

# **REQUEST FOR PROPOSAL**

for

## **Jack London Square Parking Management Services**

**17-18/18**



**PORT OF OAKLAND**

PURCHASING DEPARTMENT  
530 WATER STREET  
OAKLAND, CA 94607



## PORT OF OAKLAND

### REQUEST FOR PROPOSAL

#### RFP No.: 17-18/18, Jack London Square Parking Management Services

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

#### Proposal Information

<b>Proposal Title</b>	Jack London Square Parking Management Services
<b>Proposal Type</b>	Professional Services
<b>Proposal Number</b>	17-18/18
<b>Proposal Issued</b>	December 8, 2017
<b>Requesting Department</b>	Commercial Real Estate Division
<b>Mandatory Pre-proposal Meeting</b>	December 15, 2017 at 9:00 a.m. Port of Oakland, 530 Water Street, Exhibit Room, Oakland, CA 94607
<b>Scheduled Publication Date</b>	December 8, 2017
<b>Proposal Due Date</b>	January 16, 2018 until 11:00 a.m.

#### Instructions for Submitting Proposals

<b>Submittal Address</b>	Port of Oakland Purchasing Department Attn: <b>Nickulaus Sioson</b> 530 Water Street Oakland, CA 94607
<b>Submittal Copies</b>	One (1) Original copy clearly marked "Original" and five (5) Copies marked "Copy".
<b>Submittal Envelope Requirements</b>	Proposal must be <u>sealed</u> and have the following information <u>clearly marked</u> and visible on the outside of the envelope: <ul style="list-style-type: none"><li>• Proposal Number</li><li>• Name of Your Company</li><li>• Address</li><li>• Phone Number</li></ul>
<b>Late Submittals</b>	Proposals received after the time and date stated above shall be returned unopened to the Respondent.

## How to Obtain Proposal Documents

Copies of the Proposal documents may be obtained at:

Location	Address
<b>Physical</b>	Port of Oakland--Purchasing Department 530 Water Street, Oakland, CA 94607 Monday through Friday 9:00 AM to 4:00 PM (510) 627-1140
<b>Website</b>	<a href="http://www.portofoakland.com/business/bids-rfps/">http://www.portofoakland.com/business/bids-rfps/</a>  Or navigate to the Port of Oakland's main website at: <a href="http://www.portofoakland.com/">http://www.portofoakland.com/</a> , then click on "Bids/RFPs" from the banner on the top of the page, and then scroll down to download the RFP.

## Questions about the Proposal

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

<b>Primary Contact</b>	Nickulaus Sioson Fax: (510) 893-2812 Email: <a href="mailto:nsioson@portoakland.com">nsioson@portoakland.com</a>
<b>Question/RFI Due Date</b>	<b>December 22, 2017 until 4:00 p.m.</b>  Please submit questions as soon as possible. No questions regarding the specifications will be responded to after the above date. All pertinent questions will be responded to and answered in writing no later than the Response Date listed below.
<b>Response Date</b>	<b>January 3, 2018</b>  All pertinent questions will be responded to <b>via addendum</b> faxed (or emailed) to all prospective proposers and placed on the Port's website. Proposers who did not receive a copy of the addendum should download it from the Port's website. See the "How to Obtain Proposal Documents" section for our web address. All addenda must be acknowledged on the RFP Acknowledgement and Signature form.

Once the RFP is issued, and until a recommendation for award is made to the Board of Port Commissioners at a public Board of Port Commissioners meeting (or in cases where a recommendation for award does not require a public Board meeting, when Proposers are notified by Port staff of the recommendation for award), each Proposer and its representatives, agents, and affiliates, shall not contact members of the Evaluation Committee, Port staff or the Board of Port Commissioners 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 Proposer, its representatives, agents, and/or affiliates may result in the Proposers' 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 of Oakland to encourage and facilitate full and equitable opportunities for small local businesses to participate in its contracts for the provision of goods and services. It is further the Port's policy that no discrimination shall be permitted in small local business participation in Port contracts or in the subcontracting of Port contracts. The successful Respondent shall comply with the Port's non-discrimination policy.

**Title VI Solicitation Notice:** The Port of Oakland, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

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

John Banisadr,  
Port Purchasing Manager

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### **Attachments:**

Title		Must Be Returned with Proposal
1	Non-Collusion Declaration	Yes
2	Statement of Equal Employment Opportunity	Yes
3	RFP Acknowledgement and Signature Form	Yes
4	Proposal Worksheet	Yes
5	Port of Oakland Non-Discrimination and Small Local Business Utilization Policy	
	5-A. Chart for Submitting Data for Calculation of Preference Points 5-B. Local Participation Questionnaire	Yes (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.)
	5-C. Monthly Utilization of Local and Small Business Enterprises 5-D. Final Utilization of Local and Small Business Enterprises	No (but Attachments 5-C and 5-D are required after contract award final completion of the project.)
6	Non-Discrimination and Small Local Business Utilization Policy Program Affidavit	Yes
7	Statement of Adherence to Labor Peace Rule	Yes
8	Supplier Insurance Requirements	No
9	Insurance Acknowledgement Statement	Yes
10	Jack London Square Parking Management Agreement (including License & Concession Agreement for parking office space located at 101 Washington St., 2 <sup>nd</sup> Floor, and for valet booths)	No (Note: If awarded the contract, the successful Respondent will execute a revised version of the Jack London Square Parking Management Agreement, which will incorporate material terms of Respondent's Proposal.)

## **I. Project Overview**

The Port of Oakland ("Port"), owner of certain parking facilities in Jack London Square ("JLS Parking") is soliciting competitive proposals to select a contractor to manage the Port's public parking facilities and operations. The Port, at its sole discretion and in the best interest of the Port, may select separate operators for Self Parking Services and Valet Services, or it may select one operator to manage all its parking facilities and operations in Jack London Square. JLS Parking has approximately 1,309 public parking stalls among several lots and street parking on Alice Street that are controlled by Secom Parking Revenue Control System ("PARCS") or Cale. This Request for Proposal ("RFP") involves the following four parking facilities: Washington Street Garage, Underground Garage, Lot 11, and Alice Street parking. Valet parking will be operated from spaces located in the Underground Garage and will provide services at both the Broadway and Franklin terminuses. The Port's goals in offering this contract opportunity are to:

1. Execute an agreement(s) with the most competitive, experienced and capable contractor to manage the JLS Parking;
2. Maximize Port revenue by helping promoting parking to the public while achieving the highest level of customer experience and service; and
3. Achieve cost savings and efficiencies in the provision of these services.

Below is a description of each of the parking facility affected by this RFP:

### **1. WASHINGTON STREET GARAGE**

The Washington Street garage is a seven-level, above ground parking garage containing approximately 978 parking spaces. The facility is equipped with a Secom parking access and revenue control system ("PARCS") configured with pay-on-foot ("POF") equipment. Daily parkers receive a time stamped parking ticket from the ticket dispenser when they arrive. When the daily parker is ready to exit the facility, the parking ticket is presented at a POF machine located near the elevator lobby, prior to retrieving their vehicle. The parker inserts the ticket into the POF machine, which automatically calculates the fee owed. If there are validations on the ticket, the POF reads the validation type, and the amount of validation is subtracted from the fee due. The processed ticket is then used to exit the facility by inserting it into an exit verifier located at the garage exit lane.

Monthly parkers are issued a proximity card, which is used to activate the entry and exit barrier gates. All activity is recorded on the Secom systems hard drive. Monthly parkers have access 24 hours a day, seven days a week.

### **2. UNDERGROUND GARAGE** (located at Broadway and Embarcadero)

The Underground Garage is a one-level subterranean parking garage containing approximately 256 parking spaces. The facility is equipped with a Secom PARCS configured with POF equipment.

- A. Self Parking** 186 of the total 256 stalls are for daily self parking; there are no monthly parkers. Daily parkers receive a time stamped parking ticket from the ticket dispenser when they arrive. When the daily parker is ready to exit the facility, the parking ticket is presented at a POF machine located in the garage, prior to retrieving their vehicle. The parker inserts the ticket into the POF machine, which automatically calculates the fee owed. If there are validations on the ticket, the POF reads the validation type, and the amount of validation is subtracted from the fee due. This processed ticket is then used to exit the facility by inserting it into an exit verifier located at the garage exit lane.

**B. Valet Parking** 70 of the total 256 stalls are reserved for valet parking only. There are currently two valet stations at Jack London Square operated from Underground Garage. Valet 1 is located on Franklin Street and Valet 2 is located on Broadway. Attendants issue a time stamped ticket from the ticket dispenser when the valet customer arrives, then takes the vehicle and park it in the Underground Garage. When the valet customer is ready to leave, the ticket is surrendered to the valet who inserts it into the fee computer, which automatically calculates the fee owed. If there are validations on the ticket, the fee computer reads the validation type, and the amount of validation is subtracted from the fee due. The attendant then retrieves the vehicle from the garage using the paid receipt to activate the exit gate, and returns the vehicle to the customer.

**3. LOT 11** (located at Webster Street)

Lot 11 is located on the corner of Webster Street and Embarcadero West. This lot has 54 marked parking spaces and is currently used for monthly parking only. The Port reserves the right to possibly allow transient parking in this lot. Monthly parkers are issued a proximity card, which is used to activate the entry and exit barrier gates. All activity is recorded on the Secom systems hard drive. Monthly parkers have access 24 hours a day, seven days a week.

**4. ALICE STREET PARKING**

Alice Street Parking is comprised of 21 parking spaces located on Alice Street south of Embarcadero West. This parking facility is managed via a pay and display system using Cale parking equipment.

**About the Port of Oakland**

The Port of Oakland was established in 1927 and oversees the Oakland seaport, Oakland International Airport, Commercial Real Estate, and 20 miles of waterfront. The Oakland seaport is the seventh busiest container port in the U.S.; Oakland International Airport is the second largest San Francisco Bay Area airport offering over 300 daily passenger and cargo flights; and the Port's real estate includes 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 70,000 jobs in the region and over 800,000 jobs across the United States. The Port is an independent department of the City of Oakland.

**II. Scope of Services and Project Background**

**Please review the Minimum Qualifications cited (below) in RFP Part II- Section 4. Interested respondents that do not meet those qualifications should not submit a proposal.**

**1. Scope of Services**

The successful Proposer ("Contractor") will perform the Parking Management responsibilities ("Services") in accordance with the requirements of the Jack London Square Parking Management Agreement ("Agreement"), **Attachment 10** (or by separate Agreements for Self Park Services and for Valet Services, if different Contractors are selected to operate each type of Service.)

Such Services include, without limitation, operating the Parking Facilities in an efficient, competent, expeditious, and courteous manner while maximizing revenues and the capacity of all of the Parking Facilities and minimizing operational costs. The Contractor will perform such Services in accordance with the rates, charges, rules, and regulations and operational procedures established or approved from time to time by the Port and/or the Director, as appropriate, and in accordance with the Agreement.

The Contractor will use its best efforts to promote and manage the Parking Facilities in accordance with the following Program goals:

- a. To manage the Program to provide an acceptable level of service consistent with the image of Jack London Square, as specified by the Port.
- b. To be responsive to the needs of the businesses in Jack London Square and patrons and to the directions of the Port.
- c. To operate the Program so as to enhance the patronage for all businesses in Jack London Square.

## 2. Description of Parking Facilities

JLS Parking has approximately 1,309 public parking stalls. The table below summarizes parking facilities owned by the Port in Jack London Square.

Parking Facility	# Stalls	Location	Use
<b>Washington Street Garage</b>	978	Washington & Embarcadero	Transient and Monthly Parking
<b>Underground Garage (includes Valet Parking)</b>	186	Broadway & Embarcadero	Transient Parking
	70	Broadway & Embarcadero	Valet Parking
<b>Lot 11</b>	54	Webster & Embarcadero	Monthly Parking
<b>Alice Street Parking</b>	21	Alice & Embarcadero West	Metered Street Parking
<b>TOTAL</b>	<b>1,309</b>		

## 3. Operator Selection

The Port at its sole discretion and in the best interest of the Port may select separate operators for Self Parking Services and Valet Services or it may select one operator to manage all of its parking facilities and operations in Jack London Square.

## 4. Minimum Qualifications Requirements

Proposer must be in good standing with the Port for its proposal to be considered responsive. For the purpose of this RFP, good standing refers to: (1) compliance with all provisions of this RFP; (2) if you are current Port Supplier/tenant/vendor, you must be current on all financial obligations to the Port, including tax payments, rental payments, and permit fees; (3) Proposer must be in legal existence at the time its Proposal is submitted; (4) have a minimum three (3) years' experience operating large (minimum 600 stalls) parking structures equipped with Parking Revenue Control Systems and /or valet services; and (5) adherence to the Labor Peace Rule and the Worker Retention requirements listed (below) in Section III (Port Policy and Other Requirements).

## 5. Jack London Square Parking Management Agreement(s)

The Jack London Square Parking Management Agreement, attached as **Attachment 10** to this RFP, should be carefully reviewed prior to submitting a Proposal. The successful Proposer will be required to execute the Agreement in substantially the form attached, as amended by any Addenda to this RFP and as completed by the Port to conform to the selected Proposer's Proposal. The Agreement includes a License & Concession Agreement for the successful Proposer to occupy office space on the second floor of the Washington Street Garage, as well as two valet booths near the Underground Garage.

Proposers should identify any changes required in the Agreement by submitting such changes, including specific language, in its Proposal. However, changes to the Agreement are strongly discouraged and may affect the ranking of the Proposal.



The Agreement must be executed by the apparent successful Proposer **within 21 days after receiving a notice of award** (unless extended in writing in the Port's sole discretion), or the apparent successful Proposer will forfeit its Proposal Surety.

If the Port selects separate Proposers to operate the Self Parking Services and the Valet Parking Services, respectively, the Port will prepare separate Parking Management Agreements that are substantially in the form attached as **Attachment 10** to this RFP, but which contain the provisions relevant to each Service, as determined in the Port's sole discretion.

## **6. Contract Term**

The term of the Agreement shall be three (3) years, commencing on April 1, 2018 and extending through March 31, 2021. The Port will have the option, exercisable at its sole discretion, by giving at least 60 days' prior written notice to the Contractor, to extend the term of the Agreement for up to two (2) extension periods of one (1) year each. (As used in this RFP, the Operating Terms shall mean the initial three year term of the Agreement and any extension resulting from the Port's exercise of its right of extension.)

## **III. Port Policy and Other Requirements**

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

### **1. Labor Peace Rule:**

The operator must comply with the Labor Peace Rule set forth in Section 3.8 of the Parking Management Agreement by, among other things, entering into a Labor Peace Agreement prior to the deadline established by the Port for execution of this parking operations agreement. As described further in the Labor Peace Rule, a Labor Peace Agreement means a written and signed agreement between the operator and a Labor Organization that prohibits a Labor Organization, its members, and any employees represented by the Labor Organization from engaging in any Labor Disruptions: (a) during any organizing, membership drive, or negotiation of a collective bargaining agreement; and (b) in the case where the Labor Organization has entered into a collective bargaining agreement with the Operator, during the entire Term of the Agreement.

The apparent successful Proposer must obtain and provide to the Port the required Labor Peace Agreement **within 21 days after receiving a notice of award**, or else the Port may select another respondent to perform the Services.

### **2. Worker Retention:**

For at least 90 work days after the commencement of the Agreement, the operator must retain existing self-park and valet parking employees who have been performing these duties for at least 90 calendar days prior to the commencement of the Agreement, unless such employees are terminated for cause. If the operator has a reduced number of employees than that of the prior operator, then the existing employees shall be offered employment based upon seniority using a combined seniority list.

### **3. Non-Discrimination and Small Local Business Utilization Policy (NDSLBP):**

The Port desires to maximize the participation of small local business and has instituted a Non-Discrimination and Small Local Business Utilization Policy (NDSLBP). The NDSLBP 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://srd.portofoakland.com/> 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/files/PDF/responsibility/NDSLBP\\_00810.pdf](http://www.portofoakland.com/files/PDF/responsibility/NDSLBP_00810.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 NDSLBP Program Affidavit.

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

For questions or assistance regarding NDSLBP, contact Ms. Lila Zinn, Contract Compliance Supervisor, (510) 627-1485, at the Port's Social Responsibility Division, or [lzinn@portofoakland.com](mailto:lzinn@portofoakland.com).

#### **4. 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 10 - Exhibit J**, and must provide proof of insurance at the time of project award. Respondents must include a statement (**Attachment 9**) 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.

#### **5. Security Sensitive Information:**

By submitting a proposal, Respondent acknowledges that in the course of performing services under the Agreement, the selected Consultant/Contractor will come into possession of sensitive information subject to Port of Oakland regulation. The selected Consultant/Contractor will be required to comply strictly with the Port of Oakland's policies and practices for sensitive information.

#### **6. Jack London Square Parking Management Agreement:**

Submission of a proposal will confirm that the Respondent fully understands the provisions of the Jack London Square Parking Management Agreement (**Attachment 10**), which the Port may revise (in its sole discretion) 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 Agreement and/or this RFP must be clearly and specifically identified in your proposal. Changes are discouraged. If the Port selects separate Proposers to operate the Self-Parking Services and the Valet Parking Services, respectively, the Port will prepare separate Parking Management Agreements that are substantially in the form attached as **Attachment 10** to this RFP, but which contain the provisions relevant to each Service, as determined in the Port's sole discretion.

### **IV. Submission Requirements**

The Port has scheduled a **Mandatory Pre-proposal meeting** on the date indicated in the table labeled "Proposal Information" (on the first page of the invitation for this RFP), to review the scope of services and the submission requirements.

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 total response to the number of pages indicated below (excludes the required attachment forms provided with this RFP).

**Submittal Format:**

Responses may not be longer than 10 pages (one sided or 5 pages double sided), printed on 8 ½" x 11" paper and formatted in no smaller than 10 point font. Each section shall be labeled according to the sections below. All submitted material must be bound with only **one staple or binder clip** in the upper left corner. Please no binders or any other type of binding. Submittals must be able to fit into a 9 x 11.5 inch folder.

1. **Company Information and Minimum Qualifications:** Provide information that clearly demonstrates how your company meets the **Minimum Qualifications Requirements** listed in this RFP. Also, 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 the behalf of your company. Please make sure that person signs and dates the statement. In addition, you should provide a statement that your company will adhere to the Labor Peace Rule and Worker Retention Requirements listed in Section III (Port Policy and Other Requirements).

If your company is making any exceptions to the Jack London Square Parking Management Agreement (**Attachment 10**) and/or this RFP, they must be clearly and specifically set forth in this section of your proposal. 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 three or more projects (in similar size and scope to this RFP), with brief descriptions that demonstrate your experience. Also, provide the names of key personnel who will be assigned to do the work under this project and provide their relevant experience. This includes key corporate contacts throughout the contract period, onsite contract transition staff and operations staff.
3. **Client References:** Provide names, addresses and contact information for three (3) current clients. Provide the size and scope of each project and a brief description of the projects. Please make sure all contact information is current. By providing such information, you authorize us to contact such clients.
4. **Plan and Approach:** Provide an overview describing the general approach, scope of services, and methodology of your company's ability to fulfill the general functions required in this RFP. Please use this section to describe the services you propose to provide to the Port and more important, how does your experience and capabilities set you apart from the competition? What insight and experience can your company offer that others cannot? The Port is particularly interested in insight into the use of new PARCS technology. Your description of the Services can be above and beyond the requirements listed in the "Scope of Service" section and the Jack London Square Parking Management Agreement (**Attachment 10**) and must include your Transition Plan and approach to beginning the services.

