the plans and specifications submitted by Permittee and approved in writing by Port, the City and the Alameda County Health Department, and shall meet all applicable local building codes and ordinances and all other applicable Laws (as defined in Section 12 of this Attachment "A"). Permittee warrants that the proposed improvements, if constructed or installed consistently with the plans and specifications approved by the Port, will comply with all applicable Laws, including without limitation the Americans With Disabilities Act of 1990 and any amendments thereto (hereafter the "ADA Requirements"). The Port's approval of any plans and specifications submitted by Permittee shall not constitute the assumption of any liability by

the Port for the compliance or conformity of such plans and specifications with such Laws, or for the accuracy or suitability of such plans and specifications for Permittee's intended purposes, and Permittee shall be solely responsible for such plans and specifications.

(d) Permittee shall give written notice to Director not less than seven (7) days prior to the commencement of any Alterations in order that Port may post appropriate notices of non-responsibility, and agrees that such notices may remain posted until the acceptance of such work by Port. Prior to commencing any such work or allowing Permittee's contractors to have access to the Assigned Space, Permittee shall (i) coordinate all such work with Port's Tenant Construction Coordinator or other aviation or engineering staff designated in writing by the Director (or with the Port's contractor, if so directed in writing by the Director) so that Permittee's Work will not interfere with or cause a delay in any other construction activities authorized by Port, and (ii) provide Port with such completion bonds and labor and material bonds and builders all risk insurance in such form and amount and issued by such company or companies as shall be acceptable to Port. Permittee shall be liable for any and all losses, liabilities, judgments, suits, claims, damages, costs and expenses (including attorneys fees, investigation costs, remediation costs, and court costs) of any kind or nature (collectively "Losses") incurred by Port arising out of Permittee's breach of its obligations under the prior sentence. Permittee shall obtain, and pay all fees for all permits and business licenses required by the Port, the City of Oakland or other governmental authority having jurisdiction, for any Alterations, and it shall furnish copies of all such permits to Port prior to the commencement of any work.

(e) If and to the extent that Permittee's activities or proposed Alterations trigger an obligation or requirement on the part of Port to make changes to the Airport (including ADA Requirements), Permittee shall indemnify, defend, and hold harmless Port from and against any Losses arising out of such activities or Alterations.

(f) Permittee shall pay for all labor done and materials furnished in any repairs or Alterations to the Assigned Space, and except as otherwise expressly authorized by Section 7(2) below, shall keep the Assigned Space and such improvements free and clear of any liens or encumbrances of any kind whatsoever created by or through Permittee. If any such lien or encumbrance (except liens expressly authorized by Section 7(2) below) is filed, Permittee shall not be deemed to be in default if within ten (10) days after the filing thereof, Permittee, at its sole cost and expense, has provided or caused to be provided to the Port a lien release bond in accordance with California Civil Code, Section 3143 or successor statute, or such other assurance approved in writing by the Port. If Permittee fails to do so, the Port shall have the right and option, but not the duty, to obtain such lien release bond or pay or otherwise discharge, stay or prevent the execution of any lien or encumbrance. In such event, the Port shall not be deemed to have waived the Port's right to declare Permittee in default under this Permit, and Permittee shall reimburse the Port for all sums expended in connection with such lien or encumbrance, including Port's attorneys fees and costs, and such reimbursement shall be due and payable 10 days after Port's written demand for any such payments, fees or costs. Within ninety (90) days after Permittee's completion of any Alterations within or to the Assigned Space, Permittee shall furnish to the Port a set of reproducible, final "as built" drawings of all such alterations, additions or improvements, together with evidence acceptable to Port of Permittee's out-of-pocket cost of such alterations, additions or improvements.

(g) Permittee's Work, as described in Section 2(a) above, shall include (i) the removal, in accordance with all of the applicable requirements of this Permit, of any asbestos in the Assigned Space (hereinafter the "Removal") and (ii) the connection of any required utility service from their existing locations outside of the Assigned Space, as the Port shall designate to Permittee in writing, to the exterior boundary of the Assigned Space (the "Utility Service Connections"). Subject to Permittee's compliance with the remaining provisions of this Section 2(g), Permittee shall be entitled, on the issuance of a credit memorandum by Port to Permittee, to be reimbursed for Permittee's actual out of pocket costs of the Removal and Utility Service Connections by having such costs credited against the next payments of Rent that come due under Paragraph E of this Permit until the amount of such credit memorandum has been exhausted.

Port's obligation to issue a credit memorandum to Permittee pursuant to the first paragraph of this Section 2(g) shall be subject to Permittee's satisfaction of all of the following conditions:

(i) Port's receipt of a certificate from Permittee's Chief Financial Officer (or the equivalent thereof), certifying the amount for which reimbursement is sought by Permittee, that such amount was properly incurred to pay Permittee's actual out of pocket costs of the Removal and Utility Service Connections, and that such amount has not been previously reimbursed by Port to Permittee. (For purposes of this Permit and such certificate, Permittee's actual out of pocket costs of the Removal and Utility Service Connections shall exclude any direct or indirect costs of any of the Permittee's employees, and any costs that arise out of Permittee's breach of any of its obligations under this Permit.

(ii) Port's receipt of copies of Permittee's contracts under which such costs were incurred, together with information on unit prices for all bids for work for which reimbursement is requested by Permittee, and an assignment to the Port of all warranties and other contractual rights against the contractor for defective work for which reimbursement is requested by Permittee.

(iii) Port's receipt of invoices from third parties in the amount and describing the costs to be reimbursed by the Port, together with copies of the checks from Permittee to such third parties evidencing payment of such costs, and such other documentation as the Port shall reasonably request.

(h) Permittee shall maintain such books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing an audit or examination of the costs reimbursed by Port to Permittee under Section 2(g) above. The Port shall have the right, at any time until the expiration of 36 months after the last credit against Rent under Section 2(g) above (or such longer period as is reasonably required for the Port to conclude an audit commenced within such 36 month period), upon seven (7) calendar days notice from the Port to Permittee, to inspect and audit such books and records, and all such books and records shall be made available, as Permittee shall elect by written notice to Port given within such seven (7) calendar day period, either at the Assigned Space, or at the offices of the Port, for inspection and audit by Port or through its duly authorized representatives. The right to inspect and audit shall include the right

to photocopy such books and records as the Port determines in its discretion to be necessary or convenient in connection with its inspection or audit thereof. If the Port determines within such audit period that Permittee was reimbursed for any amount other than Permittee's actual out of pocket costs (as defined in Paragraph 2(g)(i) above) of the Removal or Utility Service Connections, then the amount of such improper reimbursement, plus the delinquency charge provided for in Section 26 below, from the date of payment by the Port to the date of repayment by Permittee to the Port, and the Port's reasonable and actual costs (including without limitation the prorated salary of the Port's auditor's, fringe benefits and overhead allocation) incurred by the Port in auditing such books and records, shall be paid by Permittee to the Port promptly after Port's written demand.

(i) Permittee shall comply with the following additional requirements in the construction of Permittee's Work in the Assigned Space located in the Terminal 2 Extension:

**C&D Waste Management**: Permittee shall insure that 75% of waste generated during construction (by weight or volume) must be diverted from the landfill via recycling or reusing materials. All material leaving the site shall be tracked and documented by Permittee, and Permittee shall provide Port with weight slips or other similar documentation in form reasonably acceptable to Port.

**Indoor Air Quality**: Permittee shall comply with the IAQ Management plan established for the remainder of the construction project including conducting a 2-week building flush-out after completion, but before occupancy.

**EQUIPMENT SELECTION**

**Water Efficiency**: All plumbing fixtures shall be as low-flow as practical. Firm limits apply to the following fixtures:

| Fixture | Acceptable Range |
|---|---|
| Kitchen sinks | 1.5 - 2.5 gpm |
| Handwash sinks | 0.5 gpm |
| Toilets | 1.2 – 1.6 gpf |

**HVAC Equipment**: All HVAC equipment shall be commissioned for proper operation and efficiency as required by section 01811 Mechanical Equipment Commissioning of the specifications or Leadership in Energy and Environmental Design ("LEED") for New Construction version 2.1.

Air conditioners and refrigeration equipment shall be Energy Star compliant and not use refrigerants containing HCFCs or Halons. Refrigerants in the 400-series are acceptable (e.g., R-410A).

**Lighting**: All illuminated exit signs shall use LED technology. Permittee shall provide area lighting with linear and compact fluorescent lamps.

**Appliances**: Use of energy efficient appliances (such as Energy Star refrigerators and freezers) is encouraged.

## MATERIAL SELECTION

Cut sheets for all of the following materials must be furnished by Permittee to Port upon request.

**Composite Lumber**: All composite lumber and agrifiber products shall contain no added urea-formaldehyde resins.

**Paint**: All paint products shall comply with the following VOC limits:

| Paint | VOC Limit (g/L) |
|---|---|
| Non-flat | 150 |
| Flat | 50 |

**Sealants**: All sealant products shall comply with the following VOC limits. Refer to the LEED-NC v. 2.1 Reference Guide for requirements for sealant types not listed.

| Sealants | VOC Limit (g/L) |
|---|---|
| Architectural | 250 |
| Sealant Primer | |
| Architectural (non-porous) | 250 |
| Architectural (porous) | 775 |
| Other | 750 |

**Adhesives**: All adhesives shall comply with the following VOC limits. Refer to the LEED-NC v. 2.1 Reference Guide for requirements for adhesive types not listed.

| Adhesives | VOC Limit (g/L) |
|---|---|
| Carpet pad adhesive | 50 |
| Wood flooring adhesive | 100 |
| Ceramic tile adhesive | 65 |
| Subfloor adhesive | 50 |
| Dry wall & panel installation | 50 |
| Cove base adhesive | 50 |
| Multipurpose construction | 70 |
| Contact adhesive | 80 |
| Special purpose contact adhesive | 250 |
| Substrates | |
| Metal to metal | 30 |
| Porous material except wood | 50 |
| Wood | 30 |
| Fiberglass | 80 |

**Carpet**: Carpet shall meet the requirements of the Carpet and Rug Institute's Green Label Plus Indoor Air Quality Test Program. Selected carpet shall have a total recycled content of at least 30%.

**Ceramic Tile**: Ceramic tile shall have a total recycled content of at least 20%.

**Acoustic Tile**: Acoustic ceiling tiles shall have a total recycled content of at least 60%.

**Insulation**: Permittee shall use formaldehyde free insulation with a total recycled content of at least 20%.

Section 2. **Midterm Refurbishment.**

(1) Permittee shall refurbish, redecorate and modernize the interior and exterior of the public area of each Concession Unit (the "Midterm Refurbishment") after the fifth ($5^{th}$) anniversary of the Rent Commencement Date for that Concession Unit (the "Mid-Term Refurbishment Date"). Midterm Refurbishment shall not mean the expenditure of money for those ordinary maintenance and repair items that should have been maintained and repaired in accordance with Section 3 below. It is the intent of this Section 2 that all Concession Units, including Concession Units operated under sublease, shall undergo Midterm Refurbishment, and that such Midterm Refurbishment shall be conducted while the Concession Units are opened for business, unless the Port determines, in the exercise of its sole discretion, that Permittee's proposed scope of work in a Concession Unit is so extensive that such Concession Unit may be closed during its Midterm Refurbishment, in which event Permittee shall have the right to close that Concession Unit during its Midterm Refurbishment, but such closure shall not result in any abatement of the Rent on that Concession Unit. In connection with such refurbishment, redecoration, and modernization, Permittee shall invest a minimum amount in each Concession Unit (the "Minimum Mid-Term Amount") equal to:

$$\$100.00 \text{ per square foot of the Concession Unit} \times \frac{\text{Comparison Index}}{\text{Base Index}}$$

As used in this Permit, the following terms shall be defined as follows:

"Base Index" shall mean the most recent Consumer Price Index published immediately prior to the Rent Commencement Date for the Concession Unit to which the Mid-Term Refurbishment Date is applicable.

"Comparison Index" shall mean the most recent Consumer Price Index published immediately prior to the applicable Mid-Term Refurbishment Date.

"Consumer Price Index" or the "Index" shall mean the index published by the United States Department of Labor, Bureau of Labor Statistics known as the Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items, San Francisco-Oakland (1982-84 equals 100), of the Bureau of Labor Statistics of the United States Department of Labor, or the official successor of said Index. In the event such index is discontinued, then "Consumer

Price Index" or "Index" shall mean an index chosen by Director which is, in Director's reasonable judgment, comparable to the index specified above.

(2) On or before the date that is six (6) months prior to the Mid-Term Refurbishment Date, Permittee shall give notice to Port of its intended plan with respect to such refurbishment requirements. All such refurbishments will be subject to all of the applicable requirements of this Permit, including without limitation Section 1 above. Permittee shall complete all such refurbishments of a Concession Unit on or before the date that is six (6) months after the Mid-Term Refurbishment Date for that Concession Unit.

(3) Within one hundred twenty (120) days after substantial completion of the Midterm Refurbishment of a Concession Unit, Permittee must provide to Port an affidavit, signed by Permittee *and* any of the Permittee's general contractor, architect or construction manager, under penalty of perjury, stating the construction costs paid by Permittee to complete such Midterm Refurbishment, together with copies of paid invoices and lien waivers substantiating the costs stated in the affidavit Such construction costs may include architectural and engineering fees, construction management costs and inspection costs associated with such Midterm Refurbishment, provided the credit for such costs against the Minimum Mid-Term Amount shall not exceed twenty percent (20%) of the Minimum Mid-Term Amount. Such construction costs may not include, by way of example but not by way of limitation, the cost of litigation, arbitration or other costs of any disputes, attorneys fees in preparing contracts, costs of insurance or insurance deductibles. If the construction costs paid by Permittee to complete such Midterm Refurbishment do not equal or exceed the Minimum Mid-Term Amount for a Concession Unit, then Permittee must pay Port within sixty (60) days of substantial completion of such Midterm Refurbishment of that Concession Unit an amount equal to the deficiency. Permittee shall maintain in a true and accurate manner and in accordance with generally accepted accounting principals, such books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing an audit or examination of such Midterm Refurbishment. At any time, upon three (3) business days notice, Port or its representatives may audit and copy all of Permittee's books, records and source documents related to the construction costs paid by Permittee to complete such Midterm Refurbishment. Such books and records shall be made available at the Assigned Space or at the offices of the Port; provided, however, that if such is not possible, Permittee shall pay for all reasonable and actual costs incurred by the Port in inspecting and auditing such books and records, including but not limited to travel, lodging and subsistence costs. If the audit reveals that the construction costs paid by Permittee were less than those stated in Permittee's affidavit, then Permittee must pay Port for the costs incurred by Port in connection with the audit plus any additional deficiency discovered between the construction costs paid by Permittee and the Minimum Mid-Term Amount for a Concession Unit, plus interest thereon at the rate provided in Section 26 below from the date of substantial completion of such Midterm Refurbishment of a Concession Unit until payment has been received by the Port.

Section 3. **Maintenance and Repair of Assigned Space.**

(1) EXCEPT WITH RESPECT TO THOSE CONSTRUCTION OBLIGATIONS OF PORT, IF ANY, SPECIFIED AS "PORT WORK" IN THE WORK LETTER, PERMITTEE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT PORT IS

LEASING THE ASSIGNED SPACE TO PERMITTEE ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT PERMITTEE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM PORT OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THE ASSIGNED SPACE, INCLUDING: (i) the quality, nature, adequacy and physical condition and aspects of the Assigned Space, including, but not limited to, landscaping, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Assigned Space, (iv) the development potential of the Assigned Space, and the use, habitability, merchantability, or fitness, suitability, value or adequacy of the Assigned Space for any particular purpose, (v) the zoning or other legal status of the Assigned Space or any other public or private restrictions on use of the Assigned Space, (vi) the compliance of the Assigned Space or its operation with all applicable Laws including without limitation, the ADA Requirements, (vii) the presence of Toxic Materials (as defined in Section 32 below) on, under or about the Assigned Space or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any improvements in the Assigned Space, (ix) the condition of title to the Assigned Space, and (x) the agreements affecting the Assigned Space, including covenants, conditions, restrictions, ground leases, and other matters or documents of record or of which Permittee has knowledge. The taking possession of the Assigned Space by Permittee shall, in itself, constitute acknowledgement by Permittee that the Assigned Space is in a condition satisfactory for its use; provided, however, that notwithstanding the foregoing acknowledgment, the Port acknowledges that the Permittee has not conducted an audit or inspection of the Assigned Space that would disclose the presence of, or contamination of the Assigned Space by, Toxic Materials and therefore, except as expressly provided in Section 32 below, the Permittee bears no responsibility for the removal, remediation or clean-up of Toxic Materials that were on the Assigned Space prior to Permittee taking possession thereof.

(2) Except as otherwise expressly provided in this Section 3(2), the Port shall have no duty to maintain the Assigned Space or any improvements located thereon. Port shall maintain that portion of the HVAC system that serves the Assigned Space but that is located outside of the Assigned Space. Permittee shall be responsible to maintain all duct work within the Assigned Space. Permittee agrees that during the Term of this Permit, at its own cost and expense, it shall keep and maintain the Assigned Space in clean and first-class order and repair and in compliance with all applicable Laws, including the replacement of any facility of Port which requires replacement by reason of Permittee's use or damage thereof or due to damage by others, excepting (a) ordinary wear and tear, (b) structural repairs to the Assigned Space, unless (i) caused by the act or omission of Permittee or any principal, affiliate, contractor, employee, agent, licensee or invitee of Permittee, or (ii) required to be repaired by Permittee pursuant to Section 37 below, (c) damage caused solely by the Port's gross negligence or willful misconduct which shall be repaired by the Port at its expense, (d) damage due to casualty with respect to which the provisions of Section 37(1)(b) (ii)(v) or (y) below shall apply, or (e) damage due to a taking with respect to which the provisions of Section 37(2)(a) or Section 37(2)(b) shall apply. Permittee hereby waives all right to make repairs at the expense of Port or in lieu thereof to vacate the Assigned Space, and waives the benefit of the provisions of California Civil Code Section 1941 and 1942 or any successor statute thereto and any other similar law, statute or ordinance now or hereafter in effect. In addition, if it becomes necessary during the term of this Permit, as reasonably determined by the Manager of Airport Properties, Permittee will, at its own

expense, redecorate and paint fixtures and the interior of the Assigned Space and improvements, and replace furniture, fixtures, wall, floor and window coverings, or other furnishings, which expenditures shall not diminish Permittee's Midterm Refurbishment obligation under Section 2 above. Without limiting the generality of the foregoing, at all times, Permittee shall be solely liable for the facade of the Assigned Space separating the Assigned Space from the terminal Common Areas, including the external face thereof, all windows and display areas therein, and all finishes thereon. If after thirty (30) days written notice from the Port, Permittee has failed to commence and diligently pursue completion of any and all such maintenance, replacement and repair which may be required to restore the Assigned Space and any of its improvements, fixtures, equipment and mechanical systems to the condition required by the fourth sentence of this Section 3(2), then Port shall have the right, but not the duty, to perform such maintenance, replacement and repair at Permittee's expense and Permittee shall reimburse Port for such costs promptly upon Port's written demand. The performance of maintenance and repair by the Port shall in no event be construed as a waiver of the Permittee's duty to maintain and repair as herein provided. Unless the written approval of the Manager of Airport Properties or his or her designee has been first obtained in each instance, Permittee shall not alter the point of supply of any utilities in the Assigned Space. Permittee shall not install any racks, stands or other display of merchandise or trade fixtures at the Airport outside of the Assigned Space without the prior written consent of the Manager of Airport Properties or his or her designee. Permittee shall not permit a work of visual art, as defined in 17 USC § 101, to be installed in the Assigned Space without providing Port with a written waiver, in form acceptable to Port, of the artist's rights under the Visual Artists Rights Act of 1990, Pub. L. 101-650, and without obtaining Port's prior written approval.

The parties acknowledge and agree that Permittee's obligations under this Section 3 are a material part of the bargained-for consideration under this Permit. Permittee's compliance obligations shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Assigned Space (including the Permittee's Work), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Permit, the length of the then remaining Term hereof, the relative benefit of the repairs to Permittee or Port, the degree to which curative action may interfere with Permittee's use or enjoyment of the Assigned Space, the likelihood that the parties contemplated the particular requirement involved, or the relationship between the requirement involved and Permittee's particular use of the Assigned Space. No occurrence or situation arising during the Term, nor any present or future requirement, whether foreseen or unforeseen, and however extraordinary, shall relieve Permittee of its obligations hereunder, nor give Permittee any right to terminate this Permit in whole or in part or to otherwise seek redress against Port. Permittee waives any rights now or hereafter conferred upon it by any existing or future requirement to terminate this Permit, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such requirement, on account of any such occurrence or situation.