**Transition Plan:** Proposer should provide a Transition Plan detailing the process whereby the Proposer assumes management and operational control of the services. The Transition Plan will include, but not be limited to:

- a. Steps to be taken by the Proposer prior to, the day of, and the period following the date that the successful Proposer assumes management and operational control of the Jack London Square Parking Services Management;
- b. Required actions on the part of the Port;
- c. Identification of all legal requirements, such as business permits, business licenses, and incorporation requirements;
- d. Hiring and staffing plan (including organization structure of on-site personnel);

- e. Timeline for implementing all steps included in the Transition Plan including requirements on the part of the Port; and
  - f. Other elements of a successful Transition Plan that the Proposer believes are required and are not listed above.
5. **Proposed Management Fee Worksheets:** Enter your proposed project costs on RFP **Attachment 4** (Proposal Worksheet), and attach related fee schedules. The Worksheet is designed so that proposers may prepare and submit a cost proposal for self parking and valet parking combined or only for self parking or only for valet parking.
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 the reason(s) for the debarment. Provide the name and contact information for the agency that debarred your company. The Port must review the reason(s) and duration for the debarment before it can determine if your company can be considered for this project.
7. **Litigation and Other Information:** Provide information describing any litigation, arbitration, investigations, or any other similar actions that your company, its principals, directors, and/or employees have been involved in during the last five (5) years relating to your company's services. Please list (a) name and court case or other identification number of each matter, (b) jurisdiction in which it was filed, and (c) outcome of matter (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 project. Failure to provide the litigation information may disqualify your proposal.
8. **Required Forms and Adherence to Port Policy and Other Requirements:** The Respondent must fill out all of 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 requirements in Section III (Port Policy and Other Requirements.) Failure of the Respondent to provide any of the required forms 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 response.

## **V. Evaluation Criteria**

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

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

## A. Evaluation Weights

Item	Criteria	Weights
	<b><u>Adherence to Port Policy and Other Requirements and Debarment Statement</u></b> 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. <i>(Submission Requirement Items 6 and 8)</i>	Pass/Fail
	<b><u>Minimum Qualifications Requirements</u></b> Described in Part II-Section 4 Scope of Services. Proposals that do not provide sufficient documentation that clearly demonstrates your company meets the minimum qualifications listed in this RFP will not be forwarded to the Evaluation Committee for review.	Pass/Fail
1	<b><u>Company Information, Client References, Litigation and Other Information, and Required Forms</u></b> Respondent's capacity to provide professional service as evidenced by past performance, company information, reference checks, litigation and other information, and required forms. <i>(Submission Requirement Items 1, 3, 7, and 8)</i>	10%
2	<b><u>Knowledge and Experience</u></b> Respondent's knowledge and experience in providing Self Parking and/or Valet Parking. <i>(Submission Requirement Item 4)</i>	20%
3	<b><u>Plan and Approach (including Transition Plan)</u></b> As evidenced from your response to the <i>Submission Requirements Item 4</i> .	20%
4	<b><u>Proposed Management Fee Worksheet</u></b> As evidenced by your response to <i>Submission Requirements Item 5</i> , and as provided on Attachment 4-Proposal Worksheet.	35%
5	<b><u>Non-Discrimination and Small Local Business Utilization Policy</u></b> 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%
	<b>TOTAL</b>	<b>100%</b>

## B. Selection Procedure:

All proposals received by the deadline which meet the RFP's requirements will be presented to the evaluation committee comprised of Port of Oakland staff and possibly external members. The evaluation committee will evaluate the proposals and score all submissions according to the evaluation criteria above. **The selection process may include panel interviews for the top scoring submissions. Panel interviews (if required) will be tentatively held on Friday, January 26, 2018. Firms are encouraged to save-the-date should they be invited to panel interviews.** 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.

## **VI. Additional Provisions**

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

### **A. Port's Legal Name and Jurisdiction**

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

### **B. Ownership of Proposal**

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

### **C. Deadline for Receipt of Proposal**

Proposals must be sealed and delivered to the Submittal Address listed in the Request for Proposal (RFP) no later than the time specified in the RFP. The Port will place a clock ("Clock") in a conspicuous location at the place designated for submittal of Proposals. For purposes of determining the time that a Proposal is submitted, the Clock shall be controlling (unless at the time of the receipt the Clock malfunctions, then the Port's clock on its network phone system shall be controlling). The Port suggests that Proposals be hand delivered to the Submittal Address in order to ensure their timely receipt. Any Proposals mailed via an express mail service, US postal service, or other courier service shall not be considered timely received until date and time stamped by the controlling Clock. Any Proposals received after the time stated (regardless of the cause of the delay, including whether caused by the express mail service, US postal services, other courier service, or the Port's mail handling personnel) shall not be opened and shall be returned, sealed, to the Proposer.

### **D. 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 contract. Any trade secrets or proprietary financial information, which a Respondent believes should be exempted from disclosure, shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections shall not be permitted and shall be invalid. The specific information must be clearly identified as such.

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

**E. Indemnification**

If Respondent is selected to receive a contract, it will be required to agree to the indemnification clause contained in Section 17 (Indemnification) of the Agreement (**Attachment 10**).

**F. Reimbursable Expenses**

All expenses associated with the Contract Transition and start-up tasks are not separately reimbursable.

**G. 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 of Port Commissioners retains the right to award this project in part or in total to the Respondent(s) of its choice, and to decide to undertake the project or to terminate the project at any time prior to approval of a formal contract.

**H. Conflicts of Interest**

By submitting a proposal, the Respondent represents that it is familiar with California Government Code Section 1090 and Section 87100 et seq., 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 the Port, or other officer, agent or employee of the 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 the 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.

**I. Cost of Preparing a Response**

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

**J. Law Compliance**

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

**K. 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.

**L. Proposal Considerations and Legal Proceeding Waiver**

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

**M. False Statements**

False statements in a proposal will disqualify the proposal.

**N. Taxes**

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

**O. Grade of Service**

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

**P. 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.

**Q. Amendments**

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

**R. Withdrawal or Modification of Offers**

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

**S. Acceptance**

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

**T. Representations**

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

**U. 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 three-year (3) contract (if any) and will have the option to issue two (2) one-year extensions not to exceed a total period of 5 years (at the costs quoted in this proposal).

**V. Contract Termination**

The Port may terminate the agreement with the Respondent on thirty (30) days' notice without cause or immediately for cause.

**W. 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 Daria Edgerly, Secretary of the Board, and received by the Port no later than 5:00 p.m. by the third (3<sup>rd</sup>) 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.



## Non Collusion Declaration

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### **RFP No.: 17-18/18, Jack London Square Parking Management Services**

(To Be Executed By Proposer and Submitted With Proposal)

I, \_\_\_\_\_, declare as follows:

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

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

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

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, at  
\_\_\_\_\_, California

\_\_\_\_\_  
Signature

Authority: California Public Contract Code § 7106; California Code of Civil Procedure § 2015.5



**PORT OF OAKLAND**

**Statement of Equal Employment Opportunity**

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**RFP No.: 17-18/18, Jack London Square Parking Management Services**

I hereby certify that \_\_\_\_\_(Legal Name of Respondent/Supplier/Consultant/Contractor), will not discriminate against 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.

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**

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**RFP No.: 17-18/18, Jack London Square Parking Management 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, the Invitation, the General Conditions, the Specifications and all of the documents for this project, proposes to enter into a contract with the Port of Oakland to perform the work listed in this RFP, including all of its component parts, and to furnish any and all required labor, materials, equipment, insurance, bonding, taxes, transportation and services required for this project in strict conformity with the plans and specifications prepared, including any Addenda, within the time specified.

**Addendum Acknowledgement:**

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

**Acknowledgement and Signature:**

1. No Proposal is valid unless signed in ink by the person authorized to make the proposal.
2. I have carefully read, understand and agree to the terms and conditions on all pages of this RFP. The undersigned agrees to furnish the services stipulated in this RFP.
3. I represent that undersigned meets all of the Qualifications Criteria listed in Part II Section 8 of this RFP.
4. I represent that I am familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, 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: \_\_\_\_\_

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**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: \_\_\_\_\_

**RFP No.: 17-18/18, Jack London Square Parking Management Services**

Proposers must complete and submit the Management Fee Worksheet and other requested content on this **Attachment 4**.

**Assumptions and Instructions for Preparing this Worksheet**

- 1) Enter the profit and overhead component of your Fixed Annual Management Fee, for Year 1. To calculate Profit & Overhead for years 2-5, apply an assumed annual increase of 3.0%.
- 2) Enter your proposed combined annual insurance premiums per parking stall, excluding Workers Compensation. Port will not reimburse for deductibles. These premiums are fixed and will not increase based on CPI. **Port will not reimburse for deductibles.** Proof of premiums actually paid is required.
- 3) **TOTAL MANAGEMENT FEE:** Lines 1 + 2.

**Management Fee Worksheet**

Please complete the following table and submit it with your proposal.

<b>Worksheet for Self Parking ONLY</b>					
<b>A. Parking Management Services</b>	<b>Contract Year</b>				
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
1. Profit & Overhead					
2. Insurance Premiums Commercial General Liability, Automobile and Garage Keepers Legal Liability					
<b>Management Fee (1+2)</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

<b>Worksheet for Valet Parking ONLY</b>					
<b>B. Parking Management Services</b>	<b>Contract Year</b>				
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
3. Profit & Overhead					
4. Insurance Premiums Commercial General Liability, Automobile and Garage Keepers Legal Liability					
<b>Management Fee (3+4)</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

<b>Worksheet for BOTH Self Parking and Valet Parking</b>					
<b>C. Parking Management Services</b>	<b>Contract Year</b>				
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
5. Profit & Overhead					
6. Insurance Premiums Commercial General Liability, Automobile and Garage Keepers Legal Liability					
<b>Management Fee (5+6)</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

**Proposed Workers Compensation Rate for Contract Year 1**

Proposer commits to use the following rate to compute the Workers Compensation Premium during the first year of Operations. After the first year assume a 3% annual increase.

Parking Management Services \_\_\_\_\_% of actual payroll expense

**Proposed Annual Salaries (including benefits) for the General Manager**

This will be the starting salary for this position. Annual increases in Port reimbursement will be limited to a maximum 3% annual increase. Contractor may elect to increase compensation to the incumbents of these positions, but reimbursement by the Port will be limited to the amounts entered here, increased annually by 3%.

General Manager \$ \_\_\_\_\_

**State Unemployment Tax Rate**

Please provide your current State Unemployment Tax Rate. \_\_\_\_\_

All proposed Management Fees, costs and cost factors described in this Attachment 4 will be factored into the Fee selection criteria included in RFP Part V on page 13. The undersigned, a duly authorized officer of the Proposer, hereby commits the Proposer to these fees, costs and cost factors.

Respondent Name: \_\_\_\_\_ Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_



## PORT OF OAKLAND

## Non-Discrimination and Small Local Business Utilization Policy

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**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](mailto: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 Ms. Lila Zinn (510) 627-1485, or [lzinn@portoakland.com](mailto: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)		<b>Prime</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
<b>Total</b> (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.



**PORT OF OAKLAND**

## **Local Participation Questionnaire**

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(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

<b>PRIME CONTRACTOR</b>		<b>BUSINESS ADDRESS</b>				<b>CONTRACT BID AMOUNT</b>		<b>DATE OF THIS REPORT</b>	
<b>PORT PROJECT NAME</b>				<b>PORT PROJECT NUMBER</b>	<b>WORK AUTHORIZATION #</b>	<b>TOTAL CONTRACT AMOUNT INCLUDING CHANGE ORDERS</b>		<b>PROJECT COMPLETION DATE</b>	
(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	<b>CONTRACT PAYMENTS</b>					
				(5a) * LIABE Dollars	(5b) * LBABE Dollars	(5c) * SBE Dollars	(5d) * VSBE Dollars	(6) Date Work Completed	(7) Date of Final Payment
<b>TOTAL</b>				\$	\$	\$	\$		

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**

<b>AUTHORIZED CONTRACTOR REPRESENTATIVE SIGNATURE and TITLE</b>	<b>BUSINESS PHONE NUMBER</b>	<b>DATE</b>
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**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://srd.portofoakland.com/> or by calling (510) 627-1627. 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 \$15,000,000
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.**

<b>COMMENTS:</b>



# PORT OF OAKLAND

## Final Utilization of Local and Small Business Enterprises

<b>PRIME CONTRACTOR</b>		<b>BUSINESS ADDRESS</b>				<b>CONTRACT BID AMOUNT</b>		<b>DATE OF THIS REPORT</b>	
<b>PORT PROJECT NAME</b>				<b>PORT PROJECT NUMBER</b>	<b>WORK AUTHORIZATION #</b>	<b>TOTAL CONTRACT AMOUNT INCLUDING CHANGE ORDERS</b>		<b>PROJECT COMPLETION DATE</b>	
(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	<b>CONTRACT PAYMENTS</b>					
				(5a) * LIABE Dollars	(5b) * LBABE Dollars	(5c) * SBE Dollars	(5d) * VSBE Dollars	(6) Date Work Completed	(7) Date of Final Payment
<b>TOTAL</b>				\$	\$	\$	\$		

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).

<b>I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE, TRUE AND CORRECT</b>		
<b>AUTHORIZED CONTRACTOR REPRESENTATIVE SIGNATURE and TITLE</b>	<b>BUSINESS PHONE NUMBER</b>	<b>DATE</b>

**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://srd.portofoakland.com/> or by calling (510) 627-1627. 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 \$15,000,000
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.**

<b>COMMENTS:</b>



**PORT OF OAKLAND**

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

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**RFP: 17-18/18, Jack London Square Parking Management Services**

I hereby certify that \_\_\_\_\_ (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**

**Statement of Adherence to Labor Peace Rule**

**RFP: 17-18/18, Jack London Square Parking Management Services**

The undersigned acknowledges that it has carefully reviewed, understand, and agree to the terms of the Labor Peace Rule set forth in Section 3.8 of the Parking Management Agreement attached to this RFP. The undersigned understands that compliance with the Labor Peace Rule is a material term to performing this opportunity.

If selected as the successful Respondent, the undersigned agrees to obtain and provide to the Port the required Labor Peace Agreement **within 21 days after receiving a notice of award**, or else the Port may select another respondent to perform the Services. If selected as the successful Respondent, the undersigned also agrees to fully comply with the Labor Peace Rule, which includes obtaining and attaching valid Labor Peace Agreement(s) to the Parking Management Agreement prior to commencing operations.

The undersigned agrees and acknowledges that the Port has a proprietary interest in the timely placement of the successful Respondent and the successful Respondent's operations under a Labor Peace Agreement (as defined in the Labor Peace Rule) and that undue delay in reaching such Labor Peace Agreement would interrupt the provision of services described in this opportunity.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date





**PORT OF OAKLAND**

**Supplier Insurance Requirements**

---

**RFP No.: 17-18/18, Jack London Square Parking Management Services**

Please refer to Exhibit J (Insurance Requirements) of the Agreement in Attachment 10, for Insurance requirements.



**PORT OF OAKLAND**

**Insurance Acknowledgement Statement**

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**RFP No.: 17-18/18, Jack London Square Parking Management Services**

I hereby certify that \_\_\_\_\_ (Legal Name of Respondent) agrees to meet all of the Port's Insurance requirements included in Agreement for Jack London Square Parking Management Services 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.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**RFP No.: 17-18/18, Jack London Square Parking Management Services**

**Attachment 10**

**Jack London Square**

**Parking Management Agreement**

**(RFP No. 17-18/18)**

## JACK LONDON SQUARE

## PARKING MANAGEMENT AGREEMENT

**BETWEEN**

**PORT OF OAKLAND**

(City of Oakland, a municipal corporation,  
acting by and through its Board of Port Commissioners)

AND

A \_\_\_\_\_

**DATED**

**APRIL 1, 2018**

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## PARKING MANAGEMENT AGREEMENT

This **PARKING MANAGEMENT AGREEMENT** (“Agreement”), dated April 1, 2018 by and between the **CITY OF OAKLAND**, a municipal corporation, acting by and through its Board of Port Commissioners (“Port”), and [REDACTED], a [REDACTED] (“Operator”),

### WITNESSETH:

**WHEREAS**, the Port has under its jurisdiction and control certain public parking facilities in Jack London Square in the City of Oakland (collectively referred to as the “Parking Facilities”, or singularly as a “Parking Facility”); and

**WHEREAS**, the Port has established a program (“Program”), for the controlled parking and valet parking in the Parking Facilities; and

**WHEREAS**, the Port has a proprietary interest in the continuous provision of Parking Services, without labor disruptions, so that the Port’s visitors and customers receive adequate Parking Services; and

**WHEREAS**, the Operator has experience in the management and operation of public self parking and valet parking facilities in the San Francisco Bay Area; and

**WHEREAS**, the Port desires to retain the Operator as an independent contractor to manage and operate the Parking Facilities in accordance with this Agreement.

### NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. **Management of Described Parking Facilities.** The Port does hereby retain the Operator, and the Operator agrees with the Port, to implement the Program and thereby manage and operate as an independent contractor the Parking Facilities that are described in **Exhibit A** (Parking Facilities Description), attached hereto and incorporated herein. The Port’s Director of Commercial Real Estate or his or her authorized designee (hereinafter “Director”) may from time to time by prior written notice to the Operator and subject to other provisions of this Agreement, add to and/or reduce permanently or temporarily the areas included within the Parking Facilities, and upon such additions and/or reductions the term “Parking Facilities” shall be construed to incorporate such additions and/or reductions. “Parking Facilities” includes all Port improvements and equipment used in connection with parking in the Parking Facilities.

2. **Term of Agreement; Options to Extend Term.** The initial term of this Agreement shall be three (3) years commencing April 1, 2018, and terminating March 31, 2021 (“Initial Term”), subject to the provisions of Section 28 (Termination). The Port shall have the unilateral right to extend the Initial Term for two (2) additional periods of one (1) year each (each additional term referred to as an “Extension Term”) upon sixty (60) days’ prior written notice in each instance from the Director to the Operator. The effectiveness of each of said options to extend the Initial Term, if exercised, shall be conditioned upon the Operator’s written acceptance of any revised Management Fee or other modified operational considerations set forth in said Director’s notice. Any reference to the “Term” of this Agreement shall be deemed to include any Extension Terms.

3. **Operational Requirements and Program Goals.** The Operator agrees to manage and operate the Parking Facilities in an efficient, competent, expeditious and courteous manner while maximizing revenues and the capacity of all of the Parking Facilities and minimizing operational costs, in accordance with the rates, charges, rules and regulations and operational procedures established or



approved from time to time by the Port and/or the Director, if appropriate, and in accordance with this Agreement.

The Operator agrees to use the Operator's best efforts to promote and manage the Parking Facilities in accordance with the following Program goals:

- (a) To manage the Program to provide an acceptable level of service consistent with the image of Jack London Square, as specified by the Port.
- (b) To be responsive to the needs of all businesses in Jack London Square and patrons and to the directions of the Port.
- (c) To operate the Program so as to enhance the patronage for all businesses in Jack London Square.

A material consideration to the Port in entering into this Agreement is the Operator's commitment to so manage and operate the Program in accordance with the above stated Program goals.

The Operator and its employees shall not engage in the sale of any product or service, or the solicitation of such sale, at Jack London Square except as expressly authorized by written agreement signed on behalf of the Port by the Director, and shall not in any way promote any business, or in any way disparage the businesses in Jack London Square.

Operator shall not, without the advance written consent of the Port, install any exterior decorations or painting or install any radio or television antennae, loudspeakers, sound amplifiers, or any devices, or install any signs in or around the Parking Facilities without the prior written consent of the Director. No loudspeakers, radios or other means of broadcasting to be heard outside the Parking Facilities shall be used by Operator. Operator shall not use any false or misleading advertising, or engage in any unfair trade practices injurious to other tenants of the Port.

Port shall have the right to object to the demeanor, conduct, and appearance of any employee of Operator or those doing business with them, subject to applicable Laws. Operator shall take all steps reasonably necessary to remedy the cause of the objection. After written notice from Port, Operator shall ensure the immediate removal from the Parking Facilities or the discipline in accordance with Operator's employee discipline policy of any employee or other representative of Operator who participates in improper or illegal acts in Jack London Square, including but not limited to the Parking Facilities, who violates any applicable laws, ordinances, rules and regulations including, without limitation, licensing and permit requirements and rules and codes of conduct applicable to all tenants of Jack London Square, or whose continued presence in Jack London Square, including but not limited to the Parking Facilities, 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 Operator to take immediate action via a telephone call. The foregoing shall not in any way limit Director's right to impose Administrative Fees in accordance with the provisions of Section 10 (Administrative Fees and Review). Operator shall not allow any of its agents, servants, or employees to conduct business in a loud, noisy, boisterous, offensive, or objectionable manner, and shall confine their business at the Parking Facilities to that of operating the Program unless otherwise approved in writing by Port.

The Operator further agrees that its management and operation duties shall include the following:

## **Jack London Square Parking Management Agreement**

**3.1 Program Development and Implementation.** The Operator shall, under the direction of the Director, be responsible for Program development and implementation during the Term of this Agreement.

**3.1.1 Construction Activities.** The Operator acknowledges that certain construction activities have been and are currently underway in Jack London Square, that additional construction activities are contemplated and that said construction activities and the business developments resulting therefrom will impact the Program. The Operator shall update the Program as necessary and continue to implement the Program during and at the completion of the construction activities.

**3.1.2 Parking Service Requirements.** The Operator agrees to provide self parking services at locations designated from time to time by the Director (the “Self Parking Services”) and to provide valet parking services at the locations designated from time to time by the Director (the “Valet Parking Services”). The Self Parking Services and Valet Parking Services are collectively referred to as the “Parking Services”).

The Parking Services shall be provided during the hours of operation for each Parking Facility specified in **Exhibit B** (Hours of Operation), attached hereto and incorporated herein, seven days a week, including holidays. The Director may modify the hours of the Parking Services by written notice to the Operator, which notice shall specify the changes ordered and the adjustment of compensation, if any. The Operator may not interrupt the Parking Services at any time. The Operator must provide the required staffing for Parking Services at all specified times.

In providing Valet Parking Services, the Operator shall comply with the following additional requirements:

1. The Operator shall not park vehicles in any other spaces other than those spaces in the Parking Facilities designated as valet parking spaces in **Exhibit A** (Parking Facilities Description), or any additional locations designated from time to time by the Director.
2. The Operator shall comply with all applicable provisions of the Vehicle Access Plan developed for Jack London Square under BCDC Permit No. 19-85, Amendment No. 13, Permit Condition II.B.14.C (the “VAP”) set forth in **Exhibit C** (Vehicle Access Plan), attached hereto and incorporated herein. The VAP is intended to limit the intrusion of motor vehicles into those areas designated as public access areas under BCDC Permit No. 19-85, and to manage those areas where pedestrians and vehicles are mixed, to protect the safety and comfort of pedestrians and their ability to move through those areas to reach the shoreline.

**3.1.3 Parking Services.** All Parking Services shall be operated according to procedures and operating plans designated from time to time by the Director. The Operator shall, at a minimum, perform all of the following functions related to the Parking Services, without limitation:

1. Provide Parking Services in accordance with schedules approved by the Director;
2. Provide trained, professional and courteous parking attendants, cashiers, and supervisors;

3. Collect parking fees and charges as established by the Port without exception, except as directed by the Director;
4. Comply with all applicable laws and regulations, including, without limitation, Port ordinances and resolutions, and the VAP; and
5. Render such other related services as may be requested by the Director.

**3.1.4 Parking Services Staffing Plans.** The Operator shall provide parking attendants, cashiers, and supervisors in accordance with the “Parking Services Staffing Plans” set forth in **Exhibit D** (Staffing Plans), attached hereto and incorporated herein. The Parking Services Staffing Plans may be modified by written notice from the Director, which notice shall specify the changes ordered and the adjustment of compensation if any.

**3.1.5 Additional Requirements.** The Operator may be required to perform a variety of additional duties including but not limited to the following, as may be authorized in writing from time to time by the Director, and at costs approved in advance in writing by the Director (subject to the reimbursement terms set forth in Section 8 (Port Reimbursement of Operator’s Budgeted Expenses)), including but not limited to:

1. Vehicle counts;
2. Customer surveys;
3. Purchase, installation and maintenance of signs, schedule holders and similar items;
4. Purchase and/or rental and maintenance of telephones and/or radios for shift supervisors in addition to the equipment provided by the Port;
5. Purchase and/or rent additional equipment or materials necessary for the Operator’s staff to supervise the Parking Services;
6. Loan or use of supervisory personnel from the Operator’s corporate headquarters for Parking Services related projects over and above those described herein; and
7. The loan or use of clerical or secretarial personnel from the Operator’s corporate headquarters for Parking Services related projects over and above those described herein.

Except as otherwise provided in this Agreement, the Operator shall be reimbursed in an amount that is equal to actual costs incurred by the Operator for meeting any such additional requirements as approved by the Director. The Operator may include any such approved costs (after the expense has actually been incurred and paid for by the Operator) in the Operator’s regular monthly invoice.

**3.1.6 Activity Reports.** The Operator shall submit to the Director, monthly and annual reports for the Parking Services on report forms, which shall be provided by the Operator or Port, at Port’s election. The Director may modify the report forms at any time and may change the frequency of the reporting requirements. Such Parking Services reports shall include, at a minimum:

1. Monthly employee rosters along with accrued employee benefit balances, including all new hires and terminations;
2. Monthly activity and Parking Revenues summaries and certifications which shall be reconciled to daily and weekly reports, as specified in Section 4.4 (Revenue Report for Parking Revenues; Scope and Schedule) provided on a monthly basis;
3. Monthly Parking Revenue Reports, as specified in Section 4.4 (Revenue Report for Parking Revenues; Scope and Schedule);
4. Monthly employee payroll reports;
5. Monthly reimbursable operational expenses summaries; and
6. Such other statistical reports concerning management and operation of the Parking Services as the Port may reasonably require from time to time.

Monthly reports shall be submitted by the 12th calendar day of each month. If the 12th calendar day of any month falls on a weekend or legal holiday, the report will be due on the next business day. Annual reports shall be submitted within thirty calendar days of the end of each calendar year. The Operator shall supply Port with such other financial or statistical reports as the Director may request from time to time during the Term of this Agreement.

**3.2 Operator's Employees.** The Operator shall appoint and retain at all times during the Term of this Agreement such employees as may be necessary to manage and operate the Parking Facilities and otherwise develop and implement the Program in an efficient, competent, expeditious and courteous manner consistent with the terms of this Agreement, in accordance with the Parking Services Staffing Plans set forth in **Exhibit D** (Staffing Plans). The Operator shall provide supervisory and administrative employees with titles and job descriptions similar to the following:

**3.2.1 General Manager.** The General Manager shall be the on-site individual in charge of the Program. The General Manager shall report to the Operator's Chief Operating Officer or other authorized corporate officer. Specifically, the General Manager's duties shall include but not be limited to the following, consistent with corporate policy of the Operator and the requirements of this Agreement:

1. Monitor the accuracy of the revenue and expense information and compare same to the written Operational and Revenue Control Program;
2. Be proficient in the use of the revenue control equipment and fully understand its capabilities and weaknesses. The General Manager shall be fully knowledgeable about the basic reporting software for the fee computers and be able to supply accounting and statistical data required by this Agreement;
3. Implement a staff training program and develop a written Training Manual and Operational Manual covering all aspects of the Program;
4. Establish performance criteria and written job descriptions for all of the

Operator's staff involved in the Program and make such available to the Director, as requested;

5. Develop all preprinted forms for use in all aspects of the Program, subject to approval by the Director, for such items as transaction records, daily and weekly Parking Facility activity reports, erroneous transaction reports, applications for monthly parking, applications for validation stickers and validation machines, accident report forms, complaint report forms and other forms that are deemed necessary to facilitate efficient management of the Program;
6. Supervise the Operator's employees;
7. Require all of the Operator's staff to be properly trained, follow rules of conduct and be properly dressed and otherwise prepared and suitable for their assigned duties;
8. Provide the Port with a weekly staff schedule for each Parking Facility no later than 5:00 p.m. on Thursday of the preceding week, and a schedule of all other staff assigned;
9. Monitor hours of staff to assure that time cards and schedules are accurate and in accordance with approved schedules;
10. Cooperate with the Port relative to any construction in Jack London Square to provide available parking to the general public and for the businesses at Jack London Square;
11. Inspect daily all the Parking Facilities. Report to the Director and correct, if appropriate, any problems in accordance with the requirements of this Agreement;
12. Discipline and/or dismiss the Operator's employees, who fail to perform in accordance with highest standards or who fail to comply with any of the terms of this Agreement;
13. Understand the maintenance requirements of the Parking Facilities and proactively and aggressively manage this responsibility;
14. Develop and update, for Port approval, a comprehensive maintenance check list and schedule to be followed by the Operator within one hundred twenty (120) days following the date of this Agreement;
15. Perform other field supervision activities as required;
16. Provide an approved means of responding to parking emergencies and public needs on a twenty four (24) hour per day basis through the use of supervisors, and/or other designated on-call Operator staff personnel;
17. Work on-site a minimum of five (5) days per week and eight (8) hours per day between 8:30 a.m. and 5:00 a.m. Monday through Friday; and

18. Be on-call to assist in parking emergencies and/or be available at other times to oversee every aspect of the Program.

The General Manager shall possess the following qualifications: Graduation from an accredited four-year college or university, and two years' experience managing or supervising a parking facility with ten (10) or more employees on a multi-shift operation. The college education requirement may be satisfied with a high school diploma as long as the General Manager is qualified and has at least five (5) years' experience managing or supervising a parking facility with ten (10) or more employees on a multi-shift operation basis including experience with revenue controls of parking facilities similar to the Parking Facilities. The Director shall have the right to review the qualifications of the General Manager prior to his or her appointment and approve or disapprove said appointment.

**3.2.2 Office Hours.** The Operator's on-site office, described in the License and Concession Agreement in **Exhibit K** (attached hereto and incorporated herein), shall remain open and shall be staffed by a supervisor, the General Manager, or other qualified employee of the Operator between 8:30 a.m. to 5:00 p.m. Monday through Friday or on a similar schedule approved in writing by the Director. The employee shall answer the telephone, handle the monthly parking cards and recordkeeping and as necessary, bill and account for the monthly card parkers, and shall handle customer complaints and receive, in person, customers visiting the Parking Facilities office to handle business required of the Operator.

**3.2.3 Supervisor.** In addition to the General Manager, there shall be a minimum of one on-site supervisor during each shift. The supervisor shall be responsible for the on-site supervision for all of the Operator's on-site staff and the overall operation of the Program in the absence of the General Manager. The on-site supervisor shall work under the direction of the General Manager. The amount of supervision expense which is eligible for reimbursement to the Operator shall be subject to mutual approval by the Director and the Operator.

**3.2.4 Worker Retention.** The Operator shall retain existing parking employees who have been performing self parking or valet parking duties for the prior operator for at least ninety (90) days prior to the commencement of the Term of this Agreement, for a period of not less than ninety (90) work days after the commencement of the Term, unless such parking employees are terminated for cause. If the Operator employs a reduced number of parking employees than that of the prior operator, then employees shall be offered employment based upon seniority using a combined seniority list.

**3.3 Uniforms and Identification Badges.** All of the Operator's employees while working under this Agreement at the Parking Facilities shall be dressed in neat, clean uniforms clearly identifying the Operator's company and bearing the employee's name. Uniforms, and requested exemptions from the uniform requirement, shall be subject to the prior written approval of the Director. The General Manager is exempt from the uniform requirement.

The Operator shall provide, maintain and clean, at its sole cost and expense, uniforms and employee and/or booth name tags to the Operator's employees. The Operator's uniform policy shall be covered in the Operator's Operational Manual as described in Section 3.4.1 (Employee Training Manual). All of the Operator's employees while working under this Agreement at the Parking Facilities shall wear name tags identifying the employees' name and the Operator's company, if not otherwise identified on the employees' uniform. Where applicable, the Operator shall prominently display employee's name in cashier booths so that it is clearly visible to the public. Uniforms shall be kept in good repair and clean and shall be of the highest quality. Uniforms shall at a minimum consist of

shirt, pants or skirt. If uniforms do not satisfactorily meet the requirements set forth in this Section, the Port, at its option, may elect to purchase uniforms for the Operator's employees and deduct said cost of uniforms from the Operator's Management Fee. The Operator shall provide its appropriate employees, e.g., attendant-assist and traffic direction personnel, with weather protection equipment at the Operator's expenses as required.

**3.4 Supervision of Personnel.** The Operator shall at all times exercise control over the conduct, demeanor and appearance of all of the Operator's personnel employed in the operation of the Parking Facilities. Such personnel shall be trained by the Operator to render a high degree of courteous and efficient service to the parking patrons and it shall be the responsibility of the Operator to maintain close supervision over said employees so as to assure continuation of the highest standard of service. Each employee must understand that a significant aspect of their duties is public relations and, as such, they are required to effectively communicate to the public. Upon objection of the Director concerning the conduct, demeanor or appearance of the Operator's General Manager, supervisors or any other of the Operator's employees, the Operator shall immediately take all steps reasonably necessary to correct the cause of the objection including, without limitation, dismissal or replacement of the involved individual consistent with applicable labor laws and bona fide labor contract requirements.

The Port has the absolute right to require the immediate removal of any employee of the Operator from work performed under this Agreement for failure to comply, in the Port's sole discretion, with any term or condition of this Agreement.

**3.4.1 Employee Training Manual.** Within sixty (60) days following the date of this Agreement, the Operator shall prepare and provide the Director with one copy of a site-specific written Training Manual. The Operator shall provide regularly scheduled formal training to the Operator's staff in the operation of the revenue control equipment, safety, on-the-job behavior requirements, conduct, operational rules, proper dress and employee attitude, and the like. The content of the Training Manual shall be subject to the Port's approval.

All personnel assigned to work under this Agreement must have the legal right to work in the United States and must read, write and speak fluent English if their assignments require communication with the public. The Operator's employees who move cars or drive any vehicle in the course of performing their job responsibilities under this Agreement must possess a valid Class C California drivers license.

**3.4.2 Reimbursable Employee Pay.** The wages and salaries for all personnel employed by the Operator shall be determined prior to the Term of this Agreement. The Operator shall provide such wage and salary information to the Port in adequate detail (as determined by the Port) prior to the Term of this Agreement. The Operator shall keep an accurate payroll record showing the name, social security number, work classification, straight time and overtime hours worked each day and week and the actual per hour/diem wages paid by the Operator to each employee in the Parking Facilities. Said payroll record shall accompany each the Operator's request for payroll reimbursement.

If, during the Term of this Agreement, the amount of wages and salaries of employees or subcontractors performing work under this Agreement are amended, the Operator shall give the Port written notice of such change at least 60 days prior to the effective date of such change and shall provide the Port adequate documentation of such change as the Port shall reasonably require.

The Operator shall schedule the Operator's employees so that the Port does not incur undue overtime expenses. Accordingly, the Operator shall employ a sufficient number of employees to cover all regularly scheduled Parking Facilities operations. All anticipated overtime

expenses must receive prior written approval from the Director. Overtime that is not properly charged or approved by the Director in writing shall not be reimbursed by the Port.

**3.4.3 Staffing Schedules.** The Operator's weekly staffing schedules concerning the Program shall be submitted to the Director, listing positions by title, location, time, hours worked, and total field and total administration hours. The Director shall be notified of any temporary change and shall be given a new schedule to reflect permanent changes.

The Operator shall use its best efforts to schedule staff such that overtime is minimized. If the Director requests an explanation for overtime worked, the Operator shall respond within two (2) business days of the Director's request.

A weekly schedule shall be submitted to the Director each Thursday showing who is scheduled to work the various job assignments for the following week. The Operator shall notify the Director of any subsequent changes by pay period.

The Director has the right to require the Operator to make such changes in the Operator's staffing schedule as the Director shall deem necessary to adequately implement the Program. Director shall give the Operator written notice of any required changes in staffing schedule. Such notice shall allow the Operator sufficient time to implement the required staffing plan changes.

**3.5 Monthly Parking Operation.** The Operator's control and operation of the Parking Facilities utilized for Self Parking Services shall include providing monthly parking to authorized Port employees, authorized Port tenant employees, and other members of the public unless otherwise directed by the Port. The Operator shall issue monthly access cards for all said persons and monitor the use thereof in accordance with Port established monthly parking regulations and applicable Port Ordinances.

The Operator shall, at no additional staffing cost to the Port, issue cards, revoke cards and maintain all records for Port vehicles utilizing monthly access cards in any or all of the Parking Facilities.

**3.6 Validation.** The Operator shall honor the Port's Validation Program in accordance with written instructions supplied by the Port. The Port shall have the right to modify its Validation Program upon written notice to the Operator.

**3.7 Conferences.** The Operator agrees to meet through its General Manager from time to time with representatives of the Port at the reasonable request of the Port, in order to undertake a complete or partial inspection of all or portions of the Parking Facilities, to review the operation and management of the Parking Facilities and review the development and implementation of the Program.

**3.8 Labor Peace Rule.**

**3.8.1 Purpose.** This Labor Peace Rule is intended to fulfill the Port's proprietary and financial interest in the provision of services without Labor Disruption. Operator's compliance with this Labor Peace Rule is a material term, covenant, and condition of this Agreement.

**3.8.2 Definitions.**

1. **"Labor Disruption"** means any concerted activity (including, without limitation, strikes, sympathy strikes, work stoppages,



picketing, slowdowns, handbilling, boycotts, or other work interference) against the Operator or the Operator's operations under this Agreement.

2. **"Labor Organization"** means an organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose (in whole or in part) of dealing with the Operator concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work.
3. **"Labor Peace Agreement"** means a written and signed agreement between the Operator and a Labor Organization that prohibits a Labor Organization, its members, and any employees represented by the Labor Organization from engaging in any Labor Disruptions: (a) during any organizing, membership drive, or negotiation of a collective bargaining agreement; and (b) in the case where the Labor Organization has entered into a collective bargaining agreement with the Operator, during the entire Term of the Agreement.