(3) Permittee shall at its own expense keep and maintain within the Assigned Space fire extinguishers and other portable fire fighting and emergency equipment of such number, type, and material as may be prescribed from time to time by the Airport Rules, Policies and Regulations, the Fire Prevention Bureau of the City, or other governmental authority having jurisdiction.

Section 4. **Other Operational Requirements.**

(1) Permittee shall not, without the prior written consent of Director, reference Port or the Airport for any purpose other than the address of the business to be conducted by Permittee in the Assigned Space, nor will Permittee do or permit anything in connection with Permittee's business or advertising which in the judgment of Port may reflect unfavorably on Port or the Airport, or confuse or mislead the public as to the relationship between Port and Permittee.

(2) Permittee must keep the display windows of each Concession Unit in the Assigned Space suitably illuminated at all times and display its hours of operation in a manner that is clearly visible from the entrance to each such Concession Unit.

(3) Permittee must keep the Assigned Space free of pests and vermin, and must dispose of all trash and debris in the Assigned Space using covered, leak-proof containers, including recycling containers, approved by the Port and in locations designated by the Port. Permittee may not place or leave or permit to be placed or left in or upon any part of the Common Areas or corridors adjacent to the Assigned Space any garbage, debris or refuse. Permittee must install and maintain, and regularly clean and empty, all grease traps in the Assigned Space and dispose of the contents thereof in compliance with all applicable Laws, and Permittee will use its own EPA identification number and list itself as the owner on the Uniform Hazardous Waste Manifest or other Profile sheets if any need to be filled out in order for Permittee to comply with its obligations under this sentence. Upon the termination of this Permit, the Port may, at its sole option, require Permittee to remove any or all grease traps at Permittee's sole cost and expense, and in compliance with all Laws.

(4) Permittee acknowledges that the operational requirements of the Airport as an airport facility, including without limitation security requirements, are of paramount importance. Permittee acknowledges and agrees that it must conduct its business in a manner that does not conflict with the operational requirements of the Airport as an airport facility and that fully accommodates those requirements. Without limiting other waivers herein, Permittee waives all claims for any Losses arising out of or connected to the operation of the Airport as an airport facility. Without limitation on the foregoing, Permittee must:

(a) cause all deliveries and dispatches of food, beverage and retail products, supplies, fixtures, equipment and furniture to be made and conveyed to or from the Assigned Space by means and during hours established by Director in Director's sole discretion. Port has no responsibility regarding the delivery or dispatch of Permittee's products, supplies, fixtures, equipment and furniture. Permittee may not at any time park its trucks or other delivery vehicles in Common Areas; and

(b) not park within the parking areas of the Airport except in those areas, if any, designated by Port pursuant to permits obtained from the Airport. Nothing herein shall imply that Permittee shall be able to secure any on-Airport parking privileges.

(5) Without limiting any other provision herein, Permittee shall not: (a) use or permit the use of the Assigned Space for the conduct in or on the Assigned Space as an outlet

store or a second-hand store; (b) advertise any distress, fire, bankruptcy, liquidation, relocation, closing, or going-out-of-business sales; (c) use or permit the use on the Assigned Space of any pinball machines, videogames, computer or electronic games, or other devices or equipment for amusement or recreation, or any vending machines, newspaper racks, pay telephones, or other coin, token, or credit card-operated devices; (d) cause or permit anything to be done, in or about the Assigned Space, or bring or keep anything thereon which might (i) increase in any way the rate of fire insurance on the terminal building complex or any of its contents; (ii) create a nuisance; (iii) in any way obstruct or interfere with the rights of others in the terminal buildings or injure or annoy them; (e) commit or suffer to be committed any waste upon the Assigned Space; (f) use, or allow the Assigned Space to be used, for any improper, immoral, unlawful or objectionable purpose; (g) place any loads upon the floor, walls or ceiling of the Assigned Space which endanger the structure or obstruct the sidewalk, passageways, stairways or escalators, in front of, within, or adjacent to the terminal buildings; (h) use any advertising or promotional medium that may be seen, heard, or otherwise experienced outside the Assigned Space (such as searchlights, barkers or loudspeakers); (i) distribute handbills or circulars to Airport patrons or to cars in the parking lots, or engage in any other advertising at the Airport and outside of the Assigned Space, except through Port's authorized terminal display advertising concessionaire or the Port's authorized outdoor advertising concessionaire; or (j) do or permit to be done anything in any way tending to injure the reputation of Port or appearance of the Airport.

(6) Permittee shall, if required by Director, employ, at its own cost and expense, an investigative organization approved by Director for the purpose of making investigations and observations and preparing a written report for Permittee of the carrying out of any pricing policies, revenue control, and operational techniques being used on the Assigned Space. Permittee shall cause such investigation and observation to be made at such reasonable times and in the manner directed by Director, and the investigator shall deliver forthwith to Director a true and complete written copy of any such reports made for Permittee.

(7) In the event Permittee receives any customer complaint with respect to Permittee's operations in the Assigned Space, Permittee shall promptly respond in writing to the complainant, with a copy to the Director, and shall make a good-faith attempt to explain, resolve or rectify the cause of the complaint. If Port establishes a toll free customer complaint telephone number, Permittee shall be required to participate and shall respond to complaints immediately. All other issues regarding the quality of service and/or prices raised on Port's own initiative may be submitted to Permittee for response, which response shall be provided by Permittee to the Port's Director within two (2) days.

(8) Permittee shall comply with the following additional requirements in the operation of the Assigned Space in the Terminal 2 Extension:

**Recycling**: Provide collection receptacles and storage capacity to recycle paper, corrugated cardboard, glass, plastics, and metals.

**Food Waste**: Participate in the Port's Food Waste Composting program.

**Cleaning**: Comply with the approved products and practices established by the Port's non-toxic cleaning policy.

**Supplies**: Utilize recycled content materials for serving and packaging. Paper products (napkins, towels, toilet paper, etc.) shall have a post-consumer recycled content of at least 30%.

**Grease traps/Interceptors**: Use best management practices for maintaining grease traps/interceptors.

Section 5. **Signage and Advertising.**

Permittee may not install any signage outside its Assigned Space, or any signage inside its Assigned Space that is visible from outside a Terminal building except signage advertising the name or logo, or both, of the business conducted by Permittee for the Permitted Uses in the Assigned Space. Any signage that is not prohibited by the first sentence of this Section 5 that Permittee wants to install or display in or on the Assigned Space must be approved in advance and in writing by the Director or his or her designee, including but not limited to, the number, size, height, location, color and general type and design of each such sign.

Permittee shall not display any advertising, promotional, or informational pamphlets, circulars, brochures or similar materials relating to its business in or about the Assigned Space, except as expressly approved by the Director or his or her designee in writing. In no event shall Permittee be permitted to display advertising or promotional materials on behalf of or benefiting third parties, such as credit card applications, table cards, banners, easel signs, travel promotions, banks, vendor supplied equipment displaying overt advertising, or the like. Without limiting the foregoing restrictions on advertising, in no event will there be permitted on the Assigned Space any advertising or promotion of cigarettes or tobacco products. No advertising or promotion shall be permitted on packaging (cups, cup holders, wrappers, bags, sacks, and the like) referring to or benefiting a third party, except 1) such packaging may include the name and/or logo of the Concession Unit using such packaging; and 2) if the package contains the product that is included within (such as a soft drink or coffee brand) and such packaging is required under the terms of the applicable license or franchise agreement.

Section 6. **Labor Peace Assurance.**

As a material term, covenant and condition of this Permit, Permittee agrees to assure labor peace ("Labor Peace Assurance") so that, during the term of this Permit, there shall be no picketing, work stoppages, boycotts or any other economic actions by or involving personnel employed in the Concession Operations that interfere with or disrupt the Concession Operations ("Labor-Related Disruption"). The occurrence of any Labor-Related Disruption, as determined by the Port in its sole discretion, shall be a default under this Permit. For the purpose of this Section 6, "Concession Operations" shall mean any work required to be done or services required to be performed under this Permit for the Permitted Uses of the Assigned Space.

The grant by the Port of this Permit is conditioned and contingent upon the Permittee having entered into a Labor Peace Agreement prior to any deadline established at the sole discretion of the Port for the execution of this Permit. A "Labor Peace Agreement" shall mean a valid agreement by and between the Permittee and a labor organization that represents or seeks to represent the Permittee's employees, which contains a provision prohibiting the labor organization and its members from engaging in, causing or encouraging any Labor-Related Disruption.

The Permittee may use any available legal means, including securing valid agreements with labor organizations, in order to assure the Port that there will be no Labor-Related Disruption during the term of this Permit. However, nothing in this Permit shall be construed to imply that any party other than the Permittee is required by the Port to enter into any labor agreement.

Section 7. **Permittee's Property.**

(1) Any and all property belonging to, or brought onto the Airport by Permittee or any of its officers, employees, agents, invitees or licensees shall be at the sole risk of Permittee. Subject to Port's right of approval as set forth in Section 1 hereof, Permittee may place and install trade fixtures and other personal property in the Assigned Space for use in connection with its operations hereunder (such trade fixtures and other personal property is hereafter collectively referred to as "Trade Equipment"), and the same shall be and remain the property of Permittee. Permittee shall, however, be responsible for the cost of repairing any damage to the Assigned Space or any other improvements of Port which are caused by the removal of any such Trade Equipment. Notwithstanding the foregoing, however, if Permittee shall at any time be in default hereunder, then Port shall have the benefit of any statutory liens on Permittee's property located in the Assigned Space which are available to it under the laws of the State of California, and except as otherwise expressly provided in Section 7(2) below, Permittee shall not remove or permit the removal of any of such property until all amounts secured by such liens have been paid and all other defaults under this Permit have been cured. In addition, if at the end of the Term or upon the earlier termination of this Permit, Permittee has not removed such property, Port shall have the right, at Permittee's expense, to remove and store or dispose of such property without liability to Permittee.

(2) Some of Permittee's Trade Equipment now or hereafter installed and used by Permittee on the Assigned Space may or will be directly financed by a third-party lender or otherwise subjected to a security interest or owned by an equipment rental company or vendor ("Equipment Lessor") and leased to Permittee either directly from the Equipment Lessor or by way of equipment sublease or assignment of equipment Permit from an equipment sublessor ("Equipment Sublessor"). If such lender, vendor, or equipment Lessor or Equipment Sublessor (or assignees) gives to Port written notice identifying the Trade Equipment prior to its installation on the Assigned Space, Port hereby agrees to recognize the rights therein of any such third-party lender, vendor, or Equipment Lessor or Equipment Sublessor (or assignee). Port agrees that all such items of financed or leased Trade Equipment installed or to be installed on the Assigned Space shall be and remain personal property and not real property, notwithstanding the fact that the same may be nailed or screwed or otherwise attached or affixed to the Assigned Space, and further agrees to recognize the rights therein of any such third-party lender, vendor,

or Equipment Lessor or Equipment Sublessor (or assignee). Permittee shall have the right at any time, provided Permittee is not in default hereunder, to remove or replace any or all Trade Equipment, whether or not financed or leased, regardless of whether attached or affixed to the Assigned Space, and to the extent of their respective interests therein such third-party lender, vendor, or Equipment Lessor or Equipment Sublessor (or assignee) that timely gave the required written notice to the Port shall also have such a right regardless of whether Permittee is in default hereunder. Any damage to the Assigned Space caused by such a removal shall be repaired promptly by and at the expense of Permittee or other party causing such removal. Port agrees that it does not have and shall not assert any right, lien or claim in or to the Trade Equipment against any third-party lender, vendor, or Equipment Lessor or Equipment Sublessor (or assignee), that timely gave the required written notice to the Port, and, subject to the obligation promptly to repair any damage to the Assigned Space, such party may remove and dispose of the same without reference to, and free and clear of, any claim or other demand of Port; provided, however that no such disposal or sale may be made on the Assigned Space. The Port agrees to execute upon request such reasonable documentation that confirms the foregoing provisions to a third party lender, lessor or other holder of a security interest, provided that Permittee is not in default hereunder and provided such documentation is approved as to form and legality by the Port Attorney.

Section 8. **WI-FI System.**

Permittee acknowledges that Port has installed an Airport-wide, open access wireless fidelity system (802.11g) that provides Wi-Fi services to the employees, passengers, tenants, and visitors at the Airport (the "Wi-Fi System"). Permittee acknowledges and agrees that a principal objective of Permittee in entering into this Permit is to ensure that: (a) it has access to the Wi-Fi System, (b) the Wi-Fi System is utilized by all tenants throughout the Airport in order to help eliminate radio frequency interference (RFI) from competing wireless networks, and (c) any RFI issues are resolved amicably among Port, Permittee, and Port's other tenants ((a) – (c) collectively referred to herein as the "Permittee Wi-Fi Objectives"). In order to achieve the Permittee Wi-Fi Objectives, Permittee hereby agrees that during the Term: (1) Permittee shall utilize the Wi-Fi System for all of its private spectrum Wi-Fi services; and (2) on Port's request, Permittee will participate with Port and Port's other tenants in Port's designated dispute resolution process to resolve any RFI issues. Notwithstanding anything in this Permit to the contrary, in the event of any RFI between the Wi-Fi System and any third party wireless network, Port shall not be liable for any cost or damage arising directly or indirectly from such RFI, including, but not limited to, any degradation or inoperability of the third party wireless network.

Section 9. **Utilities.**

Port shall provide each Concession Unit with the utilities service as shown on attached Exhibit 5.

Permittee shall be responsible for obtaining and paying for all other utility service to the Assigned Space, and for any associated charges. Permittee shall pay for all utilities (including, without limitation, electricity, water, telephone, wireless access fee and sewer) used

or consumed in the Assigned Space, and Permittee shall pay the Port's applicable Cost of Service Fee, calculated pursuant to the provisions of Port Resolution No. 02410, as such resolution may hereafter be amended or replaced, or under any other Port resolution or ordinance, either existing or hereafter adopted by the Port, and shall also pay the cost of a Port supplied electrical meter. Permittee shall also be obligated to pay any Port electrical inspection fee.

Section 10. **Port's Right to Enter; Permittee's Right of Access.**

(a) Port and its designated agents shall have the right to enter the Assigned Space at any reasonable time for inspection, maintenance, repair, attending to emergencies or any other reasonable purpose. Such entry shall not constitute a forceable or unlawful entry or detainer of the Assigned Space. The Port will make a reasonable effort, except in case of an emergency, to provide advance notice of its intent to enter the Assigned Space, which notice (notwithstanding the provisions of Section 24 to the contrary) may be given in person to Permittee's manager on duty, or by telephone or by e-mail as designated by Permittee in Paragraph A of the Permit, but Port will have no liability to Permittee if Port fails to give such notice or if such notice is given by Port but not received by Permittee.

(b) Permittee and its officers, employees, agents and invitees shall, subject to the Airport Rules, Policies and Regulations, have the right of ingress and egress to and from the Assigned Space.

Section 11. **Taxes and Assessments.**

(1) This Permit may create a property interest that is subject to property taxation and Permittee, in whom the possessory interest is vested, may be subject to the payment of property taxes levied on such interest. If the taxing authority assesses to Permittee a possessory interest tax with respect to any tax year any portion of which is included in the Term of this Permit, then Permittee shall be responsible for paying the entire annual possessory interest tax without deduction or proration, notwithstanding the expiration or termination of the Term prior to the close of the tax year. Permittee acknowledges the foregoing and that the same constitutes a sufficient statement in accordance with the requirements of Section 107.6 of the California Revenue and Taxation Code. Permittee shall pay, on or before the due date established therefor, all taxes, assessments (including, without limitation, storm water utility charges, and any business tax lawfully imposed by the City) and impact fees which are levied against or in connection with the Assigned Space, Permittee's interest therein and the property and improvements of Permittee for the Term hereof or attributable to Permittee's activities at the Assigned Space or at the Airport. For purposes of this Section, a possessory interest tax shall be deemed a tax and not an assessment. Permittee's obligations under this Section 11 shall survive the expiration or earlier termination of this Permit. Nothing contained herein shall be construed as a release or waiver on the part of the Port, or the City, of the right to assess, levy or collect any license, personal, tangible, intangible, occupation or other tax, fee or assessment which they, or either of them, may lawfully impose on the business or property of Permittee.

(2) Permittee shall pay or cause to be paid all sales and/or use taxes levied on all materials, supplies, or equipment purchased and used on or incorporated into Permittee's

Work, and all other taxes properly assessed against equipment or other property used in connection with Permittee's Work. Without means of limitation, Permittee shall be responsible for any documentary, excise, stamp and transfer tax and any sale, use or other tax imposed by reason of the design, delivery, sale, transfer, or installation of the materials, supplies, equipment or other property purchased and used on or incorporated into Permittee's Work, regardless of which party has liability for such tax under applicable law, and any deficiency, interest or penalty asserted with respect thereto. Permittee represents that Permittee has, or will obtain prior to the transfer of title to any materials, supplies, equipment or other property purchased and used on or incorporated into Permittee's Work, the necessary seller's permit as required by the State of California. Permittee represents that it will collect, report, and pay all sales and or use taxes arising out of Permittee's Work to the State Board of Equalization. Upon full payment Permittee will issue Port a receipt pursuant to California Revenue and Taxation Code Section 6203, relieving Port of all liability for any tax relating to the materials, supplies, equipment or other property purchased and used on or incorporated into Permittee's Work.

Section 12. **Compliance with Laws, Rules, Policies and Regulations.**

(1) Permittee covenants and agrees to observe and comply with (and to cause all of its sublessee authorized under Section 18 below to comply with) all present and future Laws, and all rules, policies and regulations of Port, including without limitation, all safety, security and operations directives of the Director or his or her designee, which now exist or may hereafter be promulgated from time to time governing conduct on and operations at the Airport or the use of facilities at the Airport (hereafter collectively the "Airport Rules, Policies and Regulations"). The Airport Rules, Policies and Regulations may, without limitation, require Permittee to participate in a parking validation program at the Airport if one is established by the Port. Permittee further covenants and agrees to observe and comply with (and to cause all of its sublessees authorized under Section 18 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 Aviation Administration, and the Transportation Security Administration). Permittee 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 Permittee or any such sublessee of any of the foregoing requirements, which payment shall be made by Permittee within fifteen (15) days from receipt of Port's invoice for such amount and documentation showing that payment of such penalty or fine is Permittee's responsibility hereunder. As used in this Permit, "Laws" shall mean all present and future federal, state and local statutes, ordinances and regulations and Port ordinances applicable to Permittee, the Assigned Space, the Permitted Uses or the Airport, including but not limited to the ADA Requirements, all acts and regulations relating in any way to food and drugs, worker's compensation, sales and use tax, credit card processing, social security, unemployment insurance, hours of labor, wages, working conditions, the Immigration Reform and Control Act of 1986, the Charter of the City (including without limitation Section 728 entitled "Living Wage and Labor Standards at Port-Assisted Businesses"), and all Environmental Laws (as defined in Section 32 below).

Without limiting the generality of the foregoing, to the extent Permittee's operations or activities or the operations or activities of any sublessee or assignee of Permittee

approved by the Port on the Assigned Space constitute industrial activities within the meaning of the Federal Water Pollution Control Act, 33 U.S.C. §§1251, et seq. ("CWA" ) and the regulations promulgated thereunder, Permittee agrees that it will be responsible for faithfully obeying and complying with such law and regulations, including, but not limited to, obtaining, if required, an individual National Pollutant Discharge Elimination System ("NPDES") permit or, if required, requesting coverage under and faithfully obeying and complying with the terms and conditions of any applicable General Permit issued pursuant to such law or regulations.

Permittee further agrees to waive and release the Port and Port officers, employees, agents and members of the Board from any and all claims, including claims of negligence, and liability that may arise from any act or failure to act by the Port in connection with the Port's providing advice, guidance, or assistance to Permittee or any assignee of Permittee approved by the Port regarding compliance with any such Laws or regulations including, but not limited to the following actions or activities: furnishing educational materials to and organizing meetings for tenants; explaining the alleged requirements of the CWA, the regulations promulgated pursuant thereto, or the terms and conditions or means of complying with any permits required by or issued pursuant to the CWA; preparing or furnishing draft Storm Water Pollution Prevention Plans or Group Monitoring Plans, or acting as leader of any Group Monitoring Plan.

Notwithstanding and in addition to any other provision of this Permit, Permittee shall maintain for periodic inspection by the Port and, concurrently with the receipt from or submission to a governmental agency, deliver to Port true and correct copies of documents (hereinafter referred to as the "Documents"), except for Documents protected by the attorney-client privilege, required to be provided, filed, lodged, maintained by the Permittee or obtained by or issued to Permittee pursuant to such Laws or regulations, including, but not limited to, the following documents:

> Permits; approvals; reports and correspondence; applications for permits, Notices of Intent, Storm Water Pollution Prevention Plans, Annual Comprehensive Site Compliance Evaluations, Annual Reports or monitoring results, or notice of violations relating or pertaining to the Assigned Space.