**3.8.3 Labor Peace Agreement and Assurance.** Prior to the Term of this Agreement, the Operator shall enter into a Labor Peace Agreement with any Labor Organization that has requested such a Labor Peace Agreement, and attach such Labor Peace Agreement(s) to **Exhibit E**, attached hereto and incorporated herein. Additionally, and to the fullest extent provided by law, the Operator hereby assures that there shall be no Labor Disruption during the Term of this Agreement that arise on the Parking Facilities, that arise in connection with the services to be performed under this Agreement, or that interfere with or disrupt the Program. The Operator acknowledges that compliance with this Labor Peace Rule, including the assurance described in this subsection, are a material term of this Agreement.

**3.8.4 Enforcement.** Any of the following shall constitute a default under this Agreement, enforceable under Section 28 (Termination), in addition to all other remedies available to the Port: (a) the occurrence of any Labor Disruption, as determined in the Port's sole discretion; or (b) the Operator's failure to maintain all Labor Peace Agreement(s) required under this Labor Peace Rule during the entire Term of this Agreement.

**3.8.5 Construction.** The Operator may use any available legal means, including securing a valid collective bargaining agreement with a labor organization, to assure the Port that there will be no Labor Disruption during the Term of this Agreement. However, nothing in this Agreement shall be construed to require that Operator to change the terms and conditions of employment for its employees, recognize a labor organization as the bargaining representative for its employees, adopt any particular recognition process, enter into a collective bargaining agreement with a labor organization, or enter into any agreement in violation of the National Labor Relations Act of 1935.

#### **4. Revenue Collection, Budget and Reporting.**

**4.1 Collection of Parking Revenues.** The Operator shall collect all charges and fees for the Parking Services ("Parking Revenues") at the rates established by the Port. The Operator shall carry out procedures and programs to safeguard all receipts collected by the Operator's employees from the Parking Services as set forth herein. The Operator shall be responsible for the accounting and

depositing with the Port on a daily basis (except as otherwise provided in Section 4.5 (Parking Revenues; Deposits) of all the Parking Revenues. The Operator agrees that all receipts are and shall remain monies of the Port. The Operator shall be trustee for the benefit of the Port of all receipts the Operator collects from users of the Parking Services, and as such trustee the Operator agrees to use utmost diligence and care in safeguarding and delivering to the Port all such receipts. The Operator shall be responsible for such receipts, fees, and funds and shall take every precaution to protect same and to insure that all sums due and owed to the Port from the Parking Services operated by the Operator are properly assessed, collected, accounted for and deposited according to the policies and procedures set forth in this Agreement. The Operator shall employ only bondable persons in connection with the work hereunder.

The Port has established that the Port-provided access and revenue control equipment is operating properly. The Operator is strictly liable for any discrepancies between actual receipts and the amounts deposited with the Port. In the event that there are any discrepancies that the Operator demonstrates are due to a malfunction of the access and revenue control equipment, the Operator will not be liable for such discrepancies. Otherwise, the Operator shall be responsible for any discrepancy. Cash shortages will be paid by the Operator to the Port. All receipts shall be deposited or delivered to the Port free and clear of all claims, demands, set-offs or counterclaims of any kind or character by the Operator against the Port.

**4.2 Parking Rates.** Rates for Parking Services under this Agreement are established by the Board of Port Commissioners and are set forth in **Exhibit F** (Parking Rates), attached hereto and incorporated herein ("Parking Rates"). The Board of Port Commissioners may amend the Parking Rates from time to time during the Term of this Agreement; provided that the Operator may recommend rates to the Port and the Port will consult with the Operator prior to establishing such rates during the Term of this Agreement.

**4.3 Payment of Receipts to Port.** The Operator agrees that, unless and until otherwise directed in writing by the Director, the Operator shall deposit all Parking Revenues at least once each day (except on weekends and bank holidays, when the deposit shall be made on the next business day, unless the Port gives the Operator written direction that the deposit is to be made on a holiday and agrees to reimburse the Operator for any reasonable costs directly related to such deposit, including the cost of armored car service). Deposits shall be made at a time approved by the Director in the depository designated by the Port in writing. Failure of the Operator to make such deposits in the manner required shall result in the assessment of an Administrative Fee described in **Exhibit H** (Administrative Fees), attached hereto and incorporated herein. In addition, any error in the amount of the Parking Revenues deposited, including credit card deposits that are not resolved within thirty (30) calendar days, shall result in the assessment of an Administrative Fee.

**4.4 Revenue Report for Parking Revenues; Scope and Schedule.** The Operator shall maintain daily information records and reports on the Parking Revenues. The Operator will submit written summary reports on a monthly basis to the Port, in report format(s) acceptable to the Port. A monthly report shall be submitted to the Port by the twelfth (12<sup>th</sup>) calendar day of each month unless such 12<sup>th</sup> calendar day falls on a weekend or legal holiday, in which event the final report shall be due on the next business day. The reports will include required supporting documentation.

The monthly Parking Reports to be submitted by the Operator to the Port shall contain a complete reporting of operations data for Parking Services, including all reimbursable budgeted expenditures made during such calendar month for Parking Services. The Parking Revenue Report will cover the following areas of information:

- Monthly activities for Parking Services and gross revenue summaries for

Parking Revenues;

- Daily unaccounted for tickets for Parking Services. Provide supporting documentation to substantiate the total computed. Report the amount due to the Port;
- Profit and loss statement for all lien sales of vehicles covering applicable parking fees and recovered expenses for Parking Services; and
- Other reports concerning management and operation of Parking Services as the Port may reasonably require from time to time.

The Operator will have available for Port's review on a spot check basis the following types of information:

- Daily cash reconciliation and credit card by shift for the Parking Services;
- Daily reports of gross receipts and fees, vehicle count and physical inventory, and ticket reconciliation for Parking Services;
- Daily recap and reconciliation reports for Parking Services; and
- Weekly activity and gross receipts summaries for Parking Services.

**4.5 Parking Revenues; Deposits.** The Operator shall deposit the Parking Revenues, including parking receipts, and all other fees and funds collected from the management of the Parking Services, according to the following procedures:

- At least once each day (except as set forth in Section 4.3 (Payment of Receipts to Port)) the Operator will assemble all Parking Revenues collected during the immediately preceding twenty-four (24) hours; and
- The Operator will make deposits as specified by the Director.

Each day the Operator will deposit all assembled Parking Revenues into the Port's bank account. The day's funds are considered deposited to, and received by the Port only under the following conditions:

- Only upon actual deposit into the Port's account within the bank designated by the Port or other Port designated depository; or
- Upon the Operator's full compliance with Director's prescribed deposit instructions for deposits during weekends, holidays or business hours into the bank designated by the Port or other Port designed depository.

The Operator will deliver to the Port's designated Finance Office a duplicate deposit slip on the day of the deposits for the Parking Revenues. The deposit slip will specify which Parking Facility the deposit relates to, and will contain the date, time, place of deposit, and total amount of deposit.

All receipts will be deposited or delivered to the Port free of all claims, demands, or counterclaims of any kind or character by the Operator against the Port.

**4.6     Computer Files.** The Port has provided, at its expense, a SECOM computerized revenue maintenance system to maintain all records of the Self Parking Revenues (“Computer System”). The Operator shall maintain the Computer System and shall also maintain and replace all related hardware as a reimbursable expense. The Operator shall back-up files on at least a weekly basis and keep such back-up files for a period of at least six (6) months. The Operator shall, at its expense, provide to the Port copies, in electronic form, of the back-up files upon written request from the Director. In addition, upon the expiration or termination of this Agreement, the Operator shall provide, in electronic form, to the Port all of the back-up files in its possession.

**4.7     Armored Car Service.** The Operator is responsible to cooperate with the armored car service hired by the Port for the pick up of deposits of Parking Revenues collected by the Operator.

**4.8     Change Fund.** The Operator will maintain, at its own expense, a cash drawer change fund and/or cartridges sufficient for the proper operation of the cashiering function for the Parking Services.

**4.9     Credit Cards.** The Operator shall accept credit cards as payment for parking fees according with the following procedures:

- (a)     The Operator shall only accept major credit cards that are approved by the Port. The Port may, from time to time, add or delete credit cards acceptable for payment;
- (b)     The credit cards may be accepted for the limited and sole purpose of payment of Jack London Square parking in lieu of cash and only for the actual amount of the appropriate parking fee;
- (c)     If the Operator accepts credit card transactions, the Operator may do so only in full compliance with all recommended procedures published by the bank or lender issuing the particular credit card involved;
- (d)     The Operator shall provide a credit card verification service (the cost of which is reimbursable to the Operator);
- (e)     The Operator shall process credit card transactions, by using an automated, electronic deposit system provided by a federally insured financial institution; and
- (f)     Under no circumstances is the Operator permitted to return cash from Port monies to any person in any transaction involving the tendering of a debit or credit card.

**4.10    Personal Checks.** The Operator may accept personal checks as payment for monthly parking fees only in accordance with the following procedures:

- (a)     The Operator shall follow instructions provided by an approved check guarantee service (the cost of which is reimbursable to the Operator) to insure the collection

of personal checks. No check shall be accepted by the Operator unless it has been guaranteed by an approved check guarantee service;

- (b) Personal checks must be made payable only to the "Port of Oakland"; and
- (c) The Operator will be responsible to pay to the Port any amounts for checks not paid if it is determined that the check guarantee service's instructions were not followed.

**4.11 Travelers' Checks.** The Operator shall not accept travelers' checks, as such term is defined in applicable local, state, or federal laws.

**4.12 Insufficient Funds (NSF) Checks and IOUs.** The Port will provide the Operator with all checks returned by the check guarantee service as a result of the Operator failing to following instructions of the check guarantee service. The Operator will be responsible for collection of all checks returned because of insufficient funds ("NSF"), unless acceptance of the check was approved in writing by one of the Operator's supervisors, with the date and time of such approval noted on the check, and such approval was given at a time when a Force Majeure event prevented the Operator from contacting the check guarantee service or if check is received by the Operator as payment for monthly parking. Except as otherwise provided in the preceding sentence, the Operator will deposit with the Port funds to pay all such NSF checks, including any bank fees, on the date such NSF checks are delivered to the Operator.

If a parking patron has no other approved means of payment, the Operator is authorized to accept IOUs in lieu of payment of parking fees. If the Operator accepts an IOU, the Operator shall make commercially reasonable efforts to collect the funds owed. If the Operator fails to use commercially reasonable efforts to collect such funds, such uncollected funds shall be treated as a cash shortage for which the Operator shall be liable. If after using commercially reasonable efforts to collect, the Operator is unable to collect funds owed, the Operator shall not be liable for such uncollected funds.

**4.13 Losses: Credit Cards and Checks.** The Operator will be fully and strictly liable to Port for any loss of revenue to Port as a result of the Operator's acceptance of credit card(s) or check(s), unless acceptance of such credit card(s) or check(s) was approved in writing by one of the Operator's supervisors, with the date and time of such approval noted thereon, and such approval was given at a time when a Force Majeure event prevented the Operator from contacting the credit card company of check guarantee service, as applicable. Except as otherwise provided in the preceding sentence, Port may deduct the full amount of any such loss of revenue from any amounts owed to the Operator, including the Management Fee. The Operator will not be responsible for credit card transactions made through the SECOM Machines.

**4.14 Lien Sales of Abandoned Vehicles.** The Operator shall remit to the Port all applicable parking fees, towing fees, and recovered expenses relating to lien sales of abandoned vehicles. The remittance shall include recovery of administrative expenses relating to the lien sales process to the extent they are assessed and collected as part of the lien sale process.

**4.15 Monthly Parking Program.** The Operator shall also provide the Port with an accurate statement of monthly parking activity including monthly cards issued and card number(s), automobile license number, patron name, place of business, work and home phone number for each patron, location of Parking Facility that vehicle is parked, monthly amount billed and collected, deposit status, the begin and end date of monthly account and status of monthly payments. The Operator shall

also list other such restrictions that apply such as time zone access and time zone restrictions. The Operator shall enter into Port approved agreements with each monthly parker containing the required information and maintain such information on a data base computer system. The Operator shall bill all monthly parking card holders on a monthly basis. The Operator shall be responsible, with respect to the monthly parking component of the Program and will record and maintain a monthly card access system. When monthly cards are lost or stolen, not turned in or otherwise missing, the Operator shall de-program the cards from the system and reprogram them as necessary. The Operator shall perform other such duties with respect to the monthly parking component of the Program as is necessary to maintain the integrity of the Program. The Port shall reimburse the Operator for the cost of the monthly cards and postage.

Where possible, the reports shall also be available to the Port, at its request, as electronic data, such as electronic data storage discs or on-line.

**4.16 Special Studies.** The Operator will, in a timely manner and at its sole cost and expense, perform reasonable studies and provide other reasonable reports as requested by the Port.

**4.17 Collection of Parking Facilities Receipts.** The Operator shall use commercially reasonable efforts to collect all Port established parking charges and fees, except for those charged to regular Port employees or otherwise collected by the Port as provided in the operational procedures established or approved by the Port or the Director. The Operator shall be absolutely responsible and liable for payment to the Port of all funds collected or required to be collected by the Operator, without excuse for nonpayment unless it is determined that a cash shortage was caused by a malfunction of the Port's pay on foot machines. The Port may hold the Operator responsible for discrepancies between monies charged an individual parker and the amount due as determined by the hourly rate and length of stay indicated on a parking ticket, and the Port may deduct the difference from the Management Fee.

**4.17.1 Written Revenue Control Program.** Within sixty (60) days of the date of this Agreement, the Operator shall prepare and submit to the Director a written Revenue Control Policy for all aspects of the Program. The Revenue Control Program shall be subject to approval, disapproval and/or modification by the Director at his or her sole discretion, and shall be updated as necessary after submission to the Director.

The Revenue Control Policy shall include, but not be limited to, the use of sequentially numbered parking tickets, time clocks, fee computers, and numbered and specially printed validation stamps. The Revenue Control Policy shall include a policy for acceptance of checks for Port parking fees, where applicable, e.g., monthly parking.

The Revenue Control Policy shall include and the Operator shall be responsible for the operation of parking meters on Alice and Clay streets and the collection, control and tabulation of money from those parking meters. The Operator shall also be responsible for the collection and control of revenues from automatic pre-cashiering machines, and credit card only machines, used in connection with the operation of the Program in any of the Parking Facilities.

The Operator shall submit to the Director a written report on a monthly basis, in a report format approved by the Director, summarizing all transactions involving the Parking Facilities including the following:

- (a) Number of vehicles parked in each Parking Facility by location.
- (b) Number of vehicles parked in each Parking Facility by hour (if

such data is provided by the Port-supplied revenue control system).

- (c) Length of stay per vehicle for each Parking Facility (if such data is provided by the Port-supplied revenue control system).
- (d) Average income received by the Operator from the parking patron per stay by Parking Facility (if such data is provided by the Port-supplied revenue control system).
- (e) Operational cost for each Parking Facility.
- (f) All costs incurred by the Operator and income received by the Operator for each Parking Facility.
- (g) An accounting of validation stamps by each Port authorized validator by Parking Facility.
- (h) A daily detail of the number of vehicles parked overnight at each Parking Facility, provided on a monthly basis.

In addition, the Operator shall control the issuance of validation stamps (or other Port approved validation program) to the Port and Port tenants and shall maintain accountability for all such stamps and the distribution of said stamps. At the direction of the Director, the Operator shall charge a fee to the Port-authorized validators for said validation stamps and shall account for the revenue therefrom as an offset for the costs of providing the validation service.

**4.17.2 Parking Revenue Control Equipment and Maintenance.** The Operator shall, as necessary, resupply the automatic ticket dispenser with tickets to be provided by the Operator as a reimbursable expense. The Operator shall train its General Manager and supervisors so that at all times they are capable of providing, and/or directing other of the Operator's personnel in providing, emergency minor repair and routine preventive maintenance for all parking automation equipment including, without limitation, ticket dispensers, automatic gates, car count equipment, detectors and fee computers.

The Operator shall monitor and maintain the Port's SECOM parking equipment. This includes adjusting time mechanisms, changing ribbons, replacing damaged gate arms, checking and cleaning print heads, cleaning and checking coin and bill acceptors, replacing audit tapes, replacing parking tickets for automatic ticket dispensers, performing routine maintenance to the ticket mechanism, and performing other minor preventive maintenance as necessary. The Operator shall be responsible for assuring that the Port's SECOM parking equipment is properly functioning, which shall include reporting malfunction of such equipment to SECOM and arranging for the repair of any malfunctioning equipment. The Operator shall immediately report damage or malfunction of said equipment to the Director. The Operator shall keep a written log of all equipment services and repair.

To the extent the Operator cannot perform the necessary repair and maintenance of the revenue control equipment, the Operator shall contract with SECOM through its local representative or another qualified firm approved by the Director for all maintenance and repairs and pay for those repairs as required as a reimbursable expense except to the extent that said repairs are minor. The Operator shall, with respect to Port owned and installed fee computers and revenue control equipment, maintain copies of all publications and equipment operation manuals provided to the Operator

by Port and institute training programs in the operation of the equipment for its employees. The Operator shall monitor and check elevators in the Parking Facilities and report any malfunction to the Director.

**4.17.3 Theft.** The Operator shall carry out, on a surprise basis randomly each month during the Term of this Agreement, a comprehensive audit program of its cashiers, attendants and fee computer receipts. The Operator shall present to the Director, within sixty (60) days following the date of this Agreement, a written report describing the internal auditing procedures for both on-site operations and administrative operations as they apply specifically to the Parking Facilities and the Port's revenue control equipment. When requested by the Director, the Operator shall provide the Port with a copy of revised or updated procedures. Basic auditing procedures shall include the use of non-resetable gate arm numbers and non-resetable detector counters (if same are provided as part of the Port-provided revenue control system) and ticket counts. The Operator shall make recommendations to the Director regarding the revenue control equipment and operation as it relates to improved revenue control capability and/or loss of integrity.

In addition, the Operator shall establish and maintain a program for selection of employees assigned to the Parking Facilities and for monitoring their conduct in a manner that is reasonably calculated to preclude theft of Parking Facilities receipts by the Operator's employees and other persons. The Operator shall insure that the Program includes provision for identification and exclusion of prospective and existing employees who have been convicted of theft by a court of competent jurisdiction.

#### **4.18 Books and Records; Activity Reports.**

**4.18.1 Maintenance and Production of Books and Records.** The Operator shall maintain complete and accurate books of accounts in a form consistent with generally accepted accounting principles, including such books and records as would normally be examined by an independent certified public accountant in performing an audit or examination of the Operator's receipts and expenses in rendering the Parking Services. The Operator shall maintain full and adequate records in accordance with Port's requirements to show the Parking Revenues collected by the Operator, and to show the actual costs incurred in the performance of the Parking Services, including employee timecards and payroll registers and paid invoices.

**4.18.2 Inspection of Books and Records.** All such books and records shall, upon reasonable notice from Port, be made available either at the offices of the Port or at the offices of the Operator, for inspection and copying by the Port through its duly authorized representative. If such books and records are not kept and maintained by the Operator within a radius of fifteen (15) miles from the offices of the Port at 530 Water Street, Oakland, California, the Operator shall, upon request of the Port, make such books and records available to the Port for inspection at a location within said ten (10) mile radius or the Operator shall pay to the Port the reasonable and necessary costs incurred by the Port in inspecting the Operator's books and records, including, but not limited to, travel, lodging and subsistence costs. The Operator 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. The Operator shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the Port makes the final or last payment under this Agreement; provided, however, that if prior to the expiration of such three (3) year period, any audit, review or investigation is commenced by the Port, or any claim is made or litigation is commenced relating to this Agreement by the Port, such books and records shall continue to be maintained by the Operator, and Port shall continue to have the right to inspect and copy such books and records in the manner stated above, until the audit, claim or litigation is



finally resolved (including the determination of any and all appeals or the expiration of time for an appeal).

**4.18.3 Port Audit.** During the Term of this Agreement, in addition to its rights under Section 4.18.2 (Inspection of Books and Records), the Port may audit any or all payments made by the Port as reimbursement for expenses pursuant to this Agreement and all Parking Revenues collected and remitted to the Port. In case of such audit, the Operator shall make available to the Port any and all ledgers, books of accounts, canceled checks, and other records or documents evidencing or relating to revenue collections, expenses, payroll records and staffing schedules of personnel assigned to the Parking Facilities and such other evidence or information as the Port may require with regard to any revenues, payroll or other expenditure charged by the Operator. The Port shall notify the Operator of such audit and the Operator shall provide such records in the manner, time and place as provided for in Section 4.18.2 (Inspection of Books and Records).

Failure to provide requested audit records and information within 15 business days after the date requested by the Port shall result in an administrative penalty of \$100 per day from the due date to the date such records are made available to the Port in compliance with the provisions of this Agreement. In the event that the Port determines, in its reasonable judgment, that any payment or reimbursement made to the Operator is not supported or substantiated by such books and records, said payment or reimbursement shall be disallowed.

**4.18.4 Deductions From Payments to Operator.** The Port shall have the right to deduct from the Management Fee or any other amount payable to the Operator, upon written notice, any unauthorized or disputed expenses, underremittance of Parking Revenues, any Administrative Fees imposed, overpayment of expenses by the Port and any other amounts owed by the Operator to the Port. If the Port is required or elects to pay any sum, or if it incurs any obligations or expenses, because of the failure, inability, neglect or refusal of the Operator to perform or fulfill any of the terms and conditions of this Agreement that it is obligated to perform or fulfill, then the Port shall have the right to deduct these sum(s) from the Management Fee or any other amounts payable to the Operator.

## **5. License for On-Site Office and Valet Booths; Equipment; Maintenance.**

**5.1 License for On-Site Office and Valet Booths.** By way of the License and Concession Agreement in **Exhibit K**, attached hereto and incorporated herein, the Port hereby grants to the Operator, and the Operator hereby accepts, an exclusive license, concession, and privilege to use an on-site office (located on the second level of the Washington Street Garage) and valet parking booths solely for the purpose of providing the Parking Services during the Term of this Agreement.

**5.2 Cleaning; Maintenance.** As reimbursable expenses, the Operator shall remove as necessary debris and other objects in the Parking Facilities, which may be hazardous or obnoxious or which may interfere with traffic flow or parking, and to dispose of said debris and other objects at places designated by the Director and in accordance with all applicable law.

The Operator shall also maintain all booths, kiosks, and driveways used in the Parking Services (including, without limitation, cashier booths, valet booths, and exit driveway areas) neat and clean at all times, including, without limitation, periodic washing of the inside and outside of booth windows, doors, walls, and counters. The Operator shall also maintain landscaping of all Parking Facilities, all roll-up doors and fire alarm systems, all security cameras and emergency beacons (including replacement of same as needed), elevators, paving, utilities, fences, striping of parking spaces, markers and guide lanes, and Parking Facility lighting fixtures and lamps. The Operator shall also be responsible for garbage disposal and shall provide janitorial services for Parking Facilities, the office, and all parking

booths, and shall power wash the Parking Facilities at least once each year and all other maintenance that the Director shall request in writing.

**5.3 Equipment Provided and Maintained by Operator.** All furnishings and equipment located in the on-site office or valet booths, or to be used in connection with the Parking Services, are set forth in **Exhibit G** (Inventory of Port-Owned Equipment and Furnishings), attached hereto and incorporated herein, which Operator acknowledges were in good working order on the date of this Agreement and that said furnishings and equipment shall remain the property of the Port.

The Operator shall provide and maintain in good order and, as necessary repair and replace, furniture and equipment as may be required for the proper operation of the Parking Facilities, the cost of said equipment shall be a reimbursable expense. The Operator shall, if required, provide an office safe of adequate design for safeguarding parking receipts awaiting deposit. Said safe, if required, shall be approved by the Director and purchased by the Operator and shall become a capital asset of the Port. The Port shall reimburse the Operator for said purchase. The Operator shall maintain in good order and repair all booth locks, windows, and electric bulbs in or attached to attendants' booths or valet booths. The Port shall reimburse the Operator for such expenses.

The Operator shall also provide and maintain all rate signs and operational hour signs and other general directional signs as required by the Director. Operator shall not install any signs without the prior written approval of the Director. Signs that are required by the Director will be a reimbursable expense. All signs used by Operator are subject to Director's approval and Operator agrees to immediately alter or remove any such signs at Director's instruction.

The Operator shall provide all its parking attendants, on-site supervisors, and traffic control personnel with business band walkie talkies or other equivalent two-way radio equipment (listed in **Exhibit G** (Inventory of Port-Owned Equipment and Furnishings)) for use in instant communication with supervisors and Parking Facilities staff. Each on-duty supervisor and each on-duty attendant and other staff will be provided with walkie talkies. Maintenance, replacement, repair of walkie talkies shall be a reimbursable expense, except as hereinafter set forth. Any loss or negligent damage of walkie talkies shall be replaced or repaired by the Operator at the Operator's non-reimbursable expense.

**5.4 Reporting Injuries, Damages, and Need for Maintenance and Repair.** The Operator immediately shall report to the Director, using such forms and/or following such procedures that the Director may from time to time provide in writing, all personal injuries and property loss or damage, or threats or potential threats thereof, that arise out of or in connection with use of the Parking Facilities and of which the Operator is aware or reasonably should be aware, and all Parking Facilities improvements and equipment that the Operator knows, or reasonably should know, are in need of repair, replacement, or maintenance.

**6. Port's Obligations; Special Parking Privileges; Security.** The Port shall provide the following in connection with the Parking Facilities and the Operator's operation and management thereof:

**6.1 Provision and Maintenance of Parking Facilities.** Unless otherwise provided herein, and consistent with the License and Concession Agreement in **Exhibit K**, the Port shall, at no cost to the Operator, provide and maintain all Parking Facilities to be operated and managed by the Operator, specifically structural repair of on-site office facilities, drainage, and all other improvements that the Port deems necessary and appropriate.

**6.2 Special Parking Privileges.** The Director may issue monthly parking stickers, and provide special identification and/or parking gate control cards, or assign all or portions of such responsibilities to the Operator.

**6.3 Security.** The Port or its designee shall be responsible for providing general contract security service to the common areas of Jack London Square and Parking Facilities. The Operator shall have no obligation to provide security guard services for the Parking Facilities.

**7. Management Fee During Initial Term.** As consideration for the Operator's performance of its obligations under this Agreement including the management and operation of the Parking Facilities and the development and implementation of the Program, the Port agrees to pay to the Operator a Management Fee of \$ [REDACTED] per month during the Initial Term.

The Management Fee during any Extension Terms shall be governed by Section 11.1 (Management Fee and Reimbursement During Extension Term).

If the Port exercises the Port's termination for cause right as set forth in Section 28 (Termination), the Operator shall not be entitled to any Management Fee that would have come due after the effective date of termination. Except for the expense reimbursements provided for in Section 8 (Port Reimbursement of Operator's Budgeted Expenses) and the Management Fee described in this Section and in Section 11.1 (Management Fee and Reimbursement During Extension Term), the Operator shall be entitled to no payment or compensation whatsoever from the Port.

**8. Port Reimbursement of Operating Expenses.** The Operator shall be reimbursed for operating expenses as follows:

**8.1 General.** The Operator shall, in the first instance, pay all proper costs and expenses incurred in managing and operating the Parking Facilities, in accordance with good business practice.

No later than twenty (20) days following the Port's receipt of the bank certifications of deposit and reports, required by Section 4.4 (Revenue Report for Parking Revenues; Scope and Schedule), the Port shall reimburse to the Operator any actual costs and expenses, as hereinafter described and limited that are applicable to the month covered by such report. All such reimbursable expenses shall be evidenced by vouchers submitted to the Director in such form and with such supporting detail as reasonably shall be required by the Director including copies of warrants. Until receipt of all such certifications and reports, the Port shall have no obligation to pay to the Operator any of the previously mentioned amounts.

**8.2 Reimbursable Costs and Expenses.** No expense or cost of the Operator shall be reimbursed by the Port unless they are itemized and specifically conform to the following line items:

1. Direct operating salaries, wages and fringe benefits of approved on-site employees including cashiers, attendants, traffic control personnel, receptionist, and all required and Port-approved operational supervision.
2. Payroll taxes, including but not limited to Medicare, OASDI, CA SDI, Federal income tax, and state income tax;
3. Workers' Compensation Insurance required by this Agreement shall be a limited reimbursable expense as follows: limited to those employees that are authorized

by the Port or the Director as a reimbursable expense under this Agreement; limited to [REDACTED] % of payroll; and, limited to three percent (3%) annual increases over the Term of this Agreement;

4. City of Oakland-imposed taxes; including the City of Oakland parking stall tax;
5. Parking tickets, validation stamps, monthly cards, various Port required forms that the Port supplies for whatever purpose and monthly parking permits;
6. Such other allowable costs and expenses itemized and approved in advance by the Director prior to expenditure by the Operator; and
7. Liability Insurance required hereunder at the rate of \$[REDACTED] per parking stall, per month, within the Parking Facilities. Port will not reimburse for deductibles under this Agreement, nor will the Port reimburse or indemnify the Operator for the costs of judgments or expenses not covered by insurance except to the extent the same are caused by the sole negligence or willful misconduct of the Port or its agents or employees.
8. Storage fees for all tickets, forms, and other records required to be kept by the Operator under this Agreement.
9. Internet and data communication costs associated with the operation of the revenue control system.
10. Special parking projects and/or deferred maintenance expenditures approved by the Port and not to exceed \$100,000 per month in addition to typical operating expenses.

Costs and expenses of property and services required by the Operator for the successful accomplishment of the obligations of the Operator under this Agreement shall not be reimbursable by the Port. Such property and services that are not reimbursable shall include, but not to be limited to, the following:

- (a) home office expenses such as costs and expenses of administration, bookkeeping and salaries and any transportation and travel costs and expenses. Specifically, such excluded costs and expenses include:
- (b) any portion of any direct salaries or benefits for corporate officers;
- (c) costs associated with the production or documentation of any payroll for employees;
- (d) any costs associated with preparing monthly reimbursement statements, invoices or bills;
- (e) any costs associated with the preparation of any required or requested statistical reporting of revenues, number of cars and other such reports required regarding statistics for parking operations;
- (f) any costs associated with the Operator's required Operational Manuals,

administrative manuals, training manuals and/or staff training;

- (g) any furnishings or equipment required under this Agreement such as desks, stools, chairs, wastebaskets and all other furniture and fixtures except as specifically set forth in Section 5.3 (Equipment Provided and Maintained by Operator);
- (h) office equipment including typewriters, adding machines, calculators, personal computers, copiers, and all other office equipment not included in that equipment being provided by the Port as listed in **Exhibit G** (Inventory of Port-Owned Equipment and Furnishings) or as set forth in Section 5.3 (Equipment Provided and Maintained by Operator);
- (i) motor vehicles, properly marked and identifiable as the Operator's required for operation of the Parking Facilities and the transport of employees;
- (j) licenses and fees;
- (k) telephone service including off-site offices except for the intercom and telephone services associated with Parking Facility booths required specifically by the Director;
- (l) Port approved employee uniforms and required name tags and operator identification information;
- (m) heaters;
- (n) booth clocks, calculation clocks, employee time clocks and cash boxes, when not supplied by the Port;
- (o) off-site personnel costs associated with accounting and/or reporting of Port revenues;
- (p) any additional bank fees not included or approved in the approved Estimated Annual Operating Budget or subsequently approved by Director in writing;
- (q) The Operator's employees' parking charges;
- (r) office telephone installation costs and printer paper and any cost for legal services; and

Trade fixtures and equipment provided and installed by the Operator, not including Port owned and provided parking fee computers and related on line equipment, shall remain the property of the Operator and shall be subject to removal upon termination of this Agreement, provided the same can be done without injury to Port Property. Any reimbursable contracts entered into by the Operator for an amount in excess of One Thousand Dollars (\$1,000.00) at any one time or in an Agreement annual period shall require the Operator to bid the contracts and provide the Director with no fewer than three bids from responsible firms reasonably acceptable to the Port based on a bid list approved by the Director in advance.

The Operator shall not be reimbursed for any expenses unless and until the

Operator provides to the Director receipts or bills and copies of the Operator's warrants in payment thereof and all other related documentation indicating that the Operator has paid for expenses prior to requesting reimbursement, including payroll warrants.

All of the Operator's requests for payments for reimbursable payroll shall be accompanied by a payroll record showing the name, address, social security number, work classification, straight time and overtime hours worked each day of the week, the actual direct wage each employee is paid, and all payable benefits for each employee. Payroll records shall also indicate the location and/or position each employee was assigned for each hour worked.

The Operator shall pay all bills on time and the Port will not reimburse the Operator for late fees, penalties, or C.O.D. charges except to the extent the same are caused by the sole negligence or willful misconduct of the Port or its agents or employees.

**9. Performance Bond.** The Operator shall, prior to the date of this Agreement, execute and deliver to the Port a Performance Bond, from a surety acceptable to the Port's Risk Manager, in a form acceptable to the Port in the Port's reasonable discretion, in the penal sum of Two Hundred Thousand and Fifty Dollars (\$250,000) and shall maintain such Performance Bond in effect during the Term of this Agreement and for three (3) calendar months after the expiration or termination of the Term of this Agreement. The cost of the Performance Bond shall be borne solely by the Operator and is not a reimbursable expense. The Performance Bond is intended to guarantee full performance of the Agreement by the Operator in accordance with all terms and conditions of this Agreement. The Performance Bond shall be subject to forfeiture in whole or in part in the event of failure of the Operator to fully perform the Agreement, and in the event that the Port sustains any claims, debts, loss of service, loss of revenues or other costs or expenses as a result of such failure of the Operator to fully perform under the Agreement. The Operator acknowledges that the Performance Bond is covering a service agreement in which the Operator's duties include the operation and management of the Parking Services. The Operator acknowledges that the Performance Bond includes a general obligation to pay all claims or debts the Port incurs in connection with the Operator's performance of the Parking Services and this Agreement.

**10. Administrative Fees and Review.**

**10.1 Administrative Fees.** The administrative fees ("Administrative Fees") set forth on **Exhibit H** (Administrative Fees), attached hereto and incorporated herein, may be imposed on the Operator at the sole discretion of the Director.

**10.2 Collection Costs and Attorneys' Fees.** The Operator shall be responsible for all fees, costs, and expenses (including attorneys' fees and costs, including all amounts attributable to Port Attorney time) incurred by the Port in collecting unpaid Administrative Fees.

**10.3 Administrative Review.** In the event Operator disputes any Administrative Fees assessed by the Director, Operator shall have the opportunity to request review by one or more hearing officers (individually, a "Hearing Officer" and collectively, the "Hearing Officers") appointed by the Executive Director of the Port; provided that the Operator may only appeal the Administrative Fees assessed for Class I violations, as described in **Exhibit H** (Administrative Fees), and Operator must first pay the Administrative Fee assessed. The Hearing Officers shall be authorized and appointed by the Executive Director of the Port. The Hearing Officers may be Port employees, provided that a majority of the Port employees appointed as Hearing Officers shall be from divisions within the Port other than the Commercial Real Estate Division. Each Hearing Officer shall be a disinterested party in any dispute giving rise to the Administrative Fee being reviewed.

Operator shall have five (5) working days from receipt of notice of the assessment of Administrative Fees to file with the Port a written request for review by one or more Hearing Officers. The written request for review will not be considered unless accompanied by payment of the Administrative Fee assessed. The Operator's written request for review shall include a copy of the notice of assessment and Operator's reasons for disputing the assessment, and shall include any supporting documents, evidence and information. The Hearing Officer(s) appointed to review the dispute reserve the right to conduct further investigation, seek additional information from Operator, and gather additional documents and evidence. After the Hearing Officer(s) initial review, an initial written determination will be given to the Port and the Operator, stating whether the Administrative Fees shall remain or be refunded to Operator.

To protest the Hearing Officer(s)'s initial determination, the Operator shall have five (5) working days after the date of initial determination to file a written request for a hearing. The Hearing Officer(s) shall hold a hearing at 530 Water Street, Oakland, CA 94607. The Operator and, if applicable, any other parties involved in a complaint or dispute giving rise to the Administrative Fee, shall be given notice of the hearing at least ten (10) days before it takes place.

The Hearing Officer(s) will review evidence at the hearing to determine whether the Operator failed to perform the activities or committed the violations giving rise to the Administrative Fees. The Hearing Officer(s) shall review and keep confidential any information revealing the Operator's or any party's proprietary interests and shall exclude the public from the hearing for that limited purpose. The Hearing Officer(s) shall give the Operator, the Port, and, if applicable, any other party involved in a dispute giving rise to the Administrative Fees, an opportunity to present evidence relating to the Operator's failure to perform or violation of the terms of this Agreement.

In order for the Hearing Officers to conclude that a violation was committed, the evidence must establish that it was more likely than not (a preponderance of the evidence) that the violation was committed.

The Hearing Officer(s) shall make its final determination within ten (10) working days after the hearing. If the Hearing Officer(s) finds that the Operator failed to perform or violated the terms of this Agreement, the Administrative Fees assessed and additional fees and penalties shall remain. If the Hearing Officer(s) finds that Operator did not fail to perform or violate the terms of this Agreement, the Administrative Fees paid by Operator shall be refunded to Operator within thirty (30) days. The Hearing Officer(s)'s decision shall be final. The Port and Operator agree to rely on and comply with the final determination of the Hearing Officer(s).

Failure to file a timely written request for review shall be an absolute bar to further administrative and judicial review of the alleged violation. Where, as here, administrative machinery exists for the resolution of complaints, the courts should not act until such administrative procedures are fully utilized and exhausted.

## **11. Management Fee And Reimbursement Adjustment.**

**11.1 Management Fee and Reimbursement During Extension Term.** In the event the Port exercises its option to extend this Agreement during the Term as so extended:

- (a) The Budget for each Extension Term will be determined by mutual agreement of the parties.
- (b) The annual Management Fee during each Extension Term will be increased by

three percent (3%).