(2) Permittee agrees for itself, its successors and assigns that it will not make use of the Assigned Space in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Port reserves the right to enter upon the Assigned Space and cause the abatement of such interference at the expense of the Permittee. This Permit and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking off at the Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

Section 13. **Percentage Fees.**

(1) For purposes of calculating the Percentage Fees payable by Permittee under Paragraph E of this Permit, "Gross Receipts" as used herein shall mean:

(a) (i) The retail price of all food, beverage and retail products sold and services rendered in, on, about or from the Assigned Space or from such other locations on Airport operated by Permittee, by any other person or entity, as may herein be authorized, whether such sales be for cash or on credit, and in case of sales on credit, whether or not payment is actually made; plus

(ii) The full amount of all deposits forfeited by customers in connection with any business of Permittee in, on, about or from the Assigned Space; plus

(iii) The full amount of all orders for goods or services accepted by Permittee in, on, about or from the Assigned Space, whether or not to be filled or performed at any other place, and the full amount of all orders accepted by Permittee elsewhere, but to be filled or performed in, on, about or from the Assigned Space; plus

(iv) The retail price of all orders placed on the Assigned Space from Permittee's catalog, internet or otherwise; plus

(v) The full amount of any charge the Permittee customarily makes for goods or services even though the Permittee fails to actually collect such a charge; provided, however, that Gross Receipts shall not include any discount granted to employees not to exceed 1% of annual Gross Receipts; plus

(vi) Any amounts paid or payable to the Permittee in exchange for coupons or vouchers which are redeemed at the Assigned Space.

(b) The following shall not be included in "Gross Receipts":

(i) Any exchange of inventory between Permittee's business locations where such exchange is made solely for the convenient operation of Permittee's business and not for the purpose of consummating a sale made in, at or from the Assigned Space, or for the purpose of depriving Port of the benefit of sales which would otherwise be made in or at the Assigned Space.

(ii) Returns to the shippers or manufacturers.

(iii) Discount sales to employees, to the extent of the discount, not to exceed 1% of annual Gross Receipts.

(iv) The amount of all sales refunds previously included in Permittee's Gross Receipts.

(v) The amount of any separately-stated federal, state or local sales or use taxes mandated by a governmental entity to be imposed upon the Permittee's customers, collected by the Permittee and remitted to such governmental entity.

(2) No deduction shall be made from Gross Receipts by reason of any credit loss sustained or financing discount that may be applicable by reason of the acceptance or use of credit and/or debit cards or by reason of any other credit arrangements. Except as otherwise expressly provided in Section 13(1)(b) above, if any charge customarily made by Permittee for goods or services is not assessed, charged or collected, irrespective of the reason therefor, then the full amount of Permittee's customary charge therefor shall nevertheless be included in determining Gross Receipts. Permittee may not show the percentage of Gross Receipts payable to Port as a separate charge to Permittee's customers. All computations in the determination of Gross Receipts shall be made in accordance with the terms of this Permit, using the accrual basis of accounting.

(3) On or before the fifteenth ($15^{th}$) day of each calendar month during the Term hereof, commencing with the first calendar month after the Rent Commencement Date, and ending on or before the fifteenth ($15^{th}$) day of the calendar month immediately following the end of the Term, Permittee shall deliver to Port a report (the "Sales Report") certified as true and correct by an officer of Permittee, segregated by each source or general type of article sold or service rendered, or in such other manner as the Port shall direct, and by the Concession Unit at which the sale occurred, and in such form and with such detail as Port may reasonably request, setting forth Permittee's Gross Receipts (as the same are hereinbefore defined) from each Concession Unit included in the Assigned Space during the preceding calendar month, and separately identifying all receipts derived by Permittee from or at the Airport during such month which have been excluded from the computation of Gross Receipts, and identifying the location at the Airport at which such excluded Gross Receipts were derived, together with payment of the Percentage Fees due by reason thereof. As described in Paragraph K of this Permit, Port shall have the right, in addition to all other rights herein, to impose an Administrative Fee in the event Permittee shall fail to submit such Sales Report timely. If Permittee shall fail to provide Port by the fifteenth ($15^{th}$) day of a calendar month with the Sales Report complying with the requirements of this Section 13(3), then Port may invoice Permittee for estimated Percentage Fees for the prior calendar month in an amount equal to the monthly Percentage Fees that would be payable based on 1.5 times Permittee's actual Gross Receipts from or at the Airport for the last month reported by Permittee to Port, or if Permittee has filed no such report with Port, then as estimated in good faith by Port. Permittee shall, within five (5) days after its receipt of such invoice, pay the invoiced amount to Port; provided, however, that when Permittee determines its actual Gross Receipts for the preceding month, Permittee may tender the actual percentage fees payment to Port, but only if it is accompanied by the Sales Report for such prior calendar month. The acceptance of such estimated Percentage Fees by Port, and the acceptance of any delinquent Sales Report by Port, shall be without prejudice to any of Port's rights under Section 19 below. Any underpayment of Percentage Fees shall be paid with the Sales Report provided by Permittee to Port covering the period for which estimated Percentage Fees have been paid together with a delinquency charge, for violation of the terms of this Permit and as liquidated damages, of the fifty dollar ($50.00) fee provided for in Section 26 below, plus interest on any unpaid amount

from the date the estimated percentage fees became payable until payment has been received by the Port, at the rate provided in Section 26 below.

Within ninety (90) days after the end of each calendar year during the Term, Permittee shall submit to Director an unqualified year-end financial report (the "Annual Report") certified by an independent Certified Public Accountant or a year-end financial report certified by Permittee's chief financial officer if such officer is approved by the Director, showing Gross Receipts achieved with respect to the prior calendar year and identifying the location at the Airport where such Gross Receipts were derived. If such Annual Report shows that the total Rent actually paid by Permittee with respect the prior calendar year was less than the Rent payable with respect to such calendar year, then Permittee shall immediately pay to Port such deficiency, together with a delinquency charge and liquidated damages of the fifty dollar ($50.00) fee provided for in Section 26 below, plus interest on such deficiency for each day from the date such Rent became due and payable until payment has been received by the Port, at the rate provided in Section 26 below. If such Annual Report shows that the Rent actually paid by Permittee with respect to such prior calendar year exceeded the Rent payable with respect to such calendar year, and if such Annual Report is acceptable to the Port, then on the issuance by Port to Permittee of a credit memorandum in the amount of such excess, such excess shall be applied as a credit against the amounts next coming due from Permittee to Port under this Permit. Notwithstanding anything to the contrary herein, in no event will the Rent payable to Port in any calendar year on a Concession Unit included in the Assigned Space be less than the Minimum Annual Guaranty for such Concession Unit for such calendar year. In addition, Permittee shall submit to Port such other financial or other reports as Director may reasonably require. Permittee shall include with each Annual Report a certificate in the form attached as Exhibit "10", certified by the chief financial officer or other authorized representative of Permittee acceptable to the Director.

Any failure to timely deliver to Port any report required by this subsection (3), excluding only delinquent reports for which a delinquency fee has already been paid by Permittee pursuant to the prior sentence, shall require payment by Permittee to Port, as liquidated damages, of a delinquency charge in the amount of Fifty Dollars ($50.00), payable at the time the delinquent report is submitted to Port.

(4) Permittee shall maintain in a true and accurate manner and in accordance with generally accepted accounting principles, complete and accurate books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing a separate audit or examination of Permittee's Gross Receipts from each Concession Unit included in the Assigned Space. This includes, but not limited to: Financial statements, general ledgers, trial balances, subsidiary books of record, sales journals, daily or periodic summary reports, inventory and purchasing records, cash register or computer terminal tapes, POS records, sales invoices, bank deposit slips, bank statements, and tax reports filed with federal, state, county, city or other agencies. Such books and records shall contain records of Permittee's pertinent activity under this Permit in a form consistent with good accounting practice which may include, without limitation, electronic media compatible with computers available to the Port, computer generated hard copies or legible microfiche or microfilm copies. Such books and records shall be maintained in a form consistent with generally accepted accounting practices. Upon seven (7) calendar days notice from Port, all such

books and records shall be made available, as Permittee shall elect by written notice to Port given within such seven (7) calendar day period, either at the Assigned Space, if any, or at the offices of the Port, for inspection by Port or through its duly authorized representatives at any time for up to seven (7) years after the calendar year to which such books and records pertain, whether or not the Term has expired or been earlier terminated; provided, however, that if prior to the expiration of such seven (7) year period, any audit, review or investigation is commenced by the Port, or any claim is made or litigation is commenced relating to this Permit by the Port, such books and records shall continue to be maintained by Permittee, and Port shall continue to have the right to inspect 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 an appeal), whether or not the Term has expired or been earlier terminated. In the event that the Port determines, in its reasonable discretion, that any exclusions, deductions or allocations reducing Gross Receipts are not supported or substantiated by such books and records, all such amounts shall be deemed Gross Receipts for purposes of determining the Percentage Fees payable to the Port. The right to inspect shall include the right to photocopy said books, records and data as the Port determines in its discretion to be necessary or convenient in connection with its review or audit thereof. Any such inspection at the Assigned Space will be conducted during reasonable business hours and in such a manner and at such time as to not unduly interfere with the conduct of Permittee's business. In the event such books and records cannot be made available at the Assigned Space or at the offices of the Port, then Permittee shall pay for all reasonable and actual costs incurred by the Port in inspecting and auditing such books and records, including but not limited to travel, lodging and subsistence costs. Port shall further have the right, upon reasonable written notice to Permittee, to cause an audit to be made of the books and records of Permittee and its assignees and agents which relate to its operations at the Airport to determine the correctness of the Percentage Fees paid by Permittee hereunder. If, as a result of such audit conducted within any of the time periods permitted by this subsection, whether or not the Term has expired or been earlier terminated, it is established that Percentage Fees have been underpaid to Port, Permittee shall forthwith, upon written demand from Port, pay the difference to Port, together with a delinquency charge and liquidated damages of the fifty dollar ($50.00) fee provided for in Section 26 below, plus interest on such underpaid amount for each day from the date such underpaid amount became due and payable until payment has been received by Port, at the rate provided in Section 26 below. Unpaid delinquency charges that accrue may be compounded monthly at the Port's sole election. Further, if such audit establishes that Permittee has understated and underpaid the total Percentage Fees due hereunder in any calendar year during the audit period by two percent (2%) or more, then all of the Port's reasonable and actual costs (including without limitation the costs of the audit firm designated by the Port's Chief Audit Officer to perform the audit, or the prorated salary of the Port's auditor's, fringes and overhead allocation) incurred by the Port in auditing such books and records shall be paid by Permittee to Port. The delinquency charge, liquidated damages and audit costs provided by this subsection (4) are in addition to all other remedies Port may have that are provided by this Permit or otherwise by law or in equity with respect to any payment that has become due and has not been paid. Further, if such audit establishes that Permittee has understated and underpaid total Percentage Fees due hereunder in any calendar year during the audit period by five percent (5%) or more, Port shall have the right to terminate this Permit as if Permittee had committed a default under Section 19 below that had not been cured prior to the expiration of any applicable

grace period. The Permittee's obligations under this subsection shall survive the expiration or earlier termination of the Term, to the extent provided herein.

(5) Permittee shall install in each Concession Unit in the Assigned Space at least one cash register. "Cash register" shall mean a conventional mechanical cash register or computerized point-of-sale devices or other similar device serving a similar purpose. Such cash register and any other cash register used in each Concession Unit shall be of a type approved by Director in writing and shall register every transaction made in, on, about or from that Concession Unit, including every type of Gross Receipts, and the tape or digital record of each said cash register shall be accessible to and subject to inspection by Director or his/her agent. Port may, at its option, require all such cash registers to be locked and accessible only by the use of one key in the hands of Port. All cash receipts must include Permittee's identification thereon. Each sale or other transaction in each Concession Unit, including all receipts from such sale or other transaction, whether for cash, credit or otherwise, must be recorded at the time of each sale or other transaction, in the presence of the customer, in a cash register or cash registers serviced by an established agency approved by Director. Mechanical cash register(s) must have a non-resettable cumulative total, a detail audit tape, a transaction number with a four-digit capacity, an indicator readily visible to customers as the amount rung, and a seven-digit cumulative capacity or greater, as determined by Director based on the type of business, with a four-digit overrun counter. At Director's request, Permittee must furnish to Port a statement from an established agency that the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by Director. If computerized cash registers or other similar electronic devices are used, that system must accurately record all sales at each Concession Unit and be no more subject to tampering than mechanical cash register(s). Upon the installation or removal of any cash register used in the Assigned Space, Permittee must immediately furnish to Director notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s). Permittee shall require any repair agency employed to repair or replace any cash register in the Assigned Space to disclose and furnish to Port or its auditors any information obtained by the agency in the course of making such repair or replacement pertaining to said cash register. Each and every customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on serially numbered sales slips or cash register tapes. Port shall have the right during business hours to examine the totals of the cash register(s) used in the Assigned Space and to inspect for compliance with this Section 13.

(6) Strong internal control procedures must be in place to ensure that all cash receipts are adequately safeguarded, deposited timely and recorded accurately in the books of Permittee and all of its approved sublessees. All cash receipts must include the identification of Permittee or its approved sublessee. All cash receipts must be recorded and receipted immediately in the presence of the customers with either cash register receipts or a pre-numbered official receipt of the Permittee or its approved sublessee. All cash must be kept in a secure location and must not be left unattended any time during the day. All cash receipts must be deposited intact daily. Under no circumstances are cash receipts to be used for making loans, advances or to pay expenses. The number of individuals authorized to receive and handle cash must be limited. There must be adequate segregation of duties between cash receiving, depositing and recording function. A supervisor must compare the record of all cash receipts with the amounts deposited. Any cash shortage or overage must be properly accounted for.

Cash receipts must be reconciled regularly to the general ledgers and bank statements to ensure that they have been completely recorded and correctly coded to the proper accounts.

(7) Permittee shall include the provisions of this Section 13 in each sublease approved by the Port pursuant to Section 18 below, and Permittee shall require each of its sublessees to comply with such provision of such sublease.

Section 14. **Aviation Operations.**

Permittee releases the Port from any present or future liability whatsoever and covenants not to sue the Port for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, air currents, electronic or other emissions or flight (including overflight of the Assigned Space) occurring as a result of aviation or airport or airport-related operations at or otherwise associated with the Airport, said release and covenant to include, but not be limited to claims (known or unknown) for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, or inverse condemnation or for injunctive or other extraordinary or equitable relief. It is further agreed that the Port shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by governmental authority.

The Port reserves from the Assigned Space an easement for flight of aircraft in or adjacent to the airspace above the Assigned Space and for the existence and imposition over, on and upon said parcel of noise, light, vibrations, smoke, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, airport or airport-related operations at or otherwise associated with use of the Airport. Permittee accepts the Assigned Space subject to the risks and activities hereinabove described.

Section 15. **Indemnification.**

(1) Permittee agrees to indemnify, defend and hold completely harmless Port (including, without limitation, members of the Port's Board of Commissioners), officers, employees and agents, from and against all liabilities (including, without limitation, liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601, et seq., or any other applicable Laws, including without limitation, the ADA Requirements), Losses, 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 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 (i) by reason or on account of damage to or destruction of any property of Port, or any property of, injury to or death of any person resulting from or arising out of the Permittee's construction of any of the Alterations, or its use, occupancy, maintenance or repair of the Assigned Space or any

improvements thereto, of Permittee's operations thereon or anywhere else on the Airport, or the acts or omissions of Permittee's officers, agents, employees, contractors, subcontractors, subtenants, invitees, vendors, suppliers or licensees, regardless of where the damage, destruction, injury or death occurred, unless such liability, loss, 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 Permittee, or the Port in concert with Permittee, has infringed on any Federal, state, or common law patent, trademark, copyright, or trade secret rights, or violated any Federal or state labor laws, or (iii) resulting from or arising out of the failure of Permittee to keep, observe or perform any of the covenants or agreements in this Permit to be kept, observed or performed by Permittee. In carrying out its obligations hereunder, Permittee shall use counsel acceptable to the Port Attorney.

(2) The foregoing provisions of this Section 15 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 Permittee under this Permit.

(3) The provisions of this Section 15 shall survive the expiration or earlier termination of the Term with respect to any acts or omissions occurring during the Term.

Section 16. **Waiver of Damage.**

Permittee hereby expressly waives and releases any cause of action or right of recovery for compensation for any and all loss or damage sustained by reason of any fire, defect, deficiency or impairments of any of the services in or to the Assigned Space or the Airport, including, but not limited to, electrical power, gas, telephone service, steam, heating, air conditioning, water supply, drainage or sewage systems, or from wires leading to or inside of any space or structure, or by reason of any loss resulting from the failure of any such system or facility unless such loss or damage is due to the willful misconduct of Port or its officers, agents or employees. It is understood that Permittee shall take such steps as Permittee may consider necessary to protect Permittee's Trade Equipment from any damage that may be caused to such equipment in the event of failure or interruption of any such utility services. 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 Permittee.

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

Section 17. **Insurance Requirements.**

(1) Permittee shall, at its own cost and expense, commencing no later than the Commencement Date and thereafter throughout the Term of this Permit, purchase and maintain

all of the insurance required by Paragraph G of this Permit and this Section 17, protecting Permittee, Port and its members (including, without limitation, members of Port's Board of Commissioners), officers, agents and employees, all of whom shall be named as Additional Insureds as required by Paragraph G, by endorsement, from and against any and all liabilities resulting from or arising out of Permittee's use or occupancy of the Assigned Space or the conduct of its operations under this Permit or on the Airport, in such form and with such companies that satisfy the requirements of subsection (5) below and as Port may reasonably approve, with a combined single limit (or its equivalent) per occurrence of not less than the amount set forth in Paragraph G of this Permit, with a deductible approved by the Port's Risk Manager in accordance with the requirements of subsection (6) below, with a waiver of any right of subrogation that the insurer may have against Port; with contractual liability coverage for Permittee's covenants to and indemnification of the Port under this Permit, and with the insurance company obligated to use counsel acceptable to the Port Attorney in carrying out its obligations to the Port. This insurance shall provide that it is primary insurance as respects any other valid and collectible insurance Port may possess, including any self-insured retention or deductible Port may have, and that Port shall not be obligated to contribute to cover any loss, damage or liability. This insurance shall also provide that it shall act for each insured and each additional insured as though a separate policy has been written for each; provided, however, that this provision shall not operate to increase the policy limits of the insurance.

(2) Permittee shall be required to maintain workers compensation insurance as required by the laws of California; provided, however, that Permittee may self-insure its workers compensation liability, subject to all applicable requirements of California law, together with employer liability insurance in the coverage amount of not less than $1,000,000.

(3) Permittee shall be required to maintain builders risk insurance (during construction of all improvements) and All Risk or Special Form property insurance (including demolition and earthquake and flood coverage) covering the Assigned Space and all contents, furniture, fixtures and equipment and all improvements to the Assigned Space (excluding only paving, pilings, parking lot curbs and landscaping and foundations below the lowest surface of the ground), with an insured value in an amount equal to 100% of the full replacement costs of the Assigned Space and all contents and improvements to the Assigned Space, including any increased costs of construction resulting from changes in applicable building codes and regulations. The policy or policies shall state that Port is an additional insured and loss payee and that the insurer waives its right of subrogation against Port. Each policy shall be subject to the approval of Port, which approval shall not be unreasonably withheld.

(4) Unless Permittee's policy of property insurance contains a rental income endorsement insuring the payment of the monthly rent for a period of not less than fifteen (15) months, Permittee shall also be required to maintain business interruption insurance insuring that the Rent will be paid to Port for a period of not less than fifteen (15) months if the Assigned Space is destroyed or rendered inaccessible by a risk insured against by the policy or policies of property insurance Permittee is required to maintain under subsection (3) above. Said insurance shall provide that the insurer waives its rights of subrogation against Port. Permittee shall maintain on file with Port, commencing with the Commencement Date and thereafter throughout the Term hereof, an endorsement or endorsements evidencing said rental income or business

interruption insurance. The cancellation and reduction provisions in Section 17(7) below shall also apply to business interruption insurance.

(5) All policies of insurance required by this Permit to be maintained by Permittee or any sublessee shall be issued by insurance carriers whose financial condition is acceptable to the Port, but in no event less than a Best rating of A+VII or better.