**11.2 Change In Service Level And Scope Of Services.** The Port, through the Director may from time to time by prior written notice to the Operator, and subject to other provisions of this Agreement, increase or decrease the locations at which some or all of the Parking Services shall be provided, or increase or decrease the required staffing or the hours during which Parking Services shall be provided. For example, the Port expects to make service requirement adjustments in order to facilitate construction activities in Jack London Square. Upon any such additions and/or reductions in area of the Parking Services or the Parking Facilities, required staffing for the Parking Services or times of the Parking Services, the terms “Parking Facilities” and “Parking Services” shall be construed to incorporate such respective additions and/or reductions. In the event the Port proposes to add and/or reduce the Operator’s scope of service, or increase or decrease the hours of operation set forth in **Exhibit B** (Hours of Operation) or staffing from those established pursuant to **Exhibit D** (Staffing Plans), the Port shall calculate such Parking Services and shall review the Budgets and Reimbursable Expenses with the Operator and make respective adjustments, but shall make no adjustment to the Management Fee.

## **12. Operations.**

**12.1 Operations And Procedures Manual.** The Operator shall develop an Operations and Procedures Manual (“Operations Manual”) based upon its best judgment and best industry standards and shall provide a copy to the Director, within sixty (60) days following the date of this Agreement, for review and approval by the Director. The Operator will confer with the Director in its preparation of the Operations Manual and shall revise the Operations Manual from time to time as required by the Director. The Operations Manual shall provide basic guidance on policies, practices, and procedures covering all aspects of facility management and operation, including but not limited to standards of performance. The Operator shall keep the Operations Manual current and shall comply with its provisions throughout the Term. Any revision shall be subject to the written approval of the Director. Each revision to the Operations Manual shall have a revision number and date. The Operations Manual shall become an integral part of this Agreement, but in the event of any conflict between the Operations Manual and this Agreement, the terms of this Agreement shall prevail. The failure of the Operator to comply with or satisfy the requirements set forth in the Operations Manual shall be considered an event of default, entitling the Port to all of the remedies set forth in this Agreement in the event of a default.

**12.2 Report Of Injuries Or Loss.** The Operator, using a form provided by the Port, shall immediately report any personal injuries, property loss or damage, threats or potential threats against life or property or any incident or activities that present imminent danger to health and safety of the general public. Any emergency conditions requiring immediate attention shall be reported by telephone immediately to the Director and to the Oakland Police Department, or as otherwise directed in writing by the Port. A follow-up written report, using a form provided by the Port, describing the emergency condition and action taken shall be submitted to the Port within 24 hours after each incident. Failure to provide a written report within 24 hours shall result in the assessment of an Administrative Fee as specified in **Exhibit H** (Administrative Fees).

**13. Compliance with Law.** The Operator agrees to comply, at no cost to the Port, with all present and future laws, ordinances, and general rules and regulations at any time applicable to the Operator’s operation and management of the Parking Facilities including, without limitation, licensing and permit requirements unless such expenses is otherwise included as a reimbursable cost under this Agreement, and rules and codes of conduct applicable to all tenants of Jack London Square. The Operator shall comply with all laws and regulations regarding disabled or handicapped persons, including, without limitation, the Americans With Disabilities Act of 1990 (“ADA”), as amended;



however, the Operator shall not be obligated under this Agreement to make any structural changes to the Parking Facilities or to apply striping or graphics therein.

**14. Fees and Taxes.** The Operator agrees timely to pay all applicable fees, taxes (except parking taxes), and other charges levied by any governmental entity upon any right or interest granted to the Operator by this Agreement or upon the exercise of any such right or interest, including the City of Oakland businesses licensing fees and taxes, if applicable. The Operator shall also be responsible for timely payment of any City of Oakland parking taxes, which taxes are as expenses reimbursable by the Port. In the event that the Operator fails to timely pay any City of Oakland parking taxes, the Operator shall be solely responsible for any penalty imposed by the City for such late payment and any such penalty shall not be a reimbursable expense.

It is the understanding of the Operator and the Port that no possessory interest in land is created by this Agreement that is subject to the payment of property taxes. In the event however that such a possessory interest tax is imposed the Operator shall immediately notify the Director in writing of such imposition and submit to the Director all documents received by the Operator relative to such imposition. The Port agrees to pay whatever possessory interest tax may be imposed, provided, however, that the Port reserves the right to challenge the imposition of such a possessory interest tax. The Operator agrees to reasonably cooperate with the Port in making necessary investigations and in preparing and presenting necessary documentary and oral evidence in connection with any challenge to such tax imposition the Port may deem appropriate.

**15. Environmental Responsibilities.** The Operator shall comply with the terms of **Exhibit I** (Environmental Responsibilities), attached hereto and incorporated herein.

**16. Insurance.** The Operator shall comply with the insurance requirements set forth in **Exhibit J** (Insurance Requirements), attached hereto and incorporated herein.

**17. Indemnification.** The Port and the Port's Commissioners, partners, officers, employees and authorized agents (collectively its "Affiliates") shall not be liable to Operator and, to the fullest extent permitted by law, Operator hereby waives all claims against each of them, for any injury to or death of any person or damage to or destruction of property in or about the Parking Facilities by or from any cause whatsoever (including, without limitation, gas, fire, oil, electricity, or leakage or invasion of water or contaminants of any character from the roof, walls, basement, subsurface, or other portion of the Parking Facilities,) except any injury to or death of any person or damage to or destruction of any property which is caused solely by the willful misconduct or active negligence of the Port or its Affiliates. Operator shall indemnify each of said parties and hold them harmless from and against any and all penalties, liability, claims, losses, damages, (including consequential damages, injury, cost and expense, including attorneys' fees (including amounts attributable to Port Attorney time) and disbursements, arising out of or related to (i) Operator's breach of any obligations under this Agreement, or (ii) claims or injury to or death of persons or damage to property resulting directly or indirectly from the Operator's use or occupancy of the Parking Facilities or activities of the Operator, its employees, agents, contractors or invitees in or about the Parking Facilities, or (iii) claims of injury to or death of persons or damage to property by the Operator or third parties (except the Port) resulting from any cause or causes whatsoever while in or upon the Parking Facilities. Such indemnity shall include, without limitation, the obligation to defend the Port and its Affiliates with legal counsel chosen or approved by the Port, and reimburse all costs of defense, including amounts attributable to Port Attorney time. The provisions of this Section shall survive termination or expiration of this Agreement with respect to any damage, injury, or death occurring prior to such termination or expiration.

**18. Relationship of Port and Operator.** The Operator is hereby retained by the Port as an independent contractor to manage and operate the Parking Facilities at the Port's direction and for no other purpose. Neither the Port nor the Operator intend that their relationship under this Agreement is a relationship of employer-employee, principal-agent, partners, joint venturers, landlord-tenant, or any other relationship except solely that of an independent contractor. The Operator acknowledges and agrees that the Operator has no possessory right whatsoever in the Parking Facilities pursuant to this Agreement or otherwise.

**19. Improvements and Alterations.** The Operator shall make no alterations or improvements, and shall post no signs, on the Parking Facilities, except with the prior written approval of the Director which approval may be denied or conditioned upon whatever terms and conditions the Director in his or her sole discretion deems appropriate. The Operator may, at no cost to the Port, and subject to subsequent removal at any time at the request of the Director, provide such movable furniture and other trade fixtures as the Operator deems appropriate; provided, however, that the Operator shall remove such furniture and trade fixtures immediately upon termination of this Agreement, and shall thereafter immediately repair to the reasonable satisfaction of the Port and at no cost to the Port any damage to the Parking Facilities caused by such removal.

**20. Assignments and Transfers.** The Operator shall not, either directly or indirectly, voluntarily or involuntarily, assign, hypothecate, encumber or transfer this Agreement or any interest therein or right granted thereby, or suffer any other person or entity to occupy, use or manage (except management by the Operator's employees) all or any part of the Parking Facilities, without the prior written consent of the Port evidenced by resolution of its Board of Port Commissioners. Neither this Agreement nor any interest therein or right granted thereby shall be assignable or transferable in proceedings in attachment, garnishment or execution against the Operator, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against the Operator or by any process of law without the prior written consent of the Port evidenced by resolution of its Board of Port Commissioners. No occupancy or use of the Parking Facilities or exercise of any right granted by this Agreement by any prospective transferee or assignee shall occur before the Port's prior written consent to the transfer or assignment. Any breach of this Section shall constitute a default and shall cause this Agreement to terminate immediately at the option of the Port without further notice to the Operator. The Operator shall not be deemed to be in default if the Operator causes an attachment or execution to be removed within ten (10) days of levy, or if the Operator causes an involuntary proceeding in bankruptcy to be dismissed or receiver to be removed within thirty (30) days of the date of commencement of said proceeding or appointment of said receiver.

A prohibited assignment within the meaning of this Section shall include, but is not limited to, the following:

- (a) If the Operator is other than a corporation, the transfer of the Agreement or any of the Operator's interests therein to a corporation that is not wholly owned by the Operator;
- (b) If the Operator consists of more than one person or entity, or a combination of a person or persons and an entity or entities, a purported assignment, voluntary, involuntary, or by operation of law of any interest in the Agreement from one or more such persons or entities, to any other person or persons or entity or entities whether or not such other person or persons or entity or entities are the Operators;
- (c) If the Operator is a partnership, a withdrawal or change, voluntary, involuntary,

or by operation of law, of any general partner, or the dissolution of the partnership;

- (d) If the Operator is a corporation, any dissolution, merger, consolidation, or other reorganization of the Operator, or the sale or other transfer of a controlling percentage of the capital stock of the Operator, or the sale of more than thirty percent (30%) of the value of the assets of the Operator 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 possessing at least thirty percent (30%) of the total combined voting power of all classes of the Operator's capital stock issued, outstanding, and entitled to vote for the election of directors. This subsection (d) shall not apply to a corporation the stock of which is traded through an exchange or over the counter or to any transfer, distribution or contribution of a controlling percentage of the capital stock of the Operator (i) by any corporate shareholder of the Operator to one or more of its own shareholders, or (ii) by any shareholder of the Operator to another corporation the capital stock of which such shareholder owns a controlling percentage. The Operator shall give the Port written notice of such transfers, distribution and contribution.

The Port's consent to or waiver of its option to terminate this Agreement in the event of a default on account of any 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 assignment, transfer or occupation or use by another person.

The Operator and the Port acknowledge and agree that the rights retained by and granted to the Port pursuant to this Section constitute a material part of the consideration for entering into this Agreement and constitute a material and substantial inducement to the Port to enter into this Agreement at the Management Fee, for the terms, and upon the other covenants and conditions contained in this Agreement, and that the acceptability of the Operator, and of any assignee or other transferee of any right or interest in this Agreement, involves the exercise of broad discretion by the Port in promoting commerce, navigation and shipping in the Port Area of the City of Oakland. Therefore, the Operator agrees that the Port may, except as otherwise expressly provided in this Agreement, refuse to consent to any proposed assignment or other transfer for any reason or reasons deemed sufficient by the Port without regard to any objective standard of reasonableness and may consent to a proposed assignment or other transfer subject to such conditions as the Port, in its sole discretion, deems appropriate. Such conditions may include, among others, adjustment in Management Fee, adjustment to insurance provisions, and such other changes to the Agreement as the Port may in its sole discretion deem appropriate.

**21. Duty to Guard Goods.** The Operator shall assume the sole responsibility for the guarding and safekeeping of and risk of loss to all property, stock, merchandise and equipment owned or controlled by the Operator or its employees that is stored or located upon or used in connection with the Parking Facilities except to the extent same are caused by the sole negligence or misconduct of the Port, its agents or employees.

**22. Waiver of Claims.** The Operator hereby waives any claim against the Port (and the Port's Commissioners, officers, agents, or employees) and the City of Oakland for damage or loss caused by any claim, suit or proceeding directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceedings instituted by a party other than the Port directly or indirectly attacking the validity of this Agreement, or any part thereof, or by any judgment or

award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the same, or any part thereof, from being carried out; provided, however, that such waiver shall not apply or run to any damage or loss in any way caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement which suit or proceeding is based in whole or in part upon an alleged "conflict of interest" of any elected or appointed official, officer, agent or employee of the City of Oakland or the Board of Port Commissioners of the Port of Oakland, including any "conflict of interest" or other matter alleged to violate or violating California Government Code Sections 1090 or 1092. The Port and the Operator each agree that it shall not in any way attempt to have this Agreement declared null or void, and that it shall reasonably cooperate with the other to defend the validity of this Agreement and of the rights and obligations granted by this Agreement. Notwithstanding the above, both the Port and the Operator reserve the right to bring a claim, suit or proceeding involving the interpretation of this Agreement.

**23. Extensions of Time.** The Port shall have the right to grant reasonable extensions of time to the Operator for any purpose or for the performance of any obligation of the Operator hereunder.

**24. Successors.** Each and every one of the provisions, agreements, terms, covenants and conditions herein contained to be performed, fulfilled, observed and kept shall be binding upon the successors and assigns of the parties hereto, and the rights hereunder, and all rights, privileges and benefits arising under this Agreement and in favor of either party shall be available in favor of the successors and assigns thereof, respectively; provided no assignment by or through the Operator in violation of this Agreement shall vest any rights in such assignee or successor.

**25. Time of Essence.** Time is hereby expressly declared to be of the essence of this Agreement.

**26. Notices.** All notices, demands, designations, waivers, approvals, billings, statements, or other communications given or required to be given under this Agreement shall be effective only if given in writing to the notice addresses set forth in this Section and: (a) sent by certified mail with a return receipt requested, (b) delivered by overnight delivery service (such as Federal Express, UPS, or similar company), or (c) delivered personally. Any such notice or other communication shall be deemed to have been rendered or given: (x) five (5) days after the date when it shall have been mailed if sent by certified mail; (y) one (1) business day after the date when it shall have been sent by overnight delivery service; or (z) upon the date personal delivery is made. The Parties shall give notice in writing to the other of any changes in the notice addresses set forth in this Section. The Parties shall also endeavor to send courtesy electronic copies of all such notices or other communications to the other.

**Port's Address  
for Notices:**

Director, Commercial Real Estate Division  
Port of Oakland  
530 Water Street  
Oakland, CA 94607

With a copy to:

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

**Operator's Address  
for Notices:**

With a copy to:

**27. Equal Opportunity and Nondiscrimination.**

**27.1 Equal Opportunity; Nondiscrimination.** In furtherance of the Port's long-standing policy to insure that equal employment opportunity is achieved and nondiscrimination is guaranteed in all Port-related activities, it is expressly understood and agreed with respect to the Operator's activities pursuant to this Agreement:

- (a) That the Operator shall not discriminate against any employee or applicant for employment because of race, color, religion, sex (including gender identity), actual or perceived sexual orientation, national origin, ancestry, age (over 40), cancer-related medical condition, a known genetic predisposition to a disease or disorder, marital status, physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, veteran's status. The Operator shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. To the fullest extent required by law, the Operator agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment Opportunity Commission (EEOC) or Department of Fair Employment and Housing (DFEH) regarding non-discrimination.

- (b) That the Operator shall, in all solicitations or advertisements for employees placed by or on behalf of the Operator, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex (including gender identity), actual or perceived sexual orientation, national origin, ancestry, age (over 40), cancer-related medical condition, a known genetic predisposition to a disease or disorder, marital status, physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status.
- (c) That the Operator will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, advising the labor union or workers' representative of the Operator's commitments under this paragraph, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) That the Operator shall not discriminate by segregation or otherwise against any person or persons because of race, color, religion, sex (including gender identity), actual or perceived sexual orientation, national origin, ancestry, age (over 40), cancer-related medical condition, a known genetic predisposition to a disease or disorder, marital status, physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, or veterans' status in furnishing, or by refusing to furnish, to such person or persons the use of any public facility upon the Parking Facilities, including any and all services, privileges, accommodations, and activities provided thereby.
- (e) That the Operator shall maintain work force records showing male, female and minority employees by job category and similar information with respect to new hires and shall submit a summary of such information to the Port's Office of Equal Opportunity upon request.
- (f) That in the construction of any improvements on, over or under the Parking Facilities and the furnishing of services thereon, no person, on the grounds of race, color, religion, sex (including gender identity), actual or perceived sexual orientation, national origin, ancestry, age (over 40), cancer-related medical condition, a known genetic predisposition to a disease or disorder, marital status, physical or mental disability as set forth in the Americans with Disabilities Act of 1990, or veteran's status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;
- (g) That the Operator's noncompliance with the provision of this clause shall constitute a material breach of this Agreement. In the event of a breach of any of the above-stated nondiscrimination and affirmative action covenants, the Port shall have the right to consider but not be limited to the following:
  - 1. Terminate this Agreement; or
  - 2. Seek judicial enforcement of said covenants.

**27.2 Participation In Contracting With Vendors and for Professional Services.**

The Operator 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 Operator shall, in all solicitations or advertisements placed by or on behalf of the Operator, for professional services, vendors or contractors, state that all qualified bidders will receive consideration on merit, without regard to race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical or mental handicap or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status.

**27.3 Enforcement.** The Operator agrees that the Operator's noncompliance with this Section shall constitute a material breach of this Agreement. In the event of breach of any of this Section, the Port shall have the right to terminate this Agreement without liability therefor, or at the election of the Port or the United States, either or both of said governments shall have the right to seek judicial enforcement of this Section.

## **28. Termination.**

**28.1 Termination for Cause.** It is mutually covenanted and agreed and this Agreement is made upon the condition that if the Operator fails timely to observe, keep or perform any of the terms, agreements, conditions or covenants contained herein on the part of the Operator to be observed or performed, or should the Operator abandon and cease to operate and manage the Parking Facilities at any time (except when prevented by fire, earthquake, wars, or other cause beyond its control, but not including Labor Disruptions that arise in violation of the Labor Peace Rule described in Section 3.8), then and in the event of such a default, at the option of the Port as evidenced by written notice to the Operator from the Director and reasonable opportunity to cure, this Agreement shall be terminated effective upon the effective date of said notice. It is understood and agreed that the Director shall have the right in his or her sole discretion to determine that such default exists as the basis for such notice.

The Operator shall not be considered to be in default until the expiration of three (3) days (in the case of a failure in the payment of moneys herein provided to be paid to the Port by the Operator) or seven (7) days (in all other instances) after written notice by the Port to the Operator and if, during such three (3) or seven (7) day period, as the case may be, such failure or condition in violation of this Agreement shall have been cured or obviated by the Operator, then upon payment, performance or satisfaction of such term, covenant or condition, the right of the Port to terminate this Agreement by reason of such failure shall cease.

If any condition, other than payment of moneys by the Operator, which would entitle the Port to declare a default is of such nature that it cannot be remedied within seven (7) days, such declaration of default, termination, or other rights of the Port, shall be postponed as long as the Operator shall have commenced the elimination of such conditions within said seven (7) days and shall then be continuously and diligently proceeding in good faith to cure the same.

**28.2 Operation by Port after Labor Disruption.** Notwithstanding anything in this Section, if the Operator is unable to fully and adequately operate the Parking Facilities due to a Labor Disruption (as determined in the Port's sole discretion) after the initial seven (7) day period described in Section 28.1 (Termination for Cause), the Port may take either or both of the following actions:

1. The Port may, at any time after giving notice to the Operator as may be reasonable under the circumstances, assume all operational control of the Parking Facilities and all related facilities and equipment, through Port employees or Port contractors, and the Operator shall fully cooperate with the Port and its

contractors in such assumption of operational control. During such times that the Operator is unable to operate the Parking Facilities because the Port has assumed control, the Management Fee shall be abated on a prorated basis.

2. The Port may terminate this Agreement immediately without further notice or obligation to the Operator.

**28.3 Termination for Convenience.** The Port and/or Director may terminate this Agreement by giving the Operator sixty (60) days' prior written notice of its intention to do so. In the event of the Port's/Director's termination of this Agreement, the Operator agrees to cooperate in every way possible with the operator succeeding the Operator so that the public's use of the Parking Facilities shall not be inconvenienced by the change of the operators.

**29. Force Majeure.** In the event that the Operator 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 (but not including Labor Disruptions that arise in violation of the Labor Peace Rule described in Section 3.8), 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 the Operator or the Port, as the case may be, such failure shall not be deemed to be a breach of this Agreement or a violation of any such covenants and the time within which the Operator 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.

**30. Attorneys' Fees and Costs.** If the Operator 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, including in-house attorney fees and amounts attributable to Port Attorney time.

**31. Agreement the Entire Agreement; Other Agreements.** The Operator agrees that the provisions of this written Agreement constitute the entire agreement between the Operator and the Port regarding management and operation of the Parking Facilities and the rights granted by this Agreement; no representation, term or covenant not expressly specified in this Agreement shall, whether oral or written, be a part of this Agreement. Any modification of this Agreement shall not be effective unless it is in writing and approved by ordinance or resolution of the Board of Port Commissioners, and approved as to form and legality by the Port Attorney.

**32. Agreement in Multiple Copies.** This Agreement may be executed in multiple copies, each copy of which shall be deemed an original.

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SIGNATURES ON FOLLOWING PAGE



IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

**PORT:**

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

Dated: \_\_\_\_\_, 2018

By: \_\_\_\_\_  
J. Christopher Lytle  
Executive Director

**OPERATOR:**

\_\_\_\_\_,  
a \_\_\_\_\_

Dated: \_\_\_\_\_, 2018

By: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 2018

By: \_\_\_\_\_

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

Approved as to form and legality this  
\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
Port Attorney  
Port Resolution No. \_\_\_\_\_

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

**EXHIBIT A**  
**PARKING FACILITIES DESCRIPTION**

Parking Facility	# Stalls	Location	Use
Washington Street Garage	978	Washington & Embarcadero	Transient and Monthly Parking
Underground Garage (includes Valet Parking)	186	Broadway & Embarcadero	Transient Parking
	70	Broadway & Embarcadero	<b>Valet Parking</b>
Lot 11	54	Webster & Embarcadero	Monthly Parking
Alice Street Parking	21	Alice & Embarcadero West	Metered Street Parking
<b>TOTAL</b>	<b>1,309</b>		

**WASHINGTON STREET GARAGE**

The Washington Street garage is a seven-level, above ground parking garage containing approximately 978 parking spaces. The facility is equipped with a Secom parking access and revenue control system ("PARCS") configured with pay-on-foot ("POF") equipment.

Monthly parkers are issued a proximity card, which is used to activate the entry and exit barrier gates. Monthly parkers have access 24 hours a day, seven days a week.

**UNDERGROUND GARAGE** (located at Broadway and Embarcadero)

The Underground Garage is a one-level subterranean parking garage containing approximately 256 parking spaces. The facility is equipped with a Secom PARCS configured with POF equipment.

- A. Self Parking.** 186 of the total 256 stalls are for daily self parking; there are no monthly parkers.
- B. Valet Parking.** 70 of the total 256 stalls are reserved for valet parking only. There are currently two valet stations at Jack London Square operated from Underground Garage. Valet 1 is located on Franklin Street and Valet 2 is located on Broadway.

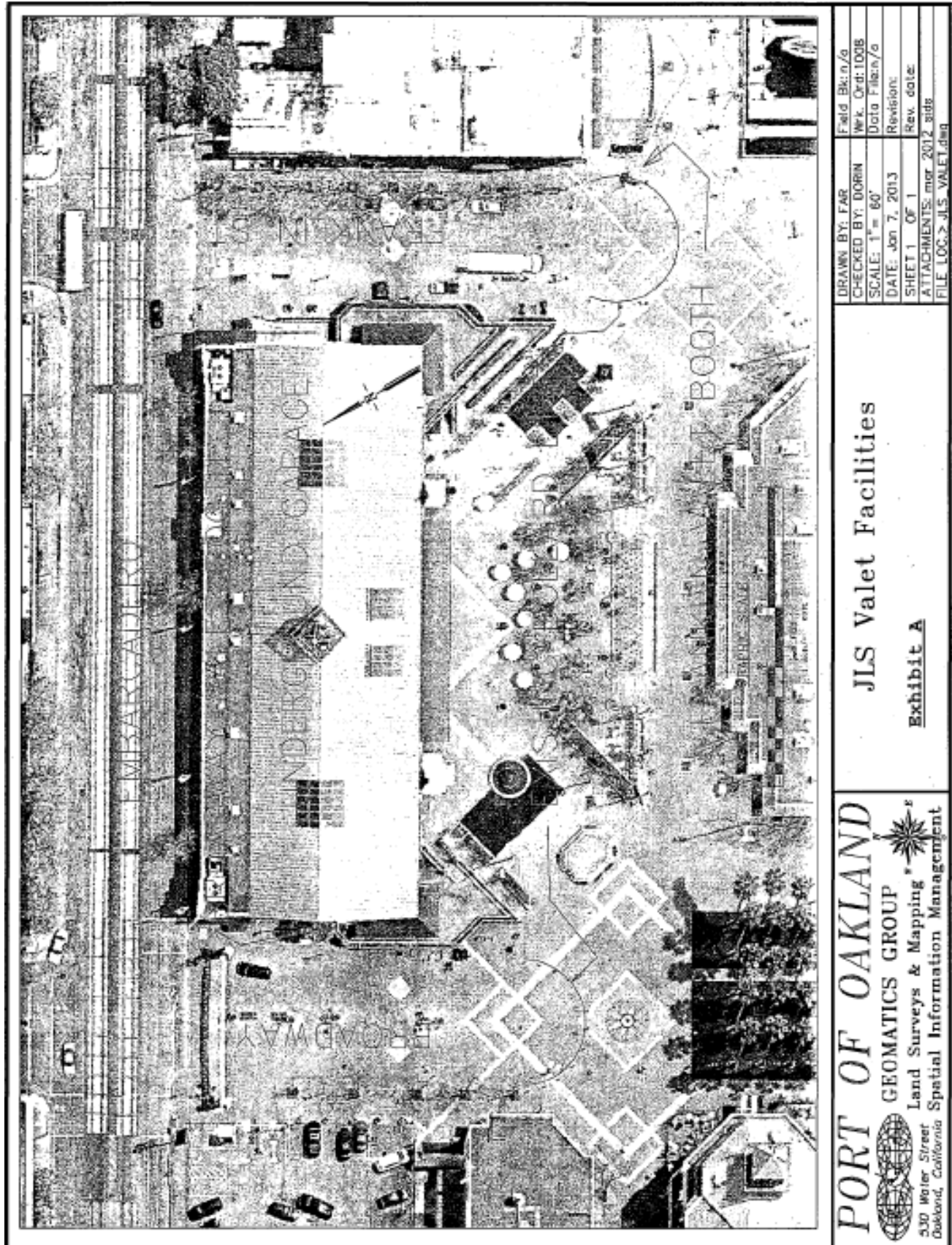
**LOT 11** (located at Webster Street)

Lot 11 is located on the corner of Webster Street and Embarcadero West. This lot has 54 marked parking spaces and is currently used for monthly parking only. The Port reserves the right to possibly allow transient parking in this lot. Monthly parkers are issued a proximity card, which is used to activate the entry and exit barrier gates. Monthly parkers have access 24 hours a day, seven days a week.

**ALICE STREET PARKING**

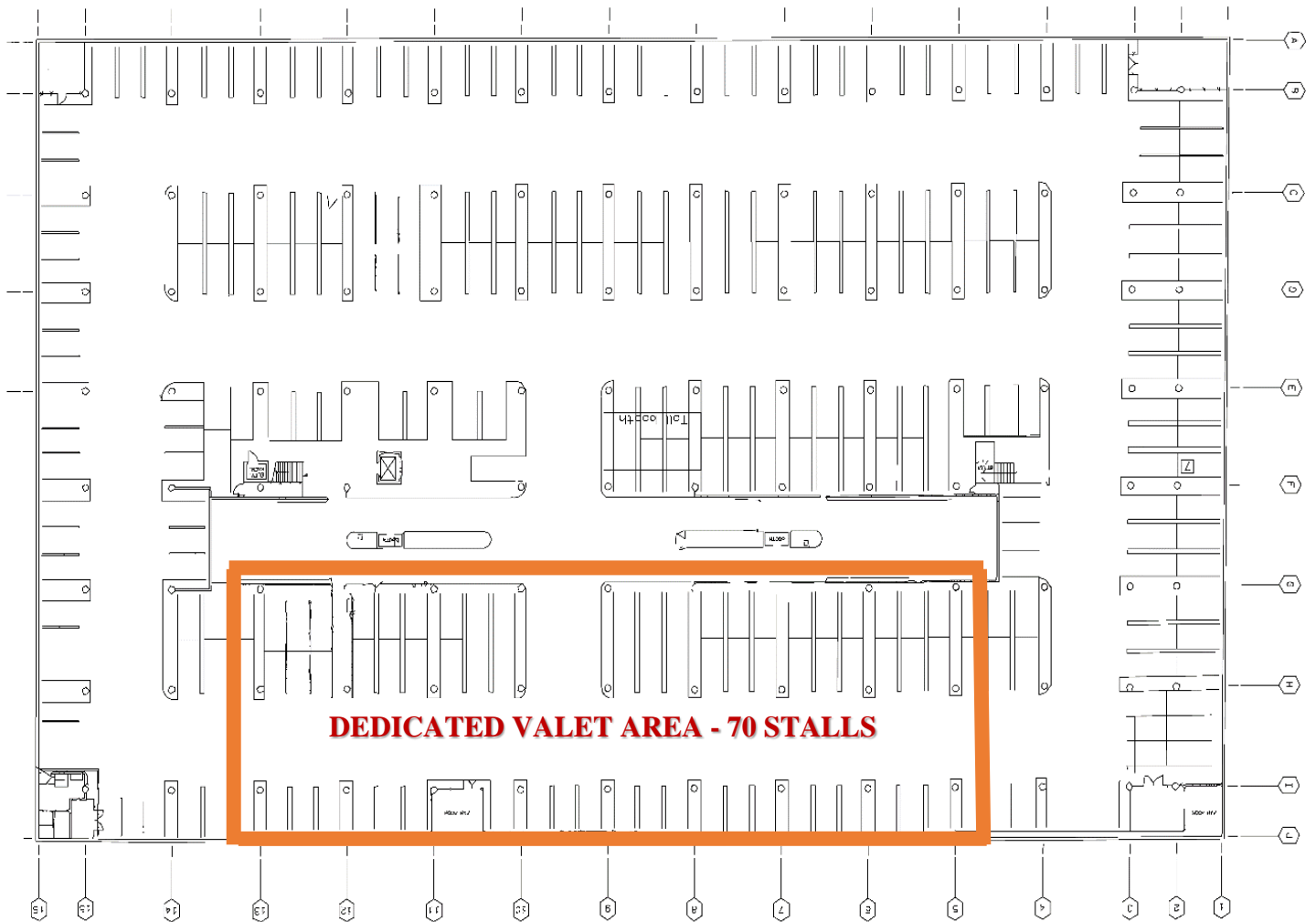
Alice Street Parking is comprised of 21 parking spaces located on Alice Street south of Embarcadero West. This parking facility is managed via a pay and display system using Cale parking equipment.

**Parking Management Agreement**  
**Exhibit A**



Parking Management Agreement  
Exhibit A

## Underground Garage – Valet Parking Area



**EXHIBIT B**  
**HOURS OF OPERATION**

**SELF PARKING HOURS OF OPERATION**

	UNDERGROUND GARAGE		WASHINGTON ST GARAGE	
Weekday	Open	Close	Open	Close
Monday	7:00 AM	1:00 AM	6:00 AM	1:00 AM
Tuesday	7:00 AM	1:00 AM	6:00 AM	1:00 AM
Wednesday	7:00 AM	1:00 AM	6:00 AM	1:00 AM
Thursday	7:00 AM	1:00 AM	6:00 AM	1:00 AM
Friday	7:00 AM	2:00 AM	6:00 AM	2:00 AM
Saturday	8:00 AM	2:00 AM	8:00 AM	2:00 AM
Sunday	8:00 AM	1:00 AM	8:00 AM	1:00 AM

**VALET HOURS OF OPERATION**

	BROADWAY STATION		FRANKLIN STATION	
Weekday	Open	Close	Open	Close
Monday	11:00 AM	10:30 PM	11:30 AM	10:30 PM
Tuesday	11:00 AM	10:30 PM	11:30 AM	10:30 PM
Wednesday	11:00 AM	10:30 PM	11:30 AM	10:30 PM
Thursday	11:00 AM	10:30 PM	11:30 AM	10:30 PM
Friday	11:00 AM	11:30 PM	11:30 AM	11:00 PM
Saturday	11:00 AM	11:30 PM	11:00 AM	11:00 PM
Sunday	11:00 AM	10:00 PM	11:00 AM	10:00 PM

**EXHIBIT C**  
**VEHICLE ACCESS PLAN**

**BCDC Permit No. 19-85, Jack London Square**  
**Special Condition II.B.14. Vehicular Use of Public Access Areas**  
**c. Vehicular Access Plan (VAP), Revised August 26, 2004**

**INTRODUCTION:** The San Francisco Bay Conservation and Development Commission ("BCDC") and the Port of Oakland ("Port") have collaboratively developed the Jack London Square ("JLS") Vehicular Access Plan ("VAP" or "Plan"), pursuant to BCDC Permit No.19-85, Amendment No. 13, Permit Condition II.B.14.c. As shown in the attached exhibit<sup>1</sup>, the VAP applies to the dedicated public access areas and to Water Street, within the area bounded by the Estuary, the western edge of Clay Street, the eastern edge of the extension of Harrison Street, and the north edge of Water Street ("Jack London Square" for the purposes of this Plan).

The VAP's purpose is to limit the intrusion of motor vehicles into those areas that are designated public access under BCDC Permit No. 19-85, and to manage those areas where pedestrian and vehicles are mixed to protect the safety and comfort of pedestrians and their ability to move through those areas to reach the shoreline. For each policy, appropriate measures, which may include signage, site design, and management practices, should guide motorists, create a safe environment for pedestrians and motorists, and minimize the amount of time that vehicles occupy and/or impact dedicated public access areas. After an initial three-year period, the VAP policies should be reviewed and revised if needed.

Both general and geographic-specific policies for vehicle access in Jack London Square are outlined below. The general policies apply to the dedicated public access areas in the entire area bounded by the Estuary, the western edge of Clay Street, the eastern edge of the extension of Harrison Street, and the north edge of Water Street. The geographic-specific policies apply to specific sites in addition to the general policies.

This Vehicular Access Plan (VAP) pertains to existing Jack London Square (JLS) development only. It is recognized that the JLS Master Development Project, which will require a new permit, will create new pedestrian and vehicular patterns, which are not addressed by these VAP policies.

**1. GENERAL POLICIES**

**a. Vehicular Use:** Except as otherwise allowed in this plan, vehicles will be prohibited in dedicated public access areas. Within Jack London Square, vehicular use of dedicated public access areas shall be restricted to maintenance/construction, public safety/emergency, service/delivery, and disabled patron drop-off purposes.

**b. Maintenance of Paved Areas:** The Port of Oakland, or its designee is responsible for maintaining pavement within the dedicated public access areas of Jack London Square. The schedule of maintenance for these areas, which may be adjusted dependent on seasonal conditions and traffic levels, will be sweeping/blowing on a daily basis and scrubbing on a monthly basis.

**c. Service/Delivery Vehicle Access:** Service and delivery vehicular access, including tenant deliveries, within dedicated public access areas or on Water Street, shall be limited to between the hours of 12:00 midnight and 11:00 a.m., seven days per week. Existing signage stating restrictions

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<sup>1</sup> Exhibit will be prepared after VAP text is finalized.

shall be maintained. The Port of Oakland or its designee shall directly manage security to enforce this policy.

**d. Signage and Site Design:** "No Parking" zones will be clearly signed. Signage improvements should be coordinated for maximum effect and to avoid visual clutter. With Port staff, the BCDC Bay Design Analyst will conduct a review of regulatory signage within dedicated public access areas. Based on that review the Port shall prepare a plan that depicts existing regulatory signage and any necessary additional signage needed to strengthen enforcement efforts. Design improvements, such as bollards, shall be installed, if needed to minimize pedestrian and vehicle conflicts. A comprehensive evaluation of the effectiveness of these design improvements will be completed after the initial 3-year period and, if needed, a plan for additional features will be prepared by the Port.

**e. Valet Management Practices:** The Port of Oakland or its designated operator will directly manage the valet parking system to improve coordination of operations and communication to valet service personnel. The security staff will regulate vehicular access to dedicated public access areas behind the bollards. This may involve checking permits (e.g., for tenant improvement contractors). Security officers will issue citations for vehicles that exceed the maximum allowable time. The valet operators will have a hand-held radio with direct communication to security. Radio communication with security will provide immediate assistance with parking enforcement. The Port may make changes in the valet operations as needed.

Geographic policies below set forth performance goals for the valet operations at the terminus of Broadway, Franklin Street, and Washington Street. It is recognized that there may be times that these performance goals cannot be achieved, due to operational constraints inherent in the design, location, and use of Jack London Square; however, BCDC believes that events of non-achievement of the goals should be rare. The constraints to non-achievement include life/safety considerations, the presence of trains that block vehicular ingress and egress, and special events. The Port shall manage and operate the valet parking system with these constraints considered and controlled to the greatest extent possible. In addition, the Port will monitor the effectiveness of the valet parking operations, including non-achievement events, to gather information about circumstances that may contribute to traffic congestion in the valet parking areas during peak periods. This information will be used only to evaluate whether and how the VAP policies should be revised after the initial 3-year period.

**f. Oakland Police Vehicles:** The Port of Oakland and/or its designee, will hold annual meetings with BCDC staff and the City of Oakland Police Department (OPD) to review vehicular access policies and discuss ways to minimize pedestrian/vehicular conflicts.

**g. Port Maintenance Vehicles:** Except for emergency repairs, Port of Oakland maintenance personnel will not park in dedicated public access areas or on Water Street during heavy pedestrian use times. Pavement-cleaning activities (involving equipment such as sweepers, blowers, and scrubbers) should be conducted before 11:00 a.m. and other maintenance vehicles should not occupy dedicated public access areas or on Water Street during the peak pedestrian use periods of 11:30 a.m. to 1:30 p.m. and 5:00 p.m. to 9:00 p.m.