(6) Deductibles and self-insured retentions shall be permitted only at Permittee's written request and upon the prior written approval of the Port's Risk Manager, which approval may be granted or withheld in the Port's sole and absolute discretion and shall be subject to the following covenants and conditions:

(a) Permittee agrees that for any such deductible or self-insured retention amount, Permittee shall provide to the Port defense and indemnification at least equal to the defense and indemnification to which the Port would be entitled as an additional insured had Permittee provided the above-specified coverages respectively under Insurance Services Office form number GL 0001, and Insurance Services Office form number CA 0001, or such other successor forms as may be deemed appropriate by the Port's Risk Manager from time to time, as evidenced by a written notice from Port to Permittee. It is understood that Permittee's agreement to provide such defense and indemnification to the Port includes cases where such defense and indemnification would be required under said insurance policy forms for claimed loss, damage, injury or death which was caused solely by the active or passive negligence or other wrongful conduct of the Port.

(b) Permittee agrees that it shall be reasonable in all cases for the Port to condition its approval of any deductible in excess of the first $2,500.00 ("unsecured amount") on Permittee's first depositing with the Port, as additional security deposit and subject to all of the other provisions of this Permit applicable to a security deposit, a sum determined by the Port up to the amount of the deductible or self-insured retention in excess of the unsecured amount. The Port from time to time but no more frequently than once each year may, in its sole and absolute discretion, adjust the unsecured amount by the percentage increase, if any, between the last Index published before the Commencement Date and the last Index published. Such additional security deposit shall be in the form specified for the Performance Deposit under Section 27 below, but shall not be considered for purposes of increasing any performance or security deposit pursuant to provisions of this Permit other than this subsection (6)(b). The additional security deposit is solely for the benefit of the Port to secure Permittee's agreement in Section 17(6)(a) above to defend and indemnify the Port.

(7) On or before the date provided in Section 17(1) above, and at least thirty (30) days prior to the expiration of any policy or policies theretofore provided hereunder by Permittee, Permittee shall cause a certificate or certificates of insurance to be furnished to Port evidencing all insurance coverage that Permittee is required to maintain under this Permit, and such certificate shall provide that the policy or policies will not be cancelled nor the limits thereunder materially changed without first providing at least thirty (30) days' prior written notice thereof to Port. At the Port's request, copies of all required insurance policies will be provided to Port.

(8) Permittee shall also require its contractors (i) to maintain the following insurance: General Liability ($5,000,000), and Automobile Liability ($5,000,000)), (ii) to obtain a waiver of subrogation against the Port in such contractor's worker's compensation policy, and (iii) to provide Port with evidence reasonably acceptable to Port that such contractor has complied with the provisions of this subsection (8).

(9) Permittee hereby waives any right which it might have against Port on account of any loss or damage occasioned to Permittee arising from any risk covered by the insurance that Permittee is required to carry under this Permit or covered by any other insurance maintained by Permittee insuring the Assigned Space, its contents or any improvements thereto.

(10) Port reserves the right, during the Term of this Permit, to reasonably amend the monetary limits or coverages herein specified, but in so doing will give Permittee at least thirty (30) days prior written notice.

Section 18. **Assignment and Subletting.**

Notwithstanding any provision of this Permit to the contrary, Permittee shall have no right to sublease or assign all or any portion of the Assigned Space to any third party (except to sublessees approved by Port's Manager of Airport Properties that were identified in the Proposal) until after Permittee has completed construction of all of the improvements that Permittee is required to construct pursuant to Section 1(2)(a) above.

Except as hereinafter in this Section 18 expressly provided, and subject to the limitations in the first paragraph of this Section 18, Permittee shall not, either directly or indirectly, voluntarily or involuntarily, sublease, assign, hypothecate, encumber or transfer this Permit or any interest therein or right granted thereby, or license the use of same, or permit or suffer any other person or entity to occupy, use or manage (except management by Permittee's employees) the same, in whole or in part, without the prior written consent of the Port's Manager of Airport Properties (for subleases), or the prior written consent of the Port evidenced by resolution of its Board (for assignments). The Port shall consider a request for its consent if the use of each Concession Unit in the Assigned Space under such sublease or assignment is a Permitted Use of such Concession Unit under Paragraph B of this Permit . No approval by the Port of any sublease pursuant to the provisions of this Section 18 shall result in any privity of contract between the Port and any such sublessee, and the Port shall have no obligations to such sublessee arising under any such sublease, and no liability to sublessee arising out of Permittee's breach of any of its obligations under such sublease, or violation of the sublessee's rights under Federal, state or common law. The Port shall not review any provisions of a sublease dealing with labor agreements, including without limitation, labor peace, labor harmony or similar provisions, and the Port's approval of a sublease pursuant to the provisions of this Section 18 shall not include the approval of any provisions dealing with such labor agreements.

Except as hereinafter in this Section 18 expressly provided, no modification of any sublease, assignment or other transfer after the Port's initial consent shall be effective without the prior written approval of the Port's Manager of Airport Properties (for subleases), or of the Port (for assignments or other transfers), by resolution of its Board if required under the

circumstances. In case of a transfer by reason of death the transferee shall notify the Port in writing of the transfer within 60 days after the death.

Neither this Permit nor any interest therein or right granted thereby shall be assignable or transferable in proceedings in attachment, garnishment or execution against Permittee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Permittee or by any process of law, and possession of the whole or any part of the Assigned Space shall not be divested from Permittee in such proceedings or by any process of law, without the prior written consent of the Port evidenced by resolution of its Board, which consent shall not unreasonably be withheld or delayed if the use of each Concession Unit included in the Assigned Space under such assignment is a Permitted Use of that Concession Unit under Paragraph B of this Permit.

Any breach of the provisions of this Section 18 shall constitute a default and shall cause this Permit to terminate immediately at the option of the Port after not less than 10 days' written notice to Permittee.

The Port's consent to or waiver of its option to terminate this Permit in the event of a default on account of any sublease, assignment, transfer, occupation or use requiring prior written Port consent shall not be construed or deemed to be a waiver of the restrictions hereinabove contained or to be a consent to or waiver of objections to any subsequent sublease, assignment, transfer or occupation or use by another person.

Permittee and the Port acknowledge and agree that the rights retained by and granted to the Port pursuant to this Section 18 constitute a material part of the consideration for entering into this Permit and constitute a material and substantial inducement to the Port to enter into this Permit at the rental, for the terms, and upon the other covenants and conditions contained in this Permit, and that the acceptability of Permittee, and of any assignee or other transferee of any right or interest in this Permit, involves the exercise of broad discretion by the Port in promoting commerce, navigation and shipping in the Port area of the City. Therefore, Permittee agrees that the Port may condition its consent, if required hereunder, to a proposed assignment, subject to such provisions as are reasonable to protect the rights and interest of the Port hereunder and to assure promotion of aviation, commerce, navigation and shipping.

Permittee agrees that its personal business skills and philosophy, its experience in constructing improvements like those it is required to construct under this Permit, and its experience in complying with the security mandates described in Section 39 below, were an important inducement to the Port for entering into this Permit and that the Port may reasonably object to the transfer of the Assigned Space to another whose proposed use, while a Permitted Use, would involve a different quality, manner or type of business skills and experience than that of Permittee, or which would result in the imposition upon the Port of any new or additional requirements under the provisions of any applicable Laws, including without limitation the ADA Requirements.

Permittee agrees that as a condition to the Port's consideration of any request by Permittee for approval of any sublease, assignment or other transfer of this Permit not provided for in the Proposal, that Permittee shall deliver to the Port a nonrefundable processing fee of not

less than $2,500.00. The Port within 10 days of receipt of said fee may give to Permittee notice that said fee shall be increased by a sum, not to exceed an additional $2,500.00, that the Port in its sole and absolute discretion determines is necessary to cover the anticipated Port administrative costs and expenses, including labor, in processing and investigating Permittee's request. In addition, if the Port determines in its sole and absolute discretion that it requires either an environmental assessment of the Property (consisting of but not limited to visual inspection, historical or document review and/or subsurface investigation) and/or environmental documentation or reports in connection with such proposed assignment or other transfer of this Permit, Permittee shall reimburse the Port for all reasonable costs incurred by the Port in connection therewith (including but not limited to internal Port costs incurred in connection with such environmental assessment). Permittee agrees that unless and until said fee, and any requested additional fee, is delivered to the Port, Permittee shall be deemed to have made no request to the Port to the assignment, sublease or other transfer of this Permit. The minimum and maximum fees shall be adjusted upon the commencement of each successive year of this Permit, in the same percentage as the change in the last Index published prior to the date of each succeeding one year period from the last such Index published prior to the Commencement Date; provided that in no event shall the adjusted fees be less than the theretofore existing fees.

In addition, Permittee's request for consent to any proposed sublease (other than subleases that were identified in the Proposal, for which only the documents and information described in (iii) below must be provided), assignment or other transfer shall not be deemed to have been submitted to the Port unless and until Permittee, except as and to the extent excused by the Port in its sole and absolute discretion, shall have submitted to the Port, in writing, the following information and documents:

(i) The name of the proposed sublessee, assignee or other transferee;

(ii) The nature of proposed sublessee's or assignee's business to be carried on in the Assigned Space.

(iii) A copy of the proposed sublease, assignment or transfer, and a description of the full consideration for such sublease, assignment or transfer;

(iv) A balance sheet of the proposed assignee as of a date within at least 90 days of the request for the Port's consent;

(v) Audited financial statements of the proposed assignee (or the principals thereof, in the case of a newly formed entity) for the 2 year period preceding the request for the Port's consent, certified by an independent certified public accountant, and unaudited financial statements for any stub period preceding the request for the Port's consent, or if they are not available, unaudited financial statements for such periods certified by the chief financial officer of the proposed assignee (or the principals thereof, in the case of a newly formed entity);

(vi) A statement in reasonable detail as to the business experience of the proposed assignee (or the principals thereof, in the case of a newly formed entity) during the 5 year period preceding the request for the Port's consent;

(vii) A copy of the proposed assignee's business and marketing plan;

(viii) Permittee's certificate certifying to the best of its knowledge (a) that this Permit is unmodified and in full force and effect (or, if there have been modifications, that this Permit is in full force and effect, as modified, and stating the modifications), (b) the commencement and expiration dates of the Permit Term and the dates, if any, to which the Rent has been paid, (c) whether there are then existing any charges, offsets or defenses against the enforcement by the Port or Permittee of any agreement, covenant or condition hereof on the part of the Port or Permittee to be performed or observed (and, if so, specifying the same), and (d) whether there are then existing any defaults by the Port or Permittee in the performance or observance by the Port or Permittee of any agreement, covenant or condition hereof on the part of the Port or Permittee to be performed or observed and whether any notice has been given to the Port or Permittee of any default which has not been cured (and, if so, specifying the same); and

(ix) Such other information and documents relating to the proposed sublessee's or assignee's business, experience and finances as the Port may reasonably request.

It is understood and agreed that the Port's consent to a requested sublease or assignment or other transfer, shall be conditioned upon the Port's receipt of each of the following:

A. In the case of a proposed assignment, a full and complete executed copy of all documents to effectuate the assignment, together with a document in recordable form whereby the proposed assignee shall expressly assume all the covenants and conditions of this Permit and shall be in a form acceptable to Port.

B. In the case of any other proposed encumbrance or proposed sublease or transfer, a full and complete executed copy of all documents to effectuate the encumbrance, sublease or transfer, which documents shall incorporate directly or by reference all of the provisions of this Permit (except for the provisions of Section 6 of this Attachment "A"

which may or may not be incorporated as Permittee may elect). The form of the proposed sublease shall satisfy the applicable requirements of Paragraph I.1(a) of this Permit.

Unless otherwise provided by resolution duly adopted by the Board in its sole and absolute discretion, no sublease, assignment or any activity on the Assigned Space by any person other than Permittee, even with the Port's consent, shall relieve Permittee of its rental or other obligations of any nature whatsoever (including but not limited to indemnification and environmental obligations) hereunder, and Permittee shall continue to be liable as a principal and not as a guarantor or surety, to the same extent as though no sublease or assignment, and no such activity on the Assigned Space by any person other than Permittee, had been made or occurred, and as though all conduct of the assignee or such other person was Permittee's conduct. Specifically, in case of any assignment, the following shall apply, unless otherwise provided in such resolution of the Board:

(i) Permittee shall be and remain liable as a principal, without the necessity of any suit or proceedings on Port's part of any kind or nature whatsoever against Permittee and without the necessity of any notice of nonpayment, nonperformance, non-observance or default to which the Permittee might otherwise be entitled, all of which the Permittee hereby expressly waives. Permittee hereby expressly agrees that the validity of Permittee's said liabilities as a principal hereunder shall not be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Port against any assignee of any of the rights or remedies reserved to the Port pursuant to the provisions of the Permit or by the relief of any assignee from any of the assignee's obligations under the Permit or otherwise by (a) the release or discharge of any assignee in any creditors' proceedings, receivership, bankruptcy or other proceedings, (b) the impairment, limitation or modification of the liability of any assignee or the estate of any assignee in bankruptcy, or of any remedy for the enforcement of any assignee's liability under the Permit, resulting from the operation of any present or future provision of the 2005 Bankruptcy Reform Act or other statute or from the decision in any court; or (c) the rejection or disaffirmance of the Permit in any such proceedings. The liability of Permittee as a principal shall in no way be affected, modified or diminished by reason of any assignment, amendment, renewal, supplement, modification or extension of the Permit or by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of the Permit, or by reason of any extension of time that may be granted by Port to any assignee or a changed or different use of the Assigned Space consented to in writing by the Port, or by reason of any dealings or transactions or matters or things occurring between Port and any assignee whether or not notice thereof is given to Permittee; and

(ii) The Port's consent to any further assignment or assignments, and successive assignments by any assignee and the assignee's assigns of the Permit, made either with or without notice to the Permittee, shall in no manner whatsoever release the Permittee from any liability as principal.

For purposes of this Section 18, an assignment shall include, if the Permittee is a corporation (except if Permittee is a corporation whose stock is publicly traded), a limited liability company or other state-chartered entity, any dissolution, merger, consolidation or other reorganization of Permittee, or the sale, issuance or other transfer of a controlling percentage of the capital stock or other units representing ownership interests of Permittee, or the sale of more than 35% of the value of the assets of Permittee whether in one conveyance or cumulatively in the aggregate in more than one conveyance. The phrase "controlling percentage" means the ownership of and the right to vote, stock or other units representing ownership interests possessing at least 35% of the total combined voting power of all classes of Permittee's capital stock issued, outstanding, and entitled to vote for the election of directors, or at least 35% of the total combined voting power of all classes of other units representing ownership interests entitled to vote for the election of managers or entitled to vote on management matters of an entity managed by its members. If Permittee is a joint venture or a limited or general partnership, an assignment for purposes of this Section 18 shall include a withdrawal, or change, voluntary, involuntary, or by operation of law, of any general partner, or of any limited partner owning more than 35% of the limited partnership interests in that limited partnership, or a dissolution of Permittee or any general partner of Permittee, or a change in control of any general partner of Permittee or a change in control of any limited partner of Permittee owning more than 35% of the limited partnership interests in Permittee. If Permittee is a limited liability company, an assignment for purposes of this Section 18 shall include a change in the manager (or a change in control of the manager), if such entity is manager managed, or a transfer of an interest in the limited liability company that results in a change in control of such entity, if such entity is member managed. If a "controlling percentage" of Permittee is owned by another entity, or if another entity otherwise controls Permittee (such entity is hereafter the "Parent"), then an assignment for purposes of this Section 18 shall include any transaction involving the Parent that would have been an assignment for purposes of this Section 18 if that transaction had involved Permittee.

Permittee shall indemnify and defend Port for, from and against any matters which arise as a result of Permittee's failure to disclose any relevant information about the Assigned Space to any assignee or sublessee of the Permittee.

In the event that Permittee assigns this Permit, as a reasonable condition to the Port's consent to such assignment, Permittee shall pay to the Port any Bonus Value, as hereafter defined. "Bonus Value" means all consideration payable by or on behalf of an assignee to Permittee (including key money, bonus money and any payment in excess of fair market value for (i) services rendered by Permittee to or on behalf of an assignee or (ii) for assets, fixtures, inventory, equipment, furniture or improvements transferred by Permittee to or on behalf of an assignee in connection with an assignment). Such consideration shall be allocated between the Assigned Space described in Paragraph D of this Permit (excluding any improvements constructed by Permittee thereon), and the improvements constructed by Permittee pursuant to Section 1(2), based on their respective fair market rental value at the time of the assignment, as agreed to in writing by the parties; provided, however, that if the parties have not reached such agreement within thirty (30) days after the Port's written request, then the fair market rental value shall be determined as follows: Each party, at its cost and by giving notice to the other party, shall appoint a real estate appraiser with experience appraising airport property to appraise and submit an opinion separately stating the fair market rental value of the Assigned Space

(excluding any improvements constructed thereon by Permittee) and the fair market rental value of such improvements. If a party does not appoint an appraiser within ten (10) days after the other party has given notice of the name of its appraiser, the single appraiser appointed shall be the sole appraiser and that appraiser's opinion of the fair market rental value of the Assigned Space and the improvements shall be conclusive on the parties. If the two appraisers are appointed by the parties as stated in this subsection, they shall meet promptly and attempt to select a third appraiser meeting the qualifications stated in this subsection within ten (10) days after the last day the two appraisers are appointed. If they are unable to agree on the third appraiser, either of the parties to this Permit by giving ten (10) days' written notice to the other party may apply to the American Arbitration Association for the selection of a third appraiser who meets the qualifications stated in this Permit Each of the parties shall bear one-half of the cost of appointing the third appraiser and one-half of the third appraiser's fee. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for either party. Within sixty (60) days after the selection of the third appraiser, each of the appraisers shall submit to each party the appraiser's report and opinion separately stating the fair market rental value of the Assigned Space (excluding any improvements constructed thereon by Permittee) and the fair market rental value of such improvements, and the median opinion shall be the opinion used under this subsection. All appraisers appointed under this Section 18 shall hold the MAI designation of the American Institute of Real Estate Appraisers or its successor organization.

Section 19. **Default.**

(1) In the event that (a) Permittee shall fail to remit any payment due to Port under this Permit or shall fail to submit any financial report required to be submitted in connection therewith, within five (5) days after the due date thereof, or (b) Permittee shall fail, within the applicable time period provided in Section 27 below, to post any additional Performance Deposit required thereunder, or (c) if Permittee commits an Event of Default under any other agreement between Permittee and the Port, or (d) if Permittee makes a general arrangement or assignment for the benefit of creditors or becomes a "debtor" as defined in 11 U.S.C. § 101 or any successor statute (unless in the case of a petition filed against Permittee, the same is dismissed within 60 days), or (e) if a trustee or receiver is appointed to take possession of substantially all of Permittee's assets located in the Assigned Space or of Permittee's interest in this Permit, where possession is not restored to Permittee within 30 days, or (f) if Permittee shall fail three times within any period of one hundred and eight (180) consecutive days to fulfill any of its obligations under this Permit, which failure is set forth in a written notice from Port to Permittee, whether or not such failure is corrected within any applicable grace period provided in this Permit, or (g) if Permittee breaches its obligations under Section 6 or Paragraph N of this Permit, or (h) if a sublessee under any sublease with Permittee breaches its obligation under such sublease and Permittee does not satisfy the requirements in the next paragraphs of this Section 19(1), or (i) in the event that Permittee or any of its officers, employees, agents, invitees or licensees violates any other term, covenant or condition of this Permit and (except where otherwise expressly provided in this Permit) such violation continues for ten (10) days after Port has given written notice thereof to Permittee, then in any such event Permittee will be in default under this Permit.

Port agrees not to declare a default under this Section 19(1) if the default is the result of an action or omission of an authorized sublessee of Permittee only if after notification by Port, Permittee has taken or is taking all legally permissible corrective action, including initiation of termination actions with respect to the Sublease with the defaulting sublessee, and Permittee has made the Port financially whole.

(2) On the occurrence of any such default, the Port, in addition to its other remedies available under the terms of this Permit or pursuant to law or in equity, may at any time thereafter, with or without notice or demand and without limiting Port in the exercise of any right or remedy which Port may have by reason of such default or breach:

(a) Terminate Permittee's right to possession of the Assigned Space by any lawful means, in which case this Permit shall terminate and Permittee shall immediately surrender possession of the Assigned Space to Port. In such event Port shall be entitled to recover from Permittee all damages incurred by Port by reason of Permittee's default including, but not limited to,

(i) The worth at the time of award of the unpaid Rent and any other sums equivalent to rent required to be paid by Permittee under this Permit that had been earned at the time of termination;

(ii) The worth at the time of award of the amount by which the unpaid Rent and any other sums equivalent to rent required to be paid by Permittee under this Permit that would have been earned after termination until the time of award exceeds the amount of such loss of Rent that Permittee proves could have been reasonably avoided;

(iii) The worth at the time of award of the amount by which the unpaid Rent and any other sums equivalent to rent required to be paid by Permittee under this Permit for the balance of the Term after the time of award exceeds the amount of such loss of Rent that Permittee proves could have been reasonably avoided; and

(iv) Any other amounts permitted by law to compensate the Port for detriment caused by Permittee's default or which in the ordinary course of events would be likely to result therefrom, including, but not limited to, the costs and expenses incurred by the Port (A) in retaking possession of the Assigned Space, (B) in cleaning and making repairs of and alterations to the Assigned Space reasonably necessary to return the Assigned Space to good condition for the Permitted Uses and in otherwise preparing the Assigned Space for reletting, (C) in removing, transporting, and storing any of Permittee's property left at the Assigned Space although the Port shall have no obligation to remove, transport, or store any of such property, and (D) in reletting the Assigned Space, including, but not limited to, brokerage commissions, advertising costs, and attorney fees.

The "worth at the time of award" of the amounts referred to in items (i) and (ii) immediately above is computed by allowing interest at the maximum rate permitted by law. The "worth at the time of award" of the amount referred to in item (iii) immediately above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(b) Avail itself of the remedy described in California Civil Code Section 1951.4 (lessor may continue Permit in effect after Permittee's breach and abandonment and recover rent as it becomes due, if Permittee has right to sublet or assign, subject only to reasonable conditions or limitations). If such conditions or limitations become unreasonable, Port may waive such conditions or limitations and continue to avail itself of this remedy.

(c) In case of abandonment or vacating of the Assigned Space by Permittee, if the Port elects not to terminate the Permit, Permittee hereby irrevocably appoints the Port the agent of Permittee to enter upon the Assigned Space and remove any and all persons and/or property whatsoever situated upon the Assigned Space, and place all or any portion of said property in storage for account of and at expense of Permittee. In such case the Port may relet the Assigned Space upon such terms as to it may seem fit, and if a sufficient sum shall not thus be realized after paying all expenses enumerated in items A, B, C, and D in subsection 2(a)(iv) of this Section 19 to satisfy the Rent and other sums herein agreed to be paid, Permittee agrees to satisfy and pay any deficiency, and to pay such expenses. Permittee hereby exempts and agrees to save harmless the Port from any Losses arising out of or caused (except to the extent caused solely by the gross negligence or intentional misconduct of the Port or its agents or contractors) by any such entry or re-entry upon said Assigned Space and/or the removal of persons and/or property and storage of such property by the Port or its agents, using defense counsel acceptable to the Port Attorney.

(d) Pursue any other remedy now or hereafter available to Port under the laws, in equity, or in judicial decision of the State of California.

Permittee hereby expressly waives any notice of default from Port not expressly provided for in this Permit as a prerequisite to Port's termination of this Permit or its repossession of the Assigned Space. Any partial payment of any payment due to the Port under this Permit from Permittee and accepted by the Port shall not render ineffective any notice given by the Port to the Permittee pursuant to the terms of this Permit or California Code of Civil Procedure Section 1161, et. seq., or any successor statute thereto.

Section 20. **End of Term.**

At the expiration or earlier termination of the Term, Permittee shall deliver to Port possession of the Assigned Space and, except as otherwise expressly provided in this Permit, all of the fixtures and equipment thereon in their original condition in all respects, reasonable use and wear excepted (and except as otherwise expressly provided in this Permit, Permittee agrees to reimburse Port for the cost of any alterations, replacement, repairs or cleaning required to restore the same to such condition). All Alterations made pursuant to Section 1 of this Attachment "A" shall immediately become Port's property and, at the expiration or earlier termination of the Term, shall remain in the Assigned Space without compensation to Permittee

unless Port advises Permittee that Permittee will be required to remove the same, in which event, at Port's election, Permittee shall promptly restore the Assigned Space to its condition prior to the installation of such Alterations. At Port's election, Permittee shall remove all cabling and wiring, including telephone lines located within the Assigned Space, which are in excess of that determined by the Port to be required for normal use of the Assigned Space. In addition, Permittee shall repair, to the Port's reasonable satisfaction, all damage to the Assigned Space and the Airport resulting from Permittee's removal of such Alterations, cabling and wiring. Permittee's obligations under this Section 20 shall survive the expiration or earlier termination of the Term.

Section 21. **Holding Over.**

(1) If Permittee or any assignee or sublessee thereof continues to occupy the Assigned Space after the Term and the Port has not objected thereto, such holding over shall be deemed a month to month Permit terminable on thirty (30) days notice given by either party (the "Hold-Over Permit") on the same terms and conditions as provided in this Permit, except (a) the Minimum Annual Guaranty and the Percentage Fees applicable to the Concession Units shall be fixed by the Director from time-to-time by giving Permittee written notice thereof at any time not less than seven (7) days before the expiration of any monthly period, to be effective at the expiration of such month, and (b) the Director, upon thirty (30) days written notice to Permittee, may change any of the other terms and conditions of the Hold Over Permit.

(2) Notwithstanding the foregoing, nothing contained in this Permit shall give Permittee any right to occupy the Assigned Space at any time after expiration of the Term. Permittee acknowledges and agrees that upon such expiration or termination, it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) or pursuant to any other laws or regulations with respect to any relocation of its business or activities upon the expiration of the Term or upon the termination of any holdover tenancy pursuant to this Section 21, and Permittee hereby waives and releases to the Port all rights, if any, to which Permittee may be entitled under said provisions or other law or regulations.

(3) If Permittee or any assignee or sublessee thereof shall continue to occupy the Assigned Space after the expiration or earlier termination of the Term and the Port has objected thereto, then the Port shall be entitled to double the Rent specified in Paragraph E of this Permit, and acceptance by Port of any sums after any such objection shall not constitute a renewal of this Permit or a consent to such occupancy, nor shall it waive Port's right of re-entry or any other right available to it under the laws of California or the provisions of this Permit.

(4) Permittee shall continue to be obligated to pay Percentage Fees during any period that Permittee or any assignee or sublessee thereof continues to occupy the Assigned Space after the expiration or earlier termination of the Term.

Section 22. **Tax Treatment.**

Permittee agrees and hereby makes the irrevocable and binding election not to take for federal income tax purposes investment tax credits or depreciation on assets financed

with the proceeds of tax exempt Port bonds or notes, unless the Port otherwise expressly agrees in advance in writing signed by the Port. Permittee also agrees at the Port's request from time to time to execute such additional documents reasonably requested by the Port or its bond counsel to effectuate and/or evidence said agreement and election. This agreement and election, and the obligation to execute said documents relative thereto is binding on each successor or assignee of Permittee.

Section 23. **Intentionally Omitted.**

Section 24. **Notices, Approvals or Consents.**

Any notice, approval or consent permitted or required to be given to Permittee hereunder shall be in writing and delivered either by hand to the Assigned Space, or by nationally recognized overnight courier service, or by U.S. Certified Mail, Return Receipt Requested, postage prepaid, to Permittee's address contained in Paragraph A of this Permit or to such other address in the United States as Permittee may, by written notice to the Port given in accordance with the requirements of this Section 24, direct from time to time. Any notice permitted or required to be given to Port hereunder shall be in writing and delivered either by hand to the Office of the Manager, Airport Properties Department, Oakland International Airport, Oakland, California, provided Permittee obtains a written acknowledgment of receipt therefor from Port, or by nationally recognized overnight courier service, or by U.S. Certified Mail, Return Receipt Requested, postage prepaid, addressed as follows:

Manager, Airport Properties Department
Oakland International Airport
9532 Earhart Road, Suite 201
Oakland, California 94621

with a copy to:

Port Attorney
Port of Oakland
530 Water Street
Oakland, California 94607

or such other address as Port may, by written notice to Permittee given in accordance with the requirements of this subsection, direct from time to time. Any such notice, approval or consent shall be deemed given on receipt if delivered by hand or three (3) days after mailing provided such hand delivery or mailing was made in accordance with the requirements of this Section 24.

Section 25. **Sums Paid by Port.**

If Port has paid any sum or sums or has incurred any obligation or expense which Permittee has agreed to pay or reimburse Port for, or if Port is required or elects to pay any sum or sums or incurs any obligation or expense because of the failure, neglect or refusal of Permittee to perform or fulfill any of the terms or conditions of this Permit, then the same shall be deemed additional rent due hereunder and Permittee shall reimburse Port therefor promptly upon demand.

Section 26. **Delinquency Charge.**

Any sums payable by Permittee to Port under any provision of this Permit which are not paid for a period of 10 calendar days (30 calendar days for unpaid sums for utilities) after it becomes due and payable shall be subject to a delinquency charge, for violation of this Permit and as liquidated damages, of $50.00, plus a sum equal to 0.05% (five one-hundredths of one percent) per day of such delinquent payment for each day from the date such payment became due and payable until payment has been received by Port, but not to exceed the maximum interest rate permitted by applicable law Unpaid delinquency charges that accrue may be compounded monthly at the Port's sole election. The delinquency charges provided by this Section 26 are in addition to all other remedies that Port may have that are provided by this Permit or otherwise by law or in equity with respect to any payment that has become due and has not been paid.

Section 27. **Performance Deposit.**

Permittee shall deposit the Performance Deposit required under Paragraph F of this Permit with Port upon execution of this Permit, which sum (and any additions thereto required hereunder) shall be by cash or irrevocable letters of credit, each in a form and from an issuer acceptable in Port's sole discretion. Any letter of credit provided as a Performance Deposit must be in the form of the letter of credit attached hereto as Exhibit "11", or such successor form as Port may from time to time require by written notice to Permittee, and shall be confirmed by and payable at the counters of a bank in San Francisco, California, Oakland, California, or at another location near the nine (9) county San Francisco Bay Area, California, as may be approved by the Port's Deputy Executive Director Financial Services in the exercise of his or her sole discretion. (Letters of credit issued through correspondent banks will not be accepted.) Unless the Port receives a written extension or replacement of the letter of credit at least sixty (60) days before the end of the term of the letter of credit, the Port without notice to Permittee, may draw on the letter of credit and retain all proceeds as a cash Performance Deposit pursuant to the terms of this Section 27. The Performance Deposit shall be retained by Port as security for the faithful performance of Permittee's obligation hereunder and under any other agreement between Port and Permittee. Permittee shall be obligated, within fifteen (15) days after Port's written demand, to increase the amount of the Performance Deposit by the same percentage increase, if any, in the amount of the total Minimum Annual Guaranty applicable to all Concession Units included in the Assigned Space, determined pursuant to Paragraph E.1(b) of this Permit, or to such greater amount required by the Airport Rules, Policies and Regulations. Port shall have the right, but not the obligation, to apply said Performance Deposit to the payment of any sum due to Port which has not been paid, including, but not limited to, reimbursement of any expenses incurred by Port in curing any default of Permittee, or to the cost of restoring the Assigned Space or its furnishings, fixtures or equipment to their original condition, reasonable use and wear excepted, or to Port's future rent damages arising out of the termination of this Permit because of Permittee's default. In the event that all or any portion of the Performance Deposit is so applied, Permittee shall be obligated, within five (5) days after Port's written demand, to remit to Port the amount required to restore the Performance Deposit to the full amount required by this Section 27. If said Performance Deposit shall not have been applied for any of the foregoing purposes, it shall be returned to Permittee, without interest,

within ninety (90) days after the end of the Term or the end of any hold-over as described in Section 21 above, whichever is later (as such ninety (90) day period may reasonably be extended by Port by written notice to Permittee to allow Port to determine if Permittee has satisfied all of its obligations under Section 32 of this Permit). The Port will not pay any interest on the Performance Deposit. Permittee hereby expressly waives the protections of California Civil Code Section 1950.7.

In the event that Permittee has another agreement or other agreements with the Port that requires or require Permittee to maintain a deposit with the Port, Permittee, at its election may satisfy the deposit requirements with a single non-cash deposit in the form acceptable to the Port, provided that: (i) the deposit instrument describes each agreement to which it is intended to apply, (ii) the deposit amount is not less than the aggregate of deposit requirements for all of the agreements to which the instrument applies and (iii) if the deposit is insufficient to satisfy the requirements of any of the agreements to which it applies, the Permittee shall be in default of each and every agreement to which the deposit applies.

Section 28. **Brokerage Commissions.**

Unless otherwise expressly provided in a written addendum to this Attachment "A" executed by Port and Permittee, Permittee warrants that no real estate commission is payable by Port to any person or entity in connection with this Permit, and Permittee hereby agrees to indemnify, defend and hold Port completely harmless from and against any and all liabilities, 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 at both trial and appellate levels, and in any mediation or arbitration agreed to by Port) incurred by Port as a result of any claims therefor.

Section 29. **Port's Reserved Rights.**

(1) Port reserves the right for itself and others to utilize and maintain existing utility easements over, under, across and through the Assigned Space, and to run water, electrical, telephone, gas, drainage, communications and other lines over, under, across and through the Assigned Space and to grant necessary utility easements therefor. Port shall also have the right, at any time and from time to time, to cause maintenance to be performed and repairs to be made in and to the Assigned Space and the fixtures, equipment and mechanical systems located therein. The Port also reserves to itself and the right to grant to others in the future nonexclusive easements over outside portions of the Assigned Space for purposes of access to adjacent Port property (including, without limitation, access to improvements owned by others such as buildings owned by Port tenants on Port land and access for purposes such as maintenance, installation or repair of utilities, use of restrooms, and construction, maintenance, repair, replacement or reconstruction of improvements or facilities located on such Port property.) The Port also reserve the exclusive right to use all areas of the Airport not comprising the Assigned Space, and the exterior walls and roofs of the Assigned Space, together with the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires, columns, and structural elements serving other parts of the Airport in and through the Assigned Space. This reservation in no way affects Permittee's maintenance obligations under this Permit.

(2) Permittee acknowledges that the Port has made no representations or warranties to Permittee regarding the location of airlines or pedestrian traffic, or the design, construction or location of security check points or other improvements in the terminal facilities at the Airport. Permittee agrees that Port reserves the right (a) to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may see fit, free from any and all liability to Permittee for loss of business or damages of any nature whatsoever to Permittee occasioned during the making of such improvements, repairs, alterations and additions, including but not limited to any damages resulting from negligence of the Port or its employees, agents or contractors, and (b) to establish such fees and charges for the use of the Airport by Permittee and all others as Port may deem advisable, including, without limitation, parking charges on Permittee, its customers and employees and on Permittee's vendors making deliveries to Permittee anywhere on the Airport.

(3) Permittee acknowledges that construction on the roads and other portions of the Airport during the Term may temporarily disrupt Permittee's use of the Assigned Space. Permittee agrees that Port will not be required to pay or credit any sums to Permittee to reimburse Permittee for any disruption or loss of use of the Assigned Space, and that there will be no abatement in the Rent or other amounts payable by Permittee to Port under this Permit.

(4) Permittee covenants and agrees that this Permit shall be subject and subordinate to the provisions of any existing or future agreement between Port and the United States Government relative to the operation or maintenance of Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds or Passenger Facility Charges ("PFC's") for the development or operation of Airport. In the event that the Federal Aviation Administration or its successors shall require any modifications to this Permit as a condition precedent to the granting of such federal funds or PFC's, Permittee shall promptly consent in writing to such modifications.

(5) Permittee shall cooperate in implementing the goals of the Port's Employment Resources Development Program, hereinafter called the "ERDP" as set forth in the Port Resolution No. 26291, as amended to date. Permittee understands the Port's ERDP seeks to address the needs of the Port tenants and professional service providers for a qualified work force and the needs of Oakland's chronically unemployed and under-employed for employment, by identifying employment opportunities, by providing employment training and counseling for persons seeking such opportunities and facilitating the employment of those persons qualified to fill the jobs identified. Permittee understands that cooperation in implementing the goals of the Port's ERDP involves considering Port ERDP referrals consistent with relevant state and federal anti-discrimination regulations seeking to insure equal employment opportunity. Permittee shall provide to the Port's Executive Director or his or her designee copies of all solicitations or advertisements for employees at the Airport placed by or on behalf of Permittee, so that the Port may assist in providing Permittee with the names of qualified unemployed and under-employed residents of Oakland and others, including minorities, women, physically handicapped persons, and veterans seeking such employment or training opportunities through the Port's ERDP efforts.

(6) Port may, at any time and from time to time, using Port personnel, or using an outside audit firm designated by the Port's Chief Audit Officer, conduct an audit of

Permittee's operations at the Airport (in addition to Port's audit rights provided elsewhere in this Permit) to confirm that such operations comply with the requirements of this Permit. Permittee shall cooperate fully with the Port in such audit and shall require all of its authorized sublessees to fully cooperate in such audit. If such audit shows that Permittee is not complying with any of such requirements, then without limiting Port's rights under Section 19 above, Permittee shall promptly remedy any noncompliance shown in such audit, and Port may require Permittee to reimburse Port for all of its costs of such audit.

Section 30. **Discrimination Not Permitted.**

(1) During the performance of this Permit, the Permittee, for itself, its assignees and successors in interest agrees as follows:

(a) Compliance with Regulations. The Permittee shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, 'DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Permit.

(b) Nondiscrimination. The Permittee, with regard to the work performed by it during the Permit, 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. The Permittee shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Permit covers a program set forth in Appendix B of the Regulations.

(c) Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Permittee 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 Permittee of the Permittee's obligations under this Permit and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(d) Information and Reports. The Permittee shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Port or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Permittee is in the exclusive possession of another who fails or refuses to furnish this information, the Permittee shall so certify to the Port or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(2) The Permittee for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Assigned Space described in this Permit for a purpose for which a DOT program or activity is extended or

for another purpose involving the provision of similar services or benefits, the Permittee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(3) The Permittee for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (ii) that in the construction of any improvements on, over, or under such Assigned Space and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (iii) that the Permittee shall use the Assigned Space in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21. Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(4) The Permittee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Permittee during the Term of this Permit.

(5) In furtherance of Port's long-standing policy to insure that equal employment opportunity is achieved and nondiscrimination is guaranteed in all Port-related activities, Permittee for itself and its successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree with respect to Permittee's activities upon the Assigned Space and as a covenant running with the land:

(a) That Permittee shall not discriminate against any employee or applicant for employment 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 veteran's status. Permittee 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. Permittee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Port's Equal Opportunity Employment Officer setting forth the provisions of this paragraph;

(b) That Permittee shall, in all solicitations or advertisements for employees placed by or on behalf of Permittee, state that all qualified applicants will receive consideration for employment 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's status;

(c) That Permittee 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 Employment Officer, advising the labor union or workers' representative of the Permittee's commitments under this Section 30, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

(d) That Permittee shall not discriminate by segregation or otherwise against any person or persons because of race, color, religion, sex, actual or perceived sexual orientation, age, national origin, physical handicap or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status in furnishing, or by refusing to furnish, to such person or persons the use of any public facility upon the Assigned Space, including any and all services, privileges, accommodations, and activities provided thereby;

(e) That Permittee 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 Opportunity Employment 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 in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person, on the grounds of race, color, national origin, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

(g) That Permittee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E, as issued on February 7, 1980, or as subsequently amended by the United States Department of Transportation, Federal Aviation Administration. Permittee further assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. Permittee assures that it will require that its covered suborganizations provide assurances to Permittee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect; and

(h) Permittee agrees that it shall not discriminate against any professional service 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 veteran's status; and that the Permittee shall, in all solicitations or advertisements placed by or on behalf of Permittee, for professional services, vendors or contractors, state that all qualified bidders will receive consideration on merit, without regard to race, color, religion, sex, national origin, age, physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status.

(6) That Permittee's noncompliance with the provision of this Section 30 shall constitute a material breach of this Permit. In the event of a breach of any of the above-stated nondiscrimination and affirmative action covenants, the Port or the United States shall have the right to consider but not be limited to the following:

(a) Withholding of payments to the Permittee under this Permit until the Permittee complies; or

(b) The Port may terminate this Permit and re-enter and possess the Assigned Space and the facilities thereon, and hold the same as if this Permit had never been made, without liability therefor; or

(c) The Port or the United States may seek judicial enforcement or said covenants.

(7) Should the Permittee authorize another person, with Port's prior written consent, to provide services or benefits from the Assigned Space or at the Airport, Permittee shall obtain from such person a written agreement pursuant to which such person shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this Section 30. Permittee shall furnish the original or a true copy of such agreement to Port. Port may from time to time be required by the United States Government, or one or more of its agencies, to adopt additional or amended provisions, including non-discrimination provisions, concerning the use and operation of the Airport, and Permittee agrees that it will adopt any such requirement as a part of this Permit.

(8) If Permittee shall furnish any services to the public at the Airport, it shall furnish said services on a fair, equal and not unjustly discriminatory basis to all users thereof and shall charge fair, reasonable and not unjustly discriminatory prices for each unit of service, provided that Permittee shall be allowed, subject to compliance with the provisions of Paragraph B.4 of this Permit, to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers, if any.

Section 31. **Federal Aviation Administration Requirements.**

(1) Permittee shall comply with all applicable regulations of the Federal Aviation Administration and the Transportation Security Administration relating to Airport security and shall control the Assigned Space so as to prevent or deter unauthorized persons from obtaining access to the air operations area of the Airport.

(2) Port reserves unto itself, and unto its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft through the airspace above the surface of the Assigned Space, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used, and for navigation of or flight in the said airspace, and use of said airspace for landing on, taking off from or operating on the Airport.

(3) Permittee expressly agrees, on behalf of itself and its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Assigned Space in compliance with the requirements of Federal Aviation Regulations, 14 CFR Part 77. In the event the aforesaid covenants are breached, the Port reserves the right to enter upon the Assigned Space and to remove the offending structure or object and cut the offending natural growth, all of which shall be at the expense of Permittee.

(4) Permittee agrees to require any lights in the Assigned Space to be constructed, focused or arranged in a manner that will prevent them from casting their beams in an upward direction so as to interfere with the vision of pilots in aircraft landing at or taking off from the Airport.

(5) Permittee expressly agrees, on behalf of itself and its successors and assigns, to prevent any use of the Assigned Space which would interfere with or adversely affect the operation or maintenance of the Airport, or which would otherwise constitute a hazard or nuisance at the Airport.

(6) Permittee agrees that it will not exercise or grant any right or privilege which would operate to prevent any person, firm or corporation operating aircraft on the Airport from performing any service (including, but not limited to maintenance and repair) on its own aircraft with its own employees that it may choose to perform. This Permit confers no right on Permittee or any other person, firm or corporation to fuel aircraft at the Airport.

(7) This Permit is subject to the requirements of the U.S. Department of Transportation's regulation, 49 CFR, Part 23; Permittee agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, subcontract or other agreement covered by 49 CFR, Part 23, or any successor regulation; and Permittee also agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR, Part 23, that it enters into and to cause those businesses to similarly include the statements in further agreements. This subsection (7) does not authorize the operation of a concession at the Airport that is not part of the Permitted Uses under Paragraph B of this Permit.

Section 32. **Environmental Responsibilities**

(1) Definitions. The following terms when used in this Permit with the initial letter(s) capitalized, whether in the singular or plural, shall have the following meaning:

(a) "Agreement": means this Permit.

(b) "Clean-up": Evaluation, investigation, testing, feasibility studies, risk assessments, removal, disposal, remediation, containment, capping, encapsulating and monitoring of Toxic Materials and restoration of the Assigned Space.

(c) "Environmental Laws": All federal, state and local laws, statutes, ordinances, codes and regulations including 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, a/k/a the Clean Water 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); California Health & Safety Code ("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); 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. (Porter-Cologne Water Quality Control Act); H&S Code Section 25229.5 et seq. (Proposition 65 or the Safe Drinking Water and Toxic Enforcement Act of 1986); the Uniform Fire Code as adopted by the City of Oakland and any other local fire codes; the regulations adopted and promulgated pursuant to such Laws and any modifications to or revisions of such Laws adopted pursuant to such Laws after the Commencement Date, as well as any subsequently enacted Laws relating to the use, release or disposal of Toxic Materials, or to the remediation of air, surface waters, groundwater, soil or other media contaminated with such substances; and any other substance designated by Port as a Toxic Material, upon a finding by the Port's Executive Director and notice to Permittee, that the substance poses a hazard to human health, safety, or the environment, including regulations and orders relating to the handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, Release, treatment and disposal of any Toxic Materials.

(d) "Exempted Toxic Materials": Toxic Materials consisting of ordinary office and janitorial supplies in amounts reasonably necessary for their intended purpose, substances in cooling systems (e.g., refrigerators and air conditioning units), or automobiles and the standard contents therein, used in the ordinary course of Permittee's Permitted Uses, so long as said items are stored, used, handled, transported and disposed of in accordance with all Laws; provided, however, that with respect to cooling systems and automobiles and the standard contents therein, Exempted Toxic Materials shall not include the storage or use of any Toxic Materials outside of a cooling system or an automobile; and further provided, however, that Exempted Toxic Materials shall lose their exemption and shall be treated as Toxic Materials in the event of any Release of such Exempted Toxic Materials.

(e) "Permittee Representative": Permittee's agents, employees, contractors, subtenants, licensees or invitees.

(f) "Release or Released": Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment.

(g) "Toxic Materials": (i) substances that are toxic, corrosive, reactive or ignitable; (ii) petroleum products, crude oil (or any fraction thereof) and their derivatives; (iii) explosives, asbestos, radioactive materials, hazardous wastes, toxic substances or related hazardous materials; (iv) noxious fumes, vapors, soot or smoke; and (v) substances which now or in the future are defined by applicable local, State or federal law as "hazardous substances,"

"hazardous materials," "hazardous wastes," "reproductive toxins," or "toxic substances," "pollutants" or "waste" or are regulated under applicable Laws.

(2) General Prohibitions.

(a) No Toxic Materials; Exceptions: Permittee shall not cause or permit any Toxic Materials to be brought upon, remain, kept or used in or about the Assigned Space or other Port property during the Term by Permittee or any Permittee Representative, except for Exempted Toxic Materials.

(b) Release of Toxic Materials: Permittee shall not cause or permit any Toxic Materials to be Released to the Assigned Space or the environment. Permittee shall notify the Port of any Release of Toxic Materials in accordance with Paragraph 10 of this Section 32.

(c) Storage Tanks: Permittee shall not install, operate or remove any underground storage tank, above ground storage tank or other storage facility whatsoever containing Toxic Materials without the prior written approval of the Port, which approval may be given, conditioned, or withheld in the exercise of its sole discretion. Any such installation, operation or removal of such tanks or other storage facilities shall be subject to all of the other applicable provisions of this Section 32.

(d) Environmental Investigation, Wells and Groundwater: Permittee shall not conduct any environmental investigation, testing or Clean-up, including but not limited to, the implementation of any environmental work plan or any soil or groundwater borings or samplings, or the installation, operation or removal of any well, or use any groundwater, on the Assigned Space without the prior written approval of Port's Executive Director or Deputy Executive Director, which approval may be given, conditioned, or withheld in the exercise of his or her sole discretion. Any such environmental investigation, testing, or Clean-up, or installation, operation, or removal of any well or any use of groundwater shall be subject to all of the other applicable provisions of this Section 32.

(3) Compliance With Laws. Permittee shall comply, at its sole cost, with all Laws relating to Toxic Materials. It shall be the sole obligation of Permittee to obtain and maintain any permits and approvals required pursuant to such Laws or this Section 32.

(4) Disposal of Toxic Materials. Permittee shall not dispose of or permit the disposal of any Toxic Materials, regardless of quantity or concentration, within the storm and/or sanitary sewer drains, pump-out stations, restrooms and/or plumbing facilities within the Assigned Space, or other property of Port. All disposal of Toxic Materials shall be in approved and labeled containers and removed from the Assigned Space only by duly licensed and insured carriers in compliance with all Laws. The Port shall sign as generator on any Uniform Hazardous Waste manifests or other waste profile sheets for the lawful disposal of Toxic Materials from the Assigned Space.

(5) Material Safety Data Sheets. Permittee shall maintain Material Safety Data Sheets, as required under the Hazard Communication Standard in 29 CFR §1910.1200, and any other Laws. Such information shall be kept current at all times and shall be kept in a place

accessible to Port and other regulatory agencies, including the Oakland Fire Department, at any time for inspection and in the event of emergency.

(6) Clean Water Act; NPDES Permits and SWPPPs. Permittee shall comply with all Laws regarding discharges to water and land, including without limitation, obtaining and complying with any individual or general National Pollutant Discharge Elimination System ("NPDES") permit or Waste Discharge Requirements that are issued to the Port or others with jurisdiction over Port property. Permittee shall comply with such applicable NPDES permits, requesting coverage under and complying with any applicable general permit and any local ordinance or regulations pertaining to stormwater, and preparation and complying with a site-specific Storm Water Pollution Prevention Plan ("SWPPP") or any revisions to an SWPPP, with respect to Permittee's operations or activities on the Assigned Space.

(7) Entry and Inspection.

(a) Port's Entry and Inspection Rights. Port and its authorized representatives and consultants shall have the right, but not the obligation, to enter the Assigned Space at any reasonable time (i) to confirm Permittee's compliance with the provisions of this Section 32, including the right to physically investigate the condition of the Assigned Space and review all permits, reports, plans, and other documents regarding the use, handling, storage or disposal of Toxic Materials, and (ii) to perform Port's obligations under this Section 32. Port's rights shall include the right to inspect, investigate, sample and/or monitor the Assigned Space, including any air, soil, surface water, groundwater or other sampling or any other testing, digging, drilling or analysis to determine whether Permittee is complying with the terms of this Section 32. Permittee shall pay the costs of Port's consultants' fees and all other costs incurred by Port if said fees and costs result from Permittee's failure to carry out its obligations under this Section 32. Port shall use reasonable efforts to minimize any interference with Permittee's business caused by Port's entry onto the Assigned Space, but Port shall not be responsible for any interference caused thereby.

(b) Environmental Audit. Port shall have the right, but not the obligation, to require, annually during the Term and again within thirty (30) business days after the expiration or earlier termination of the Term, that a detailed review ("Environmental Audit") be undertaken, at Permittee's expense, to determine whether the Assigned Space and Permittee's and Permittee's Representatives' use, handling, storage or disposal of all Toxic Materials comply with this Section 32. The Environmental Audit shall be conducted by independent, qualified, licensed environmental consultants selected by Port and pre-approved by Permittee. The Port shall provide Permittee with thirty (30) days prior written notice of its intent to conduct the Environmental Audit and the name of the proposed environmental consultant. If Permittee objects to the consultant selected by the Port, Permittee shall provide the Port with a written objection to the proposed consultant within five (5) business days after its receipt of such written notice. If Permittee fails to make such timely objection, then Port's selection of the environmental consultant shall be final. If Permittee makes such timely objection, and the parties are unable to agree upon an environmental consultant within ten (10) business days of such objection, the Port shall have the right to select the environmental consultant from its list of pre-approved "as needed" environmental consultants. The Environmental Audit shall include an inspection of the Assigned Space, interviews with the occupants of the Assigned Space and any

other matters which said consultants believe, in the exercise of their professional judgment, are reasonably necessary to ascertain whether Permittee's operations and the Assigned Space are in compliance with this Section 32, including inspection of the Assigned Space, interviews with the occupants of the Assigned Space, the installation of monitoring wells, and the sampling and analysis of soil, surface water and groundwater. Permittee shall fully cooperate with the consultants and comply with all information requests. After the completion of the Environmental Audit, a written report shall be prepared and copies shall be distributed to both Permittee and Port.

(c) Required Compliance. If the Assigned Space is not in compliance with this Section 32 or applicable Laws by reason of any violation by Permittee and/or any Permittee Representative of their obligations under this Section 32, Permittee shall, at its cost, promptly take all action necessary to bring the Assigned Space into compliance, including all Clean-Up.

(8) Indemnity.

(a) Basic Obligation. Permittee shall be solely responsible for and shall indemnify, protect, defend (with counsel acceptable to Port) and hold harmless Port and Port's Commissioners, agents, employees, representatives, contractors, Port designated secondary users of the Assigned Space, directors and officers (collectively hereinafter referred to as the "Indemnitees") from and against any and all claims, costs, penalties, fines, liabilities, losses, including without limitation: (i) diminution in value of the Assigned Space 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 Assigned Space (including, without limitation deed restrictions), or any other Port property; (iii) damages arising from any adverse impact on marketing of space in the Assigned Space or other Port property; (iv) Permittee's responsibilities, if any, for pre-existing contamination as described in subsection (h) below; (v) increased costs of maintenance, construction, repairs or major improvements to the Assigned Space, or any other Port property; (vi) stigma damages; (vii) Clean-up costs; (viii) claims related to the disposal of Toxic Materials whether at the Assigned Space or landfills or other offsite locations; and (ix) sums paid in settlement of claims, paralegal and attorneys' fees, consultant fees and expert fees, damages, injuries, causes of action, judgments, taxes and expenses which arise during or after the Term as a result of the failure of Permittee or any Permittee Representative to comply with Permittee's obligations under this Section 32 or the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, presence, suspected presence, threatened or actual discharge, release or disposal of Toxic Materials, in, upon or about the Assigned Space or other Port property, by Permittee or by any Permittee Representative or by any other known third party, and with respect to the Assigned Space, unknown third party, during the Term.

(b) Notice and Opportunity. Each party shall give the other reasonable notice of a party's knowledge of Toxic Materials affecting the Assigned Space or the discovery of any event or condition that could give rise to an indemnification obligation under subsection (a) above, and the knowledge of any third party's claim in relation thereto, which could give rise to such an indemnification obligation. In addition, subject to the limitations and conditions set forth in subsection (e) below, Port shall allow Permittee a reasonable opportunity to promptly and diligently indemnify, protect, and defend Port and the other Indemnitees, and to undertake

appropriate Clean-up for which Permittee is responsible hereunder; provided, however, that all Clean-up activities by Permittee or any Permittee Representatives shall be with Port's prior written approval.

(c) Action. Permittee's indemnification obligation under this Section 32(8) shall commence in no event later than any notice of any claim whether by regulatory notice (which shall be deemed to include, without limitation, notice by a governmental agency of an informational request, or to take investigative, remedial, removal or other action), threatened legal action, arbitration, mediation, administrative proceeding or lawsuit ("Action").

(d) Notice; Defense of Action. Port shall within a reasonable time after receipt of notice of an Action or after Port otherwise has discovered an event or condition which would give rise to Permittee's indemnification obligation under this Section 32, give notice to Permittee. The failure to so notify Permittee shall not relieve Permittee of any liability it may have to Port. Port shall give notice to Permittee of the commencement of an Action, and Permittee shall be entitled to participate therein. Port may, in its sole discretion, assume control of the defense of any Action or other claims brought against Port, and Permittee shall be responsible for payment and/or reimbursement of all reasonable defense costs. Defense costs shall include all legal and paralegal and attorneys fees (including costs attributable to in-house paralegals and attorneys), legal overhead costs, court costs, fees and costs of experts retained as consultants or expert witnesses, in-house environmental staff costs, fees and costs charged by governmental entities for such items as oversight or review fees. The defense of an Action shall be deemed to include pre-litigation defense costs, the response to any request, directive or order by a governmental agency, and the cost associated with tendering claims to insurance carriers for defense and indemnity. Permittee and Port shall cooperate with each other in the defense against any Action, including, without limitation, the tendering of claims to Permittee's insurance carriers for defense and indemnity.

(e) Settlements. No compromise or settlement of any Action affecting the Assigned Space may be effected by Permittee without Port's written consent.

(f) Right to Defend. With respect to any Action by a governmental agency, and with respect to all other claims as to which Port determines in good faith that there is a reasonable probability that such Action or claim may materially and adversely affect Port other than as a result of monetary damages or that the monetary damages are likely to exceed the amount which Permittee is obligated to indemnify under this Section 32, Port may, by notice to Permittee, assume the exclusive right to defend, compromise or settle such action without prejudice to its rights to indemnification hereunder.

(g) Survival. Permittee's indemnification obligation under this Section 32 shall survive the expiration or earlier termination of the Term.

(h) Pre-Existing Contamination. Notwithstanding any other provision of this Section 32, Permittee shall not be responsible for any Toxic Materials that were on the Assigned Space prior to Permittee's taking possession except as follows: (1) Permittee shall be responsible for any such Toxic Materials to the extent that the scope, boundaries or level of contamination, or the cost of Clean-up, is increased as a result of Permittee's failure, after

Permittee knows, or has a reasonable basis to believe that Toxic Materials are on the Assigned Space or other Port property, promptly and reasonably to (A) notify Port in writing of such Toxic Materials, (B) take precautionary measures to alter its operations and the activities of other parties (including Permittee's Representatives) on the Assigned Space in order to assure that such operations or activities do not increase such scope or cost; and (C) provide Port prompt and adequate access to the Assigned Space in order to undertake all Clean-up activities that Port, at its sole discretion, may take; (2) Permittee shall be responsible for and shall pay for the lawful removal of asbestos containing materials from the Assigned Space that is required as a result of Permittee's Work or any other of Permittee's construction activities; (3) Permittee shall be responsible for any such Toxic Materials on the Assigned Space prior to Permittee's taking possession if such Toxic Materials were present on the Assigned Space due to the negligent or intentional acts or omission of Permittee or any Permittee Representative; and (4) Permittee shall be responsible for any Toxic Material that is discovered, Released or disturbed as the result of any testing, excavation or other subsurface activity made or undertaken on the Assigned Space by Permittee or any Permittee Representative, unless Port has given to Permittee in writing prior approval for such testing, excavation or subsurface activity including the workplan for such testing, excavation or subsurface activity (which approval may be given or withheld in Port's sole discretion and which approval may also be conditioned upon Permittee's compliance with Port's directive to modify Permittee's testing, excavation or subsurface activity plans so as to minimize the testing, excavation, Release or disturbance of Toxic Materials on, under or beneath the Assigned Space).

(9) Clean-up. If Permittee or any Permittee Representative or any other known persons and with respect to the Assigned Space, unknown persons (except the Indemnitees) causes contamination of surface water, groundwater or soil or other portions of the Assigned Space or other Port property by Toxic Materials, then Permittee shall promptly take any and all actions necessary for Clean-up of such contamination. Prior to taking such action, except in the case of an emergency, Permittee shall provide Port with written notification of all actions proposed to be taken by Permittee, and shall proceed with such action only upon receipt of approval by Port for such action. If Permittee fails to take such action after approval by Port, or if Port does not approve Permittee's proposed action, Port may, but shall not be obligated to, take Clean-up actions. In such event, all costs incurred by Port with respect to such Clean-up activities shall be for the account of Permittee.

(10) Notices. In addition to Permittee's obligations to report spillage, discharge, Release and disposal of Toxic Materials to local, state and federal agencies, Permittee shall immediately provide Port with telephonic notice, which shall later promptly be confirmed by written notice, of any and all spillage, discharge, Release and disposal of Toxic Materials onto or within the Assigned Space or other Port property and any injuries or damages resulting directly or indirectly therefrom, regardless of whether reporting to a governmental agency is required. Further, Permittee shall deliver to Port each and every notice or order received by Permittee or any Permittee Representative from governmental agencies concerning Toxic Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order. Permittee shall promptly notify the Port of any notice of intent to sue under any citizen suit provision of any Laws.

(11) Fees, Taxes and Fines. Permittee shall pay, prior to delinquency, any and all fees, taxes (including excise taxes) and fines which are charged upon or incident to any responsibility of Permittee under this Section 32, and shall not allow such obligations to become a lien or charge against or upon the Assigned Space or Port.

(12) Delivery of Documentation.

(a) Copies to Port. If Permittee makes any disclosure, or provides any report, to any governmental agency concerning Permittee's storage, use, generation or disposal of Toxic Materials on the Assigned Space or other Port property, Permittee shall concurrently also provide a copy of such disclosure or report to Port.

(b) Business Plan. At any time that Permittee's business or operations conducted within the Assigned Space or on other Port property requires the establishment and implementation of a business plan pursuant to California Health and Safety Code §25500 et seq. (the "Code") or any other Laws concerning the handling of Toxic Materials, or to prepare an inventory pursuant to any Laws, Permittee shall (i) timely comply with such requirement, (ii) promptly give written notification to Port that Permittee's business is subject to the business plan requirement of the Code or other Laws, (iii) promptly advise Port whether the business is in compliance with the Code and other Laws, and (iv) simultaneously deliver to Port and the appropriate regulatory agency any such business plan.

(c) Clean Water Act Documents. Permittee shall deliver to Port a copy of all registration forms, reports, policies, its site-specific SWPPP, any revised or updated SWPPP and documents submitted to a government agency or prepared or maintained by Permittee, required to be prepared pursuant to the Clean Water Act that relates to the Assigned Space or other Port property. Permittee shall retain for a period of five years all documents required by or prepared in connection with any NPDES permit or Waste Discharge Requirements permit or authorization relating to Permittee's activities, operations or facilities that relate to the Assigned Space or other Port property, including, but not limited to, correspondence, analyses, reports, orders, or other documents submitted to or received from any government agency.

(d) Proposition 65. Permittee shall deliver to Port a copy of any notices posted, distributed or published pursuant to Proposition 65, Chapter 6.6, Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5 et seq. that relates to the Assigned Space or other Port property. Permittee shall provide, upon request by the Port, the identity of specific chemicals which require notification under Proposition 65.

(e) Documents. Permittee shall maintain for periodic inspection by Port and deliver to Port upon request (unless required by other provisions of this Section 32 or by the Laws without the stated requirement for a Port request) true and correct copies of the following documents (hereinafter referred to as the "Documents"), related to the handling, storage, disposal and emission of Toxic Materials on the Assigned Space or other Port property, concurrently with the receipt from or submission to a governmental agency:

Permits; approvals; spill reports; reports and correspondence; storage and management plans; spill prevention control and countermeasures plans; other spill contingency and emergency response plans; documents relating to taxes for toxic materials; manifests for disposal or treatment of Toxic Materials; notice of violations of any Laws; plans relating to the installation of any storage tanks to be installed in, under or around the Assigned Space; and all closure plans or any other documents required by any and all federal, state and local governmental agencies and authorities for any storage tanks or other facilities installed or Toxic Materials located in, on or under the Assigned Space.

Permittee is not required, however, to provide Port with any portion(s) of the Documents containing information of a proprietary nature which, in and of itself, does not contain a reference to any Toxic Materials or hazardous activities which are not otherwise identified to Port in such Document, unless any such Document names Port as an "Owner" or "Operator" of the facility in which Permittee is conducting its business. It is not the intent of the foregoing, unless necessary for Port to comply with Laws or to enforce provisions of this Agreement or otherwise secure Port's rights, to provide Port with information which could be detrimental to Permittee's business should such information become possessed by Permittee's competitors.

(13) Expiration of Term of Agreement.

(a) Periodic Monitoring; Surrender. Permittee regularly shall monitor and inspect the Assigned Space and all activities thereon with the objectives of discovering any Toxic Material that Permittee is required under the terms of this Section 32 to Clean-up or to remove upon the expiration or earlier termination of the Term and of making reasonable and adequate provisions for assuring that removal of any Toxic Materials is accomplished before such expiration or earlier termination. This subsection is not intended to and shall not be construed to delay any Clean-up that is required by Laws or other provision of this Section 32 to be undertaken before expiration or earlier termination of the Term. In all cases where reasonably possible, before such expiration or earlier termination, and in all other cases promptly after the scheduled date of the expiration or earlier termination of the Term, Permittee shall take any and all action required to be taken under this Section 32 and the Laws in order to (i) surrender the Assigned Space to Port in a condition which would be completely free of any and all Toxic Materials for which Permittee has Clean-up responsibility under this Agreement, and (ii) close or remove any storage tanks in, on or under the Assigned Space installed or operated by Permittee or any Permittee Representative unless an alternative arrangement has been approved by Port's Executive Director or Deputy Executive Director in the exercise of his or her sole discretion (said items (i) and (ii) herein referred to as "Agreement Closure").

(b) Other Required Action. Notwithstanding any lesser standard of removal or remediation which might be allowable under the Laws or governmental policies, Permittee shall perform or cause to be performed all actions necessary, as determined by Port in

its reasonable business judgment, to ensure that Agreement Closure has been completed, including inspection, testing and post-Agreement Closure monitoring, and shall provide to Port copies of such notices of compliance, clearances, "no further action" notices or other notices or approvals from appropriate governmental agencies as may be reasonably required by Port to evidence Permittee's completion of its Agreement Closure obligations. Permittee, at its own expense, shall repair any damage caused by such work and unless otherwise requested by Port, shall remove, at the completion of all testing and monitoring, in accordance with applicable law, any and all monitoring wells installed as a result of or in connection with Permittee's occupancy of the Assigned Space or otherwise installed by Permittee, or at Permittee's direction.

(c) Extension of Term. If Permittee does not surrender the Assigned Space in the condition required and complete any required remediation of Toxic Materials, closure or removal of storage tanks or Agreement Closure before the scheduled date of expiration or earlier termination of the Term, then Port shall have the option either (a) to extend the Term of this Agreement for the period of time necessary for Permittee to bring the Assigned Space to such condition, and/or Clean-up or remediate the Toxic Materials or close or remove storage tank(s), subject, however, to Port's reserved right at Port's election to terminate the Agreement, as so extended, at any time upon at least 30 days prior written notice to Permittee, and Permittee diligently shall pursue to completion during such extension all work necessary to remove all Toxic Materials, for which Permittee is responsible, from the Assigned Space and/or to close or remove storage tank(s), or (b) not to extend the Term of this Agreement. Permittee shall notify Port in writing promptly after Permittee becomes aware that Permittee likely will not complete required work before the scheduled date of expiration or earlier termination of the Term. Absent contrary written notice from Port to Permittee (whether or not Permittee has given Port Permittee's said notice that Permittee likely will not timely complete said work), Port shall be presumed to have elected to extend the Term of this Agreement if Permittee has not completed said work. If Port does not extend the Term of this Agreement, Port shall provide Permittee with reasonable access to the Assigned Space so that Permittee can fulfill its obligations under this Section 32, which Permittee agrees to pursue diligently to completion.

(d) Closure Plans. Permittee shall submit to Port for review, comment and approval its closure plans relating to Agreement Closure and to the remediation of Toxic Materials or to the closure and removal of any storage tanks at least twenty one (21) business days prior to the commencement of the work.

(e) Certificates. Upon the expiration or earlier termination of the Term, Permittee, at its sole cost, shall remove and remediate all Toxic Materials, for which Permittee has Clean-up responsibility under this Section 32, from the Assigned Space and shall provide a certificate to Port certifying that there are no Toxic Materials in, on or about the Assigned Space and Certificates of Closure from all appropriate governmental regulatory agencies, including but not limited to the Cal/EPA, Department of Toxic Substances Control, the San Francisco Bay Region, Regional Water Quality Control Board, the Alameda County Health Care Services Agency, and the City of Oakland. If Permittee fails to so surrender the Assigned Space as required herein, Permittee shall indemnify, protect, defend and hold Port and the other Indemnitees harmless from all damages in connection with the condition of the Assigned Space such as damages occasioned by the inability to re-let the Assigned Space or a reduction in the

fair market and/or rental value of the Assigned Space by reason of the existence of any Toxic Materials in or around the Assigned Space, as more fully set forth above.

(f) Storage Tanks. With regard to underground and/or aboveground storage tanks, if any, at least 90 days, but not more than 120 days, before the expiration of the Term, or, in the event of earlier termination prior to the date of expiration, Permittee shall give Port written notice expressly referring to the provisions herein and stating Permittee's intention either to close or to remove any storage tank and any component thereof (including, but not limited to, the connected piping, pumps, pump-out stations, fuel dock(s) and all ancillary equipment and containing systems (collectively, "Component")) for which Permittee has closure responsibility under this Section 32. Port may elect by written notice to Permittee, given at any time not later than 30 days after receipt of notice of Permittee's intention, to require Permittee either (a) to remove said tanks or Component or (b) to leave the tanks or Component in place in operating condition, provided, however, that if Port requires Permittee to leave the tanks or Component in place in operating condition, Permittee shall provide Port with documentary evidence that the tanks or Component have been modified to comply with the upgrade requirements for underground storage tanks, spill and overfill prevention and underground piping pursuant to Chapter 6.7, Underground Storage of Hazardous Substances, Health and Safety Code, that the tanks have passed Tank Tightness Integrity Tests for the past five (5) years, and provide to Port soil and groundwater monitoring data verifying that there has been no Release of Toxic Materials from the tanks, and all other monitoring records, equipment testing or maintenance records required by California Code of Regulations Title 23, Chapter 16, Section 2610 et seq. If Port gives notice of election to Permittee during said 30-day period, Permittee shall handle the tanks or Component in accordance with Port's intention as stated in its notice to Permittee. If no notice of election is given to Permittee, Permittee shall remove said tanks or Component as required by the Laws.

(g) Compensation During Extension. In the event the Term of this Agreement is extended pursuant to the foregoing provisions, then during the period of extension, all of the terms of the Agreement shall continue to apply except that the amount of the Minimum Annual Guaranty under the Agreement shall be increased 50%. Port may increase the amount of the Minimum Annual Guaranty under the Agreement by up to an additional 50% for each six-month period, or portion of a six-month period, that the Term extends beyond the scheduled expiration or termination date. If the Term of this Agreement is not extended, or if extended, it subsequently is terminated by Port, Permittee shall remain obligated diligently to pursue to completion all work necessary to free the Assigned Space of all Toxic Materials for which Permittee is responsible and/or to close or remove storage tank(s), and until the completion of all of said work, all of the indemnity, liability insurance and security/performance deposit provisions of this Agreement shall continue to apply and shall be binding upon Permittee notwithstanding the expiration or termination of the Term.

(14) Consultants and Contractors. All consultants and other Permittee Representatives performing work on behalf of Permittee concerning Toxic Materials on the Assigned Space or other Port property shall be qualified and licensed to undertake the applicable work and as to any consultants or other Permittee Representatives selected by Permittee, Port shall be notified of the selected consultants or other Permittee Representatives at least ten (10) business days prior to the commencement of any work by such consultants or other Permittee

Representatives (except in an emergency, in which case Port shall be notified within one (1) business day after the selection of the consultants or other Permittee Representatives). All work shall be performed in a good, safe and workmanlike manner and, with regard to work performed at or near the end of the Term, in a manner that will not interfere with Port's use, operation, leasing or sale of the Assigned Space or other Port property.

(15) Spill Response Plan. Permittee shall at all times maintain with Port and post in an appropriate location on the Assigned Space a complete copy of spill notifications forms required from time-to-time by Port. Permittee shall comply with all notification and procedural requirements for Port tenants set forth in any applicable Port spill plan in effect from time-to-time.

(16) Asbestos. Permittee shall comply with all asbestos notification requirements, asbestos management plans, and asbestos handling, abatement and disposal requirements required by the Laws and as set forth in (but not limited to) Health and Safety Code Section Chapter 10.4 Asbestos Notification, sections 25915, et seq., and California Code of Regulations Title 8, Section 1529. Permittee is required to provide written notice to its employees of known asbestos containing materials. Permittee is also required to enact asbestos management plans, and post warnings with respect to any construction, maintenance or remodeling conducted in the building area where there is a potential for employees to come into contact with, or Release, or disturb asbestos or asbestos containing construction materials. Permittee shall comply with asbestos survey and monitoring requirements as required by the Laws. Port shall have the right, at its expense, to hire a consultant to oversee Permittee's asbestos handling, abatement and disposal activities.

(17) Port's Claims. Nothing in this Section 32 shall be construed to prohibit or restrict Port from pursuing any and all claims, causes of action, proceedings, and the like, against insurance carriers and against any other person or entity which Port may believe caused or otherwise contributed to the claims, demands, causes of action, damages and liabilities of any kind arising directly or indirectly out of any Toxic Materials on the Assigned Space or other Port property.

(18) Notice and Disclosure Regarding Toxic Materials. Pursuant to H&S Code Section 25359.7, the Port notifies Permittee that the Port has reasonable cause to believe that a Release of Toxic Materials has come to be located on, at, beneath or emanating from the Assigned Space. Permittee acknowledges that prior to execution of this Agreement, the Port has given to Permittee written notice, based on the Port's commercially reasonable efforts, of the final non-privileged reports prepared by the Port's consultants, which reports are listed on Exhibit "12" to this Agreement and by this reference incorporated herein, relating to the presence of Toxic Materials on, at, beneath or emanating from the Assigned Space. Permittee shall provide notice of such Toxic Materials as required by H&S Code Section 25359.7 or other Laws to its sublessees, assignees, and Permittee Representatives.

(19) Environmental Condition Documents. Permittee agrees that Permittee's rights to use the Assigned Space are subject to, and Permittee shall comply with, to the extent applicable to Permittee, all permits, directives, orders, and requirements described on Exhibit "13" to this Agreement (collectively referred to as the "Environmental Condition Documents").

Permittee agrees fully to cooperate with the Port in the discharge of its obligations and exercise of its rights under the Environmental Condition Documents, including without limitation, maintaining and providing to the Port information and data on operations at the Assigned Space necessary for the Port to monitor and report on compliance with the Environmental Condition Documents. Permittee agrees that the Port or its authorized representatives may from time to time enter the Assigned Space to undertake Clean-up and other activities provided for in the Environmental Condition Documents, provided that the Port shall give to Permittee such reasonable advance notice of such entry and activities as may be feasible under the circumstances and shall minimize to the maximum extent reasonably feasible any interference with Permittee's operations on the Assigned Space.

(20) California Environmental Quality Act. Prior to proceeding with any activity that might trigger the California Environmental Quality Act ("CEQA"), Permittee shall inform the Port of the proposed activity and request a determination from the Port of the type and scope of review, if any, that is needed to comply with CEQA. If the Port determines that an activity is subject to CEQA, it will consult with Permittee. The Port will then retain discretion to adopt conditions of approval to reduce environmental impacts of the proposed activity, adopt alternatives to the proposed activity or deny its approval of the proposed activity. Permittee shall be responsible for costs associated with CEQA compliance, including but not limited to, the payment for the preparation of any documents which the Port deems necessary and the preparation, publication/circulation and filing of notices, in its sole discretion, to comply with CEQA. For purposes of ensuring compliance with environmental standards and requirements, including mitigation measures, the Permittee will provide evidence of its environmental compliance activities, including but not limited to permits, logs, monitoring reports, records, and other documents.

Section 33. **Prevailing Wage Requirements.**

(1) Permittee agrees that in the performance of work under this Permit, if applicable, Permittee shall comply with:

(a) The Public Work Prevailing Wage Requirements, which are the applicable prevailing wage requirements of California Labor Code Sections 1720 et seq. and Port Ordinance No. 1606, as amended, and which generally apply to construction, costing more than $1,000.00, which is made on or to Port property and the cost of which is paid for in whole or in part by the Port's advance or reimbursement to Permittee or by credit against rent or other sums due the Port; and

(b) The Private Work Prevailing Wage Requirements of this Permit which generally apply to all construction, other than construction to which the Public Work Prevailing Wage requirements apply, which is made on or to Port property, costing more than $50,000.00.

(2) "Construction" as used herein shall apply to construction, alteration, demolition or repair work, and the laying of carpet and maintenance work, provided, that Private Work Prevailing Wage Requirements shall not apply to maintenance work. "Construction" includes all construction of building core and shell, building annexes, tenant improvements and

public works that are within the customary jurisdiction of the construction trades and crafts, whether performed on- or off-site. Off-site work, performed by Materialmen, as defined under California Law, is not included in the term "Construction".

(3) The Private Work Prevailing Wage Requirements shall not apply to tenant improvements costing less than $50,000.00, nor to tenant improvements for 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. The $50,000.00 cost shall be adjusted annually pursuant to the Consumer Price Index.

(4) The following provisions of this subsection (4) apply only if, and to the extent that, the prevailing wage requirements are applicable.

(a) The prevailing wage requirements shall apply to the employees of any employer including the Permittee, any tenant of Permittee, any general contractor or subcontractor or other contractor engaged in construction of any improvements in the Assigned Space or at the Airport for Permittee, including their successors and assignees, but shall not apply to supervisory or managerial personnel or to persons employed in the rental, operation or (in the case of Private Work Prevailing Wage Requirements only) maintenance of the Assigned Space.

(b) The Permittee shall cause the provisions of this Section 33 to be incorporated into each contract and subcontract, and Permit agreement which would be subject to this Section 33. In the event the provisions are not so incorporated, the Permittee 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 Permittee were the actual employer.

(5) The prevailing wage requirements of this Section 33 will be monitored and enforced by the Port. In addition to any other rights provided by California law to recover compensation, a worker that has been paid less than the prevailing wage rates shall have a right to commence an action or proceeding against the employer of the worker for the difference between the prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which the worker was paid less than the compensation required to be paid under the provisions of this subsection. No issue other than that of the liability of the employer for the amount of unpaid wages allegedly due shall be determined in such action or proceeding, and the burden shall be on the employer to establish that the amounts demanded are not due. A worker recovering any or all of the wages claimed to be due shall recover his costs and attorney fees in securing such recovery. Nothing in this subsection (5) shall preclude its enforcement by the California Division of Labor Standards Enforcement.

(6) Nothing in this Permit shall prevent the employment of any number of properly registered apprentices, as defined in Chapter 4, Division 3 of the 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. When submitting the certified payroll records required hereunder Permittee shall submit documentary proof of the valid apprentice status of any worker listed as an apprentice.

(7) Permittee agrees that to the extent that Permittee is required to comply with the prevailing wage requirements, Permittee 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 Section 1773.8 of the California Labor Code), in effect on the date of the Port's first approval of a building permit or other approval of the work. 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. Permittee agrees to post a copy of the prevailing rate of per diem wages at each job site.

(8) Permittee, as a penalty to the Port, shall forfeit twenty-five dollars ($25) 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 Permittee.

(9) To the extent that there is insufficient money due Permittee as an advance, reimbursement or credit to cover all penalties forfeited and amounts due and in all cases where this Permit does not provide for a money payment by the Port to Permittee, and except in cases where enforcement authority is vested in the State pursuant to Section 1775 of the California Labor Code, the Port not later than ninety (90) days after the filing of a valid notice of completion in the office of the Alameda County Recorder or not later than ninety (90) days after the Port's acceptance of the work, whichever last occurs, may maintain an action in any court of competent jurisdiction to recover the penalties and the amounts due provided for herein. Permittee agrees that no issue other than that of the liability of Permittee for the penalties allegedly forfeited and amounts due shall be determined in such action, and the burden shall be upon Permittee to establish that the penalties and amounts demanded in such action are not due. Out of any money withheld or recovered or both there shall first be paid the amount due each worker and if insufficient funds are withheld or recovered or both to pay each worker in full the money shall be prorated among all such workers.

(10) At least two weeks before the last date Permittee accepts initial bids for construction Permittee shall file with the Port a written list of the name of all contractors to whom Permittee has submitted a request for bids. In addition, Permittee shall file with the Port the name of each contractor with whom it proposes to contract, together with the name of the subcontractors of all tiers, at least five (5) working days before entering into the contract.

(11) Permittee agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on work covered by this Section 33 showing all of the information specified in subsection (a) of Section 1776 of the

California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-(e) inclusive of Section 1776 of the California Labor Code. In addition, copies of such certified payroll records shall be filed with the Port within a reasonable time not to exceed fifteen (15) days from close of payroll by the respective employer.

(12) It is understood and agreed that all documents that Permittee is required to submit to or file with the Port under this Section 33 shall constitute public records that shall be available to any member of the public for review or copying in accordance with the California Public Records Act.

(13) In the event of repetitive breach of the requirements of this subsection by Permittee, the Port shall be entitled, in addition to all other remedies hereunder for breach of this Permit, to appoint at Permittee's expense a special monitor to oversee Permittee's compliance. Fees for said special monitor shall be billed to Permittee, which fees Permittee agrees to pay as additional rent within 10 days after Permittee's receipt of such bill. In the event of noncompliance with the foregoing requirements concerning payroll records which continues for more than ten (10) days after the Port gives to Permittee written notice specifying in what respects Permittee must comply, Permittee shall forfeit as a penalty to the Port for each worker twenty-five dollars ($25) for each calendar day, or portion thereof, until strict compliance is effectuated.

(14) Permittee 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.

(15) Except where the context otherwise requires, the definitions of terms and phrases contained in the State 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 33.

Section 34. **Emergency and Public Contacts.**

At all times during the Term, Permittee shall maintain a twenty four (24) hour per day, seven (7) day per week, person and telephone number by which Airport Operations can contact Permittee. Permittee shall provide Port with written notice of such name(s) and number(s) and of any changes thereto.

Section 35. **No Accord and Satisfaction.**

No payment by Permittee or receipt by the Port of a lesser amount of any sum due hereunder, shall be deemed to be other than on account of the earliest due rent or payment, nor shall any endorsement or statement on any check or any letter accompanying any such check or payment be deemed an accord and satisfaction, and the Port may accept such check or payment and pursue any other remedy available in this Permit, or at law or in equity. A duplicate copy of all communications concerning disputes about debts that are owed or may be owed pursuant to this Permit, and instruments in less than the full amount claimed by the Port and tendered as full

satisfaction of a disputed debt or other amount owed, shall be provided to the Port's Deputy Executive Director Financial Services, either by hand delivery, provided Permittee obtains a written acknowledgment of receipt thereof from Port, or by nationally recognized overnight courier service, or by U.S. Certified Mail Return Receipt Requested, postage prepaid, addressed as follows:

Deputy Executive Director Financial Services
Finance Division
530 Water Street
Oakland, California 94604-2064

or to such other address as shall be designated by Port by written notice to Permittee in accordance with the requirements of Section 24 above.

Section 36. **Maritime and Aviation Project Labor Agreement.**

Any construction project undertaken by Permittee pursuant to this Permit, for which the Port approves a permit for construction (the "subject permit"), that exceeds $50,000 when considered together with the value of all construction projects on the Assigned Space or on any site leased by Permittee for which the Port had approved a permit within a 12 month period before the date of the subject permit, is subject to coverage under the terms of the Port's Maritime and Aviation Project Labor Agreement ("MAPLA") as it applies to Port tenants. Failure to utilize MAPLA could lead to grievance and arbitration and the potential for damages, attorney's fees and costs should the Building & Construction Trades Council of Alameda County, AFL-CIO ("Unions") prevail in arbitration. With respect to any construction project which is subject to coverage of the terms of the MAPLA in accordance with the following:

(1) Permittee shall assure that each construction project contractor with whom Permittee contracts ("prime contractor"), before beginning its respective construction work, sign a Letter of Assent to the MAPLA;

(2) Permittee shall require by contract that each prime contractor require that each subcontractor on said construction project, regardless of tier, sign a Letter of Assent to the MAPLA;

(3) The Unions which are signatory to MAPLA are third party beneficiaries of Permittee's obligations under this Section 36 and are entitled to proceed with grievances and arbitration against Permittee under the MAPLA for Permittee's breach of such obligations; and

Permittee may not assert that the Unions do not have standing to proceed with any such grievance or arbitration proceeding described above or to recover from Permittee damages, attorneys' fees and costs if Permittee breaches any such obligations.

In the event the Port agrees to any revisions to MAPLA, or enters into a new MAPLA, Port shall notify Permittee in writing of such revised or new MAPLA requirements and after such written notice, such revised or new MAPLA requirements shall become part of this Section 36 and shall supersede any conflicting requirements of this Section 36, and Permittee

shall be obligated to comply with such revised or new MAPLA requirements as fully as if they were set forth herein.

Section 37. **Damage or Destruction; Condemnation.**

(1) (a) In the event the Assigned Space or the improvements thereon are damaged by any casualty which is required to be insured against by Permittee pursuant to this Permit, then Permittee shall, in accordance with all applicable requirements of this Permit (including without limitation Section 1(2) above), repair such damage (and replace any Trade Equipment damaged by such casualty) as soon as reasonable possible, at its own cost, and this Permit shall continue in full force and effect, with no abatement in the Rent payable by Permittee to Port under Paragraph E of this Permit.

(b) In the event the Assigned Space or the improvements thereon are damaged by any casualty which is not required to be insured against by Permittee pursuant to the provisions of this Permit, then Port may, at Port's option, either (i) repair such damage as soon as reasonably possible at Port's expense, in which event this Permit shall continue in full force and effect, and there shall be no abatement in the Rent payable by Permittee to Port under Paragraph E of this Permit, or (ii) give written notice to Permittee within sixty (60) days after the date of occurrence of such damage of Port's intention to (v) to remove all damaged Concession Units (and their associated Minimum Annual Guaranty) from the Assigned Space, effective as of the date of the occurrence of such damage, or (w) to terminate this Permit, in which event such termination shall be effective as of the date of the occurrence of such damage; provided, however, that notwithstanding the foregoing: (x) If such damage was caused by the act or omission of Permittee or any principal, affiliate, contractor, employee, agent, licensee or invitee of Permittee, then Permittee shall, in accordance with all applicable provisions of this Permit (including without limitation Section 1(2) above), repair such damage promptly and at its sole cost and expense, this Permit shall remain in full force and effect, and there shall be no abatement in the Rent payable by Permittee to Port under Paragraph E above; and (y) If such damage is not covered by subsection (b)(ii)(x) above, and if such damage occurred during the last twelve months of the Term, then either party shall have the right, by written notice given to the other within sixty (60) days after the date of occurrence of such damage, to terminate this Permit as of the date of such damage, in which event all proceeds of the insurance against casualty that Permittee was required to maintain pursuant to this Permit shall be paid to Port.

In the event a Concession Unit is removed from the Assigned Space pursuant to Section 37(1)(b)(ii)(v) above, the Port, shall send to Permittee an amendment to this Permit showing the deletion of that Concession Unit from the Assigned Space, and this Permit shall be deemed amended thereby.

(c) If the Assigned Space is damaged or destroyed by casualty, Permittee shall have no claim against Port for any damage suffered by reason of any such damage or destruction, or for any required repair or restoration. Port and Permittee hereby waive the provisions of California Civil Code Sections 1932 and 1933, and of any other statutes which relate to the termination of a Permit when leased property is destroyed and agree that any such event shall be governed by the terms of this Permit.

(2) (a) If the whole of the Assigned Space should be taken by any public or quasi-public authority under the power or threat of eminent domain, then, in such event, on the earlier of the date title to the Assigned Space vests in such public or quasi-public authority, or the date on which said public or quasi-public agency takes possession of the Assigned Space, this Permit shall terminate with respect to Port's and Permittee's future obligations hereunder, but said termination shall not affect Port's and Permittee's rights to any compensation or damages for, on the account of, or arising out of such taking. For any period of time prior to termination during which Permittee (involuntarily on account of such taking or any proceedings related thereto) does not have full use of the Assigned Space, the monthly Rent due hereunder shall be equitably reduced. In the event of such a taking, the Port shall be entitled to receive all sums in the award of damages and compensation arising by reason of such taking except that an amount therefrom equal to the fair market value of Permittee's leasehold interest in the Assigned Space (as of the date of valuation of the taking) shall be paid to Permittee.

(b) If a substantial portion of the Assigned Space should be taken so as to impair materially the use of the Assigned Space as contemplated by the Permit, then on the earlier of the date title to such portion of the Assigned Space vests in such public or quasi-public agency, or the date on which such public or quasi-public agency takes possession of such portion of the Assigned Space and Permittee no longer has full possession of such portion, this Permit shall terminate with respect to Port's and Permittee's future obligations hereunder, but said termination shall not affect Port's or Permittee's rights to any compensation or damages for, on account of, or arising out of such taking. For any period of time prior to termination during which Permittee (involuntarily on account of such taking or any proceedings related thereto) does not have full use of the Assigned Space, the monthly Rent due hereunder shall be equitably reduced. In the event of such a substantial taking, the award of damages and compensation arising by reason of such taking shall be distributed in the same manner as the last sentence of Section 37(2)(a) above.

(c) If a taking shall occur which does not result in termination of this Permit as provided in the previous subsections of this Section 37(2), but which requires the portion of the Assigned Space not so taken to be reconstructed and restored so as to be constituted an architecturally complete unit suitable for use by Permittee, all compensation and damages payable for or on account of such taking shall be payable to Permittee, and shall be held in a separate account approved in writing by Port in trust by Permittee to be used by Permittee in accordance with all applicable requirements of this Permit (including without limitation Section 1(2) above) solely to reconstruct and restore the portion of the Assigned Space not so taken to an architecturally complete unit suitable for use by Permittee; and the monthly Rent payable by Permittee hereunder shall be equitably reduced during the time Permittee does not have full use of the Assigned Space as a result of such taking to account for the reduced economic value to Permittee, if any, occasioned by reason of such taking. The balance of any compensation and damages remaining after the reconstruction and restoration contemplated by this subsection shall be distributed in the same manner as distribution of damages and compensation for a total taking under the last sentence of Section 37(2)(a) above. In the event of a taking covered by this subsection (c), Port shall send to Permittee an amendment to this Permit showing the deletion of that portion of the Assigned Space that was the subject of this taking, and this Permit shall be deemed amended thereby.

(d) If a taking shall occur which does not result in a termination of this Permit as provided in the previous subsections of this Section 37(2), and which does not require any portion of the Assigned Space not so taken to be reconstructed and restored so as to constitute an architecturally complete unit suitable for use by Permittee, the proceeds shall be distributed in accordance with the last sentence of Section 37(2)(a) above. Permittee, however, shall be entitled to an equitable reduction in the monthly Rent.

(e) No taking of Permittee's leasehold estate in the Assigned Space or any part thereof without a taking of the fee shall terminate or give Permittee the right to surrender this Permit, nor excuse the taker of such leasehold estate, including any successor in interest thereto, from full performance of the covenants for the payment of the Rent and other charges or any other obligations hereunder capable of performance by the taker of such leasehold estate, including any successor in interest thereto, after any such taking, but in such case, all compensation and damages payable for or on account of such taking shall be payable to and be the sole property of Port. During any period of time that Permittee is not in possession of the Assigned Space, or any portion thereof, as a result of the taking of any portion of its leasehold estate hereunder, but only during such period of time, (1) Permittee shall not be obligated to pay or in any way be liable for the payment of any Rent or to perform any of the other obligations or covenants otherwise to be performed by it hereunder with respect to, but only with respect to the portion of the Assigned Space affected by such taking, (2) the Port shall look solely to the taker of such leasehold interest, including the successors in interest thereto and any party then in possession of all or such portion of the Assigned Space affected by such taking for the payment of the Rent and the performance of the other obligations and covenants hereunder with respect to such portion of the Assigned Space, and (3) as between Port and Permittee, Port shall not forfeit or terminate this Permit for breach by the taker of such leasehold interest, including its successors in interest thereto and any party then in possession, of any obligation or covenant hereunder, including the obligation to pay the Rent. Any taking that is the subject of this subsection (e) shall not extend the Term of this Permit.

(f) In the event of any taking of any portion of the Assigned Space, Permittee shall be entitled to receive all compensation and damages arising from such taking and payable for or on account of the Permittee's Trade Equipment located on the portion of the Assigned Space so taken, except for those trade fixtures and equipment that pursuant to this Permit are to remain with the Assigned Space on surrender.

(g) Except as otherwise expressly provided in this Section 37(2), no taking shall reduce or abate Permittee's obligation to pay the Rent during the Term of this Permit. Where Section 37(2) expressly provides for a reduction in the Rent payable by Permittee, if the parties cannot agree on the amount of such reduction, the same shall be determined by Arbitration. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrators shall have no power to modify any of the provisions of this Permit and their jurisdiction is limited accordingly. Each party hereby consents to the entry of judgment by any court having jurisdiction in accordance with the arbitration decision. No change in the Arbitration Rules which would deprive a party of the rights to be represented by counsel, to present evidence or to cross-examine witnesses presented by the other party shall be effective in any arbitration proceeding arising out of this Permit. Any arbitration provided for herein shall be conducted in

the Port's offices in Alameda County, California. Disputes under this Permit shall be subject to Arbitration only to the extent expressly provided for in this subsection (h).

(h) Permittee acknowledges the Port's reserved power upon payment of just compensation to exercise its power of eminent domain as to the leasehold estate created hereunder; provided, however, that the foregoing acknowledgment shall not be deemed or construed to prejudice or waive any rights of Permittee to challenge or object to any attempt by the Port so to exercise such power.

Section 38. **Right to Modify.**

Permittee agrees that during the Term of this Permit, this Permit may be unilaterally modified by the Port, upon advice of the Port Attorney, and on at least thirty (30) days prior written notice by Port to Permittee, in order to conform to changes in applicable Laws, including without limitation, judicial, Department of Transportation, Department of Homeland Security, Federal Aviation Administration, Transportation Security Administration, Federal Trade Commission or Federal Communications Commission rulings or opinions. This subsection shall not relieve Permittee from its independent obligation to comply with all applicable Laws, or preclude Permittee from contesting said matters, but Permittee shall abide by such modification.

Section 39. **Security Mandates.**

Permittee recognizes that Port is required to comply with the security mandates of the Department of Transportation, the Federal Aviation Administration, the Transportation Security Administration, the Department of Homeland Security, and with other governmental and administrative rules and regulations relating to airports. Any procedures determined by Port to be applicable to Permittee in order for Port to comply with the foregoing will be furnished to Permittee in writing, and delivered by facsimile transmission, confirmed by mail, to Permittee at its notice address provided in this Permit. Permittee and its agents, employees, representatives and permitted sublessees and assignees shall be responsible for full compliance with all procedures delivered by facsimile transmission to Permittee. Such procedures are subject to change without notice other than delivery thereof to Permittee, as provided for in this Section 39. Permittee shall reimburse Port, within fifteen (15) days from receipt of Port's invoice, and documentation showing that payment of such civil penalty or fine is Permittee's responsibility hereunder, the amount of any civil penalty or fine that may be assessed against Port by any governmental agency for any violation of applicable security rules or regulations which arises out of Permittee's failure to comply with the provisions of this Section 39. In such event, Port shall also have all of its other rights and remedies provided in this Permit and arising at law or in equity.

Section 40. **Miscellaneous.**

(1) The section and paragraph headings contained in this Permit 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 hereof.

(2) It is expressly understood and agreed that, except for Permittee's right to possession of the Assigned Space described as exclusive in Paragraph D.1 of this Permit, and except to the extent otherwise expressly provided for in a written addendum to this Permit signed by Port, the rights granted Permittee under this Permit are non-exclusive.

(3) Except as expressly prohibited herein, the provisions of this Permit shall bind and inure to the benefit of the successors and assigns of the parties hereto.

(4) Time is expressed to be of the essence of this Permit.

(5) This Permit shall be governed by and construed in accordance with the laws of the State of California (without regard to principles of conflict of laws). It is agreed that if any covenant, condition or provision contained herein is held to be invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of any other covenant, condition or provision herein contained, and the invalid or unenforceable provision shall be limited to the extent necessary for it to be valid and enforceable.

(6) No recourse under or upon any obligation, covenant or agreement contained in this Permit, or any other agreement or document pertaining to the operations of Permittee 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 Permit, shall be had against any member (including, without limitation, members of Port's Board and its citizens advisory committees), officer, employee or agent, as such, past, present and future, of Port, either directly or through Port or otherwise, for any claim arising out of this Permit 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, officer, employee 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 Permit 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 Permit.

(7) Permittee represents and warrants to Port that, to the best of its knowledge, except as may be disclosed in an Addendum hereto, no member, officer, employee or agent of Port has any interest, either directly or indirectly, in the business of Permittee to be conducted hereunder.

(8) (a) This Permit constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreement, representation or statements heretofore or contemporaneously made with respect to such subject matter, whether oral or written (including, without limitations, any answers provided by Port to questions asked by Permittee or others in conjunction with the Port's Request For Proposals for the concession rights granted by this Permit), are merged herein. Except as otherwise expressly provided in this

Permit, this Permit may be altered or amended only by written instrument executed by both parties hereto.

(b) Permittee acknowledges that it either was represented or had the opportunity to be represented by legal counsel in the negotiation of this Permit, and agrees that the terms of this Permit shall not be strictly construed against the Port as the drafter of this Permit.

(9) (a) Permittee 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 the Port and arising against Permittee under this Permit, 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 Permittee. Permittee 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 the Port and arising against Permittee under this Permit. Port agrees to serve such process on Permittee's registered agent under California law if the name and address of Permittee's current registered agent in California has been provided to the Port in advance and in writing.

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

CSC – The United States Corporation Company
2730 Gateway Oaks Drive
Suite 100
Sacramento, CA 95833

(10) Permittee warrants that no person or agency has been employed or retained to solicit or obtain this Permit upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Port, at its option, may annul or immediately terminate this Permit or recover from Permittee the full amount of the contingent fee. As used in this section, "bona fide agency" means an established commercial or selling agency, maintained by Permittee 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; "bona fide employee" means a person, employed by Permittee and subject to Permittee's supervision and control as to time, place, and manner of performance, who 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" 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; and "improper influence" means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter."

(11) Port agrees to make a reasonable effort to provide notice to Permittee of any public records request involving documents or information provided by Permittee to Port pursuant to the terms of this Permit. However, Port shall have no liability arising out of its failure to provide such notice to Permittee or out of Port's production of such documents or information in response to any public records request.

Section 41. **Force Majeure.**

In the event that Permittee or the Port is delayed, directly or indirectly, from the performance of any act or thing required under the terms hereof by acts of God, accidents, fire, floods, inclement weather, governmental action, restrictions, priorities or allocations of any kind and all kinds, strikes or labor difficulties of any and all kinds, shortages of or delay in the delivery of material, acts of war, riot and civil commotion, or by any similar cause reasonably beyond the control of Permittee or the Port, as the case may be, such failure (except for the payment of Rent or other sums required by this Permit to be paid by Permittee to Port, and except for any failure that arises out of Permittee's breach of any of its obligations under this Permit, and except for any strikes or labor difficulties arising from Permittee's breach of the Labor Peace Assurance) shall not be deemed to be a breach of this Permit or a violation of any such covenants and the time within which Permittee or the Port must perform any said act shall be extended by a period of time equal to the period of delay arising from any of said causes.

Section 42. **Defined Terms.**

The following terms, when used in this Permit with the initial letter(s) capitalized, whether in the singular or plural, shall have the meanings given to such terms in the following Paragraphs of this Permit, or in the following Sections of this Permit contained in this Attachment "A":

| TERM | LOCATION |
|---|---|
| ADA Requirements | Section 1(2)(c) of Attachment "A" |
| Affiliate | Section 1(2)(b) of Attachment "A" |
| Airport | 1st paragraph of Permit, on page 1 |
| Airport Pricing Policy | Paragraph A.5(a) |
| Airport Rules, Policies and Regulations | Section 12(1) of Attachment "A" |
| Alterations | Section 1(2)(c) of Attachment "A" |
| Annual Report | Section 13(3) of Attachment "A" |
| Assigned Space | Paragraph D.1 |
| Assigned Space Change | Paragraph H.1(a) |
| Base Index | Section 2(1) of Attachment "A" |
| Board | 2nd paragraph of Permit, on page 1 |
| Branded | Paragraph E.2 |
| Change Notice | Paragraph H.1(a) |
| City | 2nd paragraph of Permit, on page 1 |
| Commencement Date | Paragraph C |
| Common Areas | Paragraph D.3 |
| Comparison Index | Section 2(1)of Attachment "A" |
| Concession Unit | Paragraph B.1 |

| TERM | LOCATION |
|---|---|
| Consumer Price Index or Index | Section 2(1) of Attachment "A" |
| Control | Section 1(2)(b)of Attachment "A" |
| CWA | Section 12(1)of Attachment "A" |
| Delivery Date | Paragraph C |
| Director | 2nd paragraph of Permit, on page 1 |
| Documents | Section 12(1) of Attachment "A" |
| Gross Receipts | Section 13 of Attachment "A" |
| Initial Minimum Annual Guaranty Adjustment Date | Paragraph E.1(b) |
| Interim Term | Paragraph C |
| Labor Peace Assurance | Section 6 of Attachment "A" |
| Labor-Related Disruption | Section 6 of Attachment "A" |
| Latest Delivery Date for a Concession Unit | As set forth opposite that Concession Unit on attached Exhibit "5" |
| Latest Opening Date | Paragraph E.3 |
| Laws | Section 12(1) of Attachment "A" |
| Losses | Section 1(2)(d) of Attachment "A" |
| Maximum Reimbursement Amount | Paragraph H.1(a) |
| Midterm Refurbishment | Section 2(1) of Attachment "A" |
| Midterm Refurbishment Date | Section 2(1) of Attachment "A" |
| Minimum Annual Guaranty | Paragraph E |
| Minimum Investment Amount | Section 1(2)(b) of Attachment "A" |
| Minimum Mid-Term Amount | Section 2(1) of Attachment "A" |
| New Aircraft Boarding Gates | Paragraph H.2 |
| Percentage Fees | Paragraph E.2 |
| Performance Deposit | Paragraph F |
| Permit | 1st paragraph of Permit, on page 1 |
| Permitted Uses | Paragraph B.1 |
| Permittee | 1st paragraph of Permit, on page 1, and Paragraph A |
| Permittee Wi-Fi Objectives | Section 8 of Attachment "A" |
| Permittee's Work | Section 1(2)(a) of Attachment "A" |
| Port | 2nd paragraph of Permit, on page 1 |
| Primary Term | Paragraph C |
| Proposal | Paragraph O |
| Rent | Paragraph E |
| Rent Commencement Date | Paragraph E.3(a) |
| Required Relocation | Paragraph H.1(a) |
| RFI | Section 8 of Attachment "A" |
| Surrender Date | Paragraph H.1(b) |
| Target Effective Date | Paragraph H.1(a) |
| Tenant Infrastructure Fee or TIA Fee | Paragraph E.5 |
| Term | Paragraph C |
| Terminal 1 | Paragraph D.1 |
| Terminal 2 | Paragraph D.1 |
| Terminal 2 Extension | Paragraph D.1 |
| TI Guide | Section 1(2)(c) of Attachment "A" |
| Toxic Materials | Section 32 of Attachment "A" |

| TERM | LOCATION |
|---|---|
| Trade Equipment | Section 7(1) of Attachment "A" |
| Transition Plan | Paragraph B.1 |
| Wi-Fi System | Section 8 of Attachment "A" |
| Work Letter | Section 1(1) of Attachment "A" |

_____ **[To be initialed by Port]**

_____ **[To be initialed by Permittee]**