**h. Tenant Improvement Contractors:** Parking permits with specified time limits and location will be required from the Port of Oakland or its designee for any parking by tenant improvement contractors in dedicated public access areas or on Water Street. Parking permits for day parking will be issued only for vehicles that carry machinery or equipment needed to perform the contract work. A second type of permit may be issued for tenant improvement contractors' loading and

unloading. Loading and unloading permits will prohibit this activity in dedicated public access areas or Water Street during the peak pedestrian use periods of 11:30 a.m. to 1:30 p.m. and 5:00 p.m. to 9:00 p.m. The Port and/or its designee shall provide BCDC with an annual report on the issuance of parking permits to tenant improvement contractors that includes the number and type of permits issued.

**i. Special Events:** The intent of this Vehicular Access Plan is to manage the daily vehicular use of Jack London Square, not special events. The Port of Oakland/Oakland Portside Associates will prepare an attachment to the annual special events plan, required by Permit No.19-85, that addresses vehicular use associated with special events, including the Farmer's Market, which currently takes place on Sundays, and other special events, such as the Artisan's Marketplace.

**j. Monitoring Effectiveness of VAP Implementation:** Monitoring and reporting conducted on valet practices enforced by security staff pursuant to the VAP by the Port will be used only for study and evaluation of the VAP and shall not be used by BCDC or any other entity for administrative, enforcement, injunctive, or legal action or as the basis for any fine, penalty, or forfeiture against the Port, its agents, officers, employees, lessees, managers, or contractors. The purpose of the Port's monitoring and reporting is to evaluate the effectiveness of the VAP for three years and to provide information that determines whether revision of the VAP is needed. During the first three years that the VAP is implemented, BCDC may obtain and record information on the effectiveness of the VAP, separate from the Port's monitoring and reporting requirements on valet parking practices pursuant to the VAP, that may be used for enforcement purposes. If, after the three-year period, either the Port or BCDC data indicate areas where the VAP is not being implemented and/or is ineffective, the VAP shall be revised by the Port to address the problems identified to the satisfaction of BCDC staff. Any information collected thereafter regarding valet parking practices may be used for enforcement purposes.

## **2. GEOGRAPHIC-SPECIFIC POLICIES**

**a. Terminus of Clay Street:** Ferry passenger drop-off will be allowed at the foot of Clay Street. Traffic may exit north on Clay Street or north on Washington Street via Water Street.

**b. Terminus of Washington Street:** The Hotel registrants and valet operators will utilize the area of the porte cochere or the temporary parking area immediately east of the porte cochere, within the leased area of the Waterfront Plaza Hotel, with exiting traffic directed north on Washington Street (via Water Street). Until the construction of the new public access begins, hotel guests may also park in the shoreline parking lot accessed at the terminus of Washington Street. The valet staff will be responsible for limiting access to this parking lot and ensuring that pedestrian circulation is not adversely impacted. No parking will be permitted on Washington Street south of Water Street. The Port's security staff will monitor and enforce the parking restrictions on Washington Street, south of Water Street. "No Parking" signs will be posted and parking tickets will be issued to violators by security officers.

**c. Terminus of Broadway:** South of the underground garage, JLS Security or other designated Port employees will be available, as needed, to explain the restrictions (valet service only, no parking) and to discourage other types of vehicular use. The Broadway vehicular turn-around and valet parking operations will be located outside of designated public access. The existing valet booth will continue to be needed to support the valet function, but it will be located outside of the designated public access area. The Port's policy is that no vehicle shall be temporarily parked for



more than 15 minutes and up to five vehicles may be temporarily parked at any one time, in the valet service area adjacent to the designated public access area. All valet vehicles should be kept moving to off-site parking spaces. No public parking is allowed in the Broadway Street turn-around and any service/delivery vehicles should be limited to between the hours of 12:00 midnight and 11:00 a.m., seven days per week.

**d. Terminus of Franklin Street:** The Franklin Street turn-around and valet parking operations will be located inside of the designated public access area. The Port's policy is that no vehicle may be parked for more than 15 minutes and up to five vehicles may be parked at any one time, within the valet service area. All valet vehicles should be kept moving to off-site parking spaces. No public parking is allowed in the Franklin Street turn-around and any service/delivery vehicles should be limited to between the hours of 12:00 midnight and 11:00 a.m., seven days per week.

The existing valet booth will continue to be needed to support the valet function. The bollards at the perimeter of the Franklin Street turn-around will be maintained to prevent unauthorized vehicles from entering the public access area. The security staff will be responsible for limiting access beyond the bollards. The security staff will regulate vehicular access to dedicated public access areas behind the bollards and will issue citations for vehicles that exceed the maximum allowable time. In addition to other types of temporary vehicular access permitted under Section 1(a) of this Plan, temporary parking, for the purposes of California Canoe and Kayak (CCK) loading/unloading and installing equipment, shall be allowed immediately behind the CCK store, as shown in the attached exhibit. Although the CCK parking area is outside of the designated public access area, vehicular access to this area requires crossing of the designated public access area. The CCK parking area will be clearly marked and CCK staff will use portable signage to communicate that the area is for CCK loading/unloading of canoes and kayaks only.

**e. Terminus of Webster Street:** Patron pick-up and drop-off will be allowed only in areas clearly designated for vehicular use (i.e., roadways and parking lots). Curbs and other physical barriers distinguish pedestrian areas from parking lot and roadways.

**f. Terminus of Harrison Street:** Patron pick-up and drop-off will be allowed only in areas clearly designated for vehicular use (i.e., roadways and parking lots). Curbs and other physical barriers distinguish pedestrian areas from parking lot and roadways.

**g. Water Street:** Water Street is the major pedestrian spine of Jack London Square. Vehicular use is limited to public safety/emergency, transit, maintenance/construction, service/delivery, and disabled and patron drop-off purposes. Parking is not permitted on Water Street, except temporarily as permitted by this Plan (i.e., tenant improvement contractors require a use permit and service/delivery and Port maintenance vehicles are not allowed during the peak pedestrian hours, 11:30 am to 1:30 p.m. and 5:00 PM to 9:00 PM). Water Street currently is closed to through-traffic between Webster Street and Broadway, except as permitted by this Plan.

**h. Marina berther parking and unloading:** Vehicle access in pedestrian areas for loading and unloading by marina berthers shall be limited to three parking spaces, with a time limit of 20 minutes, adjacent to the Harbormaster's Office. In addition, berthers may utilize privately owned portable carts for transporting cargo and equipment between the public parking lots and their boats.

### 3. ENFORCEMENT PROCEDURES

The Port of Oakland is responsible for enforcing the Vehicular Access Plan, utilizing the following procedures:

**a. Traffic Citations:** Traffic citations will be the principal means of enforcement. Restricted areas will be patrolled by the JLS security personnel, who will also help to inform the public of the VAP policies. Security personnel will issue parking citations for violations and will tow vehicles, pursuant to the Oakland Traffic Code, to enforce VAP policies.

**b. Leases:** The VAP policies will be communicated to Port tenants, by the Director of Commercial Real Estate or his/her designee, via notices, meetings, and lease language. Some existing leases include covenants that require compliance with all applicable rules and regulations, which would include the revised Vehicular Access Plan. The VAP policies will be included in the rules and regulations section of future leases. Port tenants will be responsible for informing their delivery service providers of the policies.

**c. Port-imposed Fines:** The Port believes that all tenants must be held accountable for their actions or in-actions. To the extent legally possible, the Port and/or its designee, at its sole discretion, shall impose their own fines on tenants who repeatedly fail to assist in abiding by the VAP. Upon the 5th notice of a violation and every one thereafter, as described in item b above, the Director of the Commercial Real Estate Division of the Port and/or his/her designee, shall issue a fine to the tenant in the amount of \$300.00, to be collected with the next monthly rent invoice. In some instances, a citation and a fine may be issued to the same party. This fine shall be in addition to any BCDC fines imposed pursuant to item d, below. BCDC will initiate enforcement proceedings if the Port fails to adopt a structure of Port-imposed fines.

**d. Reimbursement of BCDC Fines:** Failure to comply with the revised Jack London Square Vehicular Access Plan policies would constitute a violation of BCDC Permit 19-85 and could subject the Port to enforcement actions by BCDC and a minimum fine of \$1,000 to a maximum fine of \$20,000 for each violation. In the event BCDC issues its own fine to the Port and/or its designee as a result of a violation committed by a Port tenant, the Port and/or its designee will pass through this fine and any related costs incurred by the Port and/or its designee to the responsible tenant.

**e. Effective date:** The Vehicular Access Plan will become effective on the effective date of the ordinance that is adopted by the Port Board approving the Vehicle Access Plan.





**EXHIBIT D**  
**STAFFING PLANS**

[Numbers depicted below are for illustration only. Operator to complete with actual numbers upon execution of the Agreement]

## TYPICAL SELF-PARK WEEKLY STAFFING PLAN

[illegible]



## TYPICAL VALET WEEKLY STAFFING PLAN

VALET		SUNDAY																												Totals	Totals	Grand		
		10:00	10:30	11:00	11:30	12:00	12:30	13:00	13:30	14:00	14:30	15:00	15:30	16:00	16:30	17:00	17:30	18:00	18:30	19:00	19:30	20:00	20:30	21:00	21:30	22:00	22:30	23:00	23:30	00:00	0:30	by Shift	by Facility	Total
BROADWAY	Valet Attendant			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5																		5.50	16.00	
	Valet Attendant			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5																		4.00			
	Valet Attendant													0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5				6.50			
FRANKLIN	Valet Attendant			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5															6.50	12.00	28.00
	Valet Attendant													0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5					5.50			
VALET		MONDAY																												Totals	Totals	Grand		
		10:00	10:30	11:00	11:30	12:00	12:30	13:00	13:30	14:00	14:30	15:00	15:30	16:00	16:30	17:00	17:30	18:00	18:30	19:00	19:30	20:00	20:30	21:00	21:30	22:00	22:30	23:00	23:30	00:00	0:30	by Shift	by Facility	Total
BROADWAY	Valet Attendant			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5								6.00	16.00	
	Valet Attendant															0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5								4.00			
	Valet Attendant														0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5				6.00			
FRANKLIN	Valet Attendant			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5																6.00	11.50	27.50
	Valet Attendant														0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5					5.50			
VALET		TUESDAY																												Totals	Totals	Grand		
		10:00	10:30	11:00	11:30	12:00	12:30	13:00	13:30	14:00	14:30	15:00	15:30	16:00	16:30	17:00	17:30	18:00	18:30	19:00	19:30	20:00	20:30	21:00	21:30	22:00	22:30	23:00	23:30	00:00	0:30	by Shift	by Facility	Total
BROADWAY	Valet Attendant			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5					6.00	16.00	
	Valet Attendant															0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5					6.00		
	Valet Attendant															0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5					4.00		
FRANKLIN	Valet Attendant			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5																6.00	11.50	27.50
	Valet Attendant														0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5					5.50			
VALET		WEDNESDAY																												Totals	Totals	Grand		
		10:00	10:30	11:00	11:30	12:00	12:30	13:00	13:30	14:00	14:30	15:00	15:30	16:00	16:30	17:00	17:30	18:00	18:30	19:00	19:30	20:00	20:30	21:00	21:30	22:00	22:30	23:00	23:30	00:00	0:30	by Shift	by Facility	Total
BROADWAY	Valet Attendant			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5								6.00	20.00	
	Valet Attendant			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5				0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5					8.00		
	Valet Attendant															0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5					6.00		
FRANKLIN	Valet Attendant			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5																6.00	16.00	36.00
	Valet Attendant															0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5					6.00		
																														4.00	16.00	36.00		
VALET		THURSDAY																												Totals	Totals	Grand		
		10:00	10:30	11:00	11:30	12:00	12:30	13:00	13:30	14:00	14:30	15:00	15:30	16:00	16:30	17:00	17:30	18:00	18:30	19:00	19:30	20:00	20:30	21:00	21:30	22:00	22:30	23:00	23:30	00:00	0:30	by Shift	by Facility	Total
BROADWAY	Valet Attendant			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5								6.00	20.00	
	Valet Attendant			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5				0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5					8.00		
	Valet Attendant															0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5					6.00		
FRANKLIN	Valet Attendant			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5																6.00	16.00	36.00
	Valet Attendant															0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5					6.00		
																														4.00	16.00	36.00		
VALET		FRIDAY																												Totals	Totals	Grand		
		10:00	10:30	11:00	11:30	12:00	12:30	13:00	13:30	14:00	14:30	15:00	15:30	16:00	16:30	17:00	17:30	18:00	18:30	19:00	19:30	20:00	20:30	21:00	21:30	22:00	22:30	23:00	23:30	00:00	0:30	by Shift	by Facility	Total
	Valet Attendant			0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5																	6.00		



[illegible][illegible]

	BROADWAY VALET
	PAID TIME OFF
	OVERTIME
	FRANKLIN VALET

REGULAR TIME	248.5
PAID TIME OFF	
OVERTIME	
TOTAL WEEKLY HRS	248.5

BROADWAY VALET	142.50
FRANKLIN VALET	106.00
TOTAL VALET HRS	248.50

**EXHIBIT E**  
**LABOR PEACE AGREEMENT(S)**

[Insert signed Labor Peace Agreement(s)]

**EXHIBIT F**  
**PARKING RATES**

**SELF PARK RATES**

**WASHINGTON STREET GARAGE**

Parking Time	Validated Rate	Unvalidated Rate
First Hour	\$0.75	\$1.25
Each Additional 1/2 Hour	\$1.00	\$1.25
12 Hour Maximum	\$11.00	\$13.00

**Monthly Parking - Washington Street Garage**

1. Nest Area - \$85.00 per month
2. Open Area - \$140.00 per month

**UNDERGROUND GARAGE**

Parking Time	Validated Rate	Unvalidated Rate
First Hour	\$0.75	\$1.50
Each Additional 1/2 Hour	\$1.50	\$1.50
12 Hour Maximum	\$13.00	\$15.00

**LOT 11**

Monthly Parking - Lot 11	Lot 11	Oak Street
Rate	\$78.00 per month	\$20.00 per month

**VALET PARKING RATES**

Parking Time	Validated Rate	Unvalidated Rate
Up to 2 Hours	\$8.00	\$15.00 Flat
Each Additional Half an Hour	\$1.00	\$15.00 Flat
Daily Maximum	\$15.00	\$15.00 Flat

**EXHIBIT G**  
**INVENTORY OF PORT-OWNED EQUIPMENT AND FURNISHINGS**

**[To be inserted upon Agreement execution]**

**EXHIBIT H**  
**ADMINISTRATIVE FEES**

The parties agree that certain aspects of the Operator's performance are essential to the Port's operation and that the Operator's failure to perform these activities or violation or breach of certain terms of this Agreement will result in administrative and monitoring expenses and burdens for the Port and its staff. Therefore, the parties agree that the listed Administrative Fees are reasonable estimates of such expenses to the Port and shall be imposed on the Operator at the sole discretion of the Director.

The Port shall assess Administrative Fees-for each instance of the Operator's failure to perform pursuant to the Agreement. The Director at his/her sole discretion may elect to waive an assessment of Administrative Fees for a particular violation; however, that waiver shall not apply to prior or subsequent violations and shall not be deemed to set a precedent for further waivers. The Director shall provide Operator written notice of each violation and applicable Administrative Fee within sixty (60) days after receiving actual notice that a violation of the Agreement has occurred that resulted in the assessment of such Administrative Fee.

No Administrative Fees shall be assessed if the Operator's failure is due to factors beyond the reasonable control of the Operator, including any event of Force Majeure as defined in Section 29 of the Agreement.

Additional fees and penalties may be assessed for any late payment or Operator's failure to pay any Administrative Fees assessed by the Director by the due date determined by the Director. The late payment penalties are set forth herein.

Each time one of the following performance violations occurs, the Operator's Management Fee, Reimbursable Expenses and other amounts payable by the Port to the Operator ("Amounts Payable") may; at the discretion of the Director, be reduced by an Administrative Fee in the amount specified for the applicable class:

**CLASS I - \$500 PER OCCURRENCE**

1. Each customer complaint that is not addressed or resolved in a manner reasonably acceptable to the Port within five (5) business days of receipt by Operator of the notice of such complaint.
2. Violation of any applicable laws and regulations, Port ordinances and resolutions, licensing and permit requirements, and rules and codes of conduct applicable to all tenants of Jack London Square.
3. Use of profane or vulgar language directed to or at the public, Port personnel, or those designated by the Port to supervise operations.
4. Solicitation of customers for sale of goods or services, or for tips or other unauthorized exchange of money.
5. Promotion of any business or disparaging any business in Jack London Square.
6. Providing false information to customers.

7. The use, possession or being under the influence of any alcoholic beverage or prohibited substance while operating a vehicle on Port property.
8. Smoking, eating, or littering while on duty.
9. Installing or displaying signage without the prior written approval of the Director.
10. Illegal or prohibited use, or use for purposes other than in the performance of the Parking Services, of any Port-owned equipment and facilities, including but not limited to booths and kiosks, ticket dispensers, automatic gates, car count equipment, detectors, and fee computers.
11. Overstatement of more than 2% of the sum which should properly have been reimbursed or paid to the Operator, for each invoice, report or bill which overcharges the Port.
12. Any Monthly Revenue Report for the Parking Revenues that:
  - a. is not reconcilable or balanced against the record of customer automobile count and records; or
  - b. overstates or understates revenues actually collected by more than 1%.
13. An error of more than 1% in the reported amount of Parking Revenues, including credit card deposits that are not resolved within 30 calendar days.
14. Any failure to deposit any Parking Revenues collected, pursuant to the procedures specified in the Agreement.
15. Any failure to provide verification or evidence that payments have been made of Reimbursable Expenses to the party noted on the bill, statement or report for such reimbursement.
16. Failure by the Operator to adhere to the procedures set forth in the Operations Manual.
17. Failing to meet minimum performance standards, as determined by the Director, including but not limited to any breach of the terms and conditions or failure to perform the obligations described in Section 3 (Operational Requirements and Program Goals).
18. Failing to report within 24 hours and each failure to prepare and submit a written report on any injury or loss to property once Operator has been made aware of the injury or loss or has reason to know of the injury or loss.

#### **CLASS II - \$250 PER OCCURRENCE**

1. For each employee of Operator per shift failing to possess proper photo ID at all times while on Port premises.
2. Failing to maintain a neat personal appearance, including failure by employees to wear appropriate uniforms, as determined by the dress code set forth by the Director.
3. Any “clocking” in or out using another employee’s card or identification.

4. For each employee providing services or working for any other entity, including the Operator, other than the services for the Port, while on duty.
5. Managers or supervisors not available at the Port's request within a reasonable period of time.
6. For each employee that does not complete the required training program.
7. Per day that the Operator fails to maintain minimum staffing schedule.
8. Per one-hour time increment, per incident, for failure to have tickets available and installed in each and every ticket-issuing machine when the ticketing machine warns that the ticket supply is low.
9. Failure to conduct the nightly inventory completely and accurately.
10. Failure to open any remote parking lots in a timely manner or within the parameters as specified by the Director.
11. For each day that the Operator fails to provide the Port with an Audit Manual after sixty (60) days of the commencement date of this Agreement.
12. For each day the Operator fails to provide the Port with an Operations Manual after sixty (60) days of the commencement date of this Agreement.
13. For each day the Operator fails to provide the Port with a Training Manual after sixty (60) days of the commencement date of this Agreement.
14. Failure by Operator to return to the Port all identification badges for each terminated employee within one business day of such termination.
15. Suspension of any service or the non-receipt or repossession of any product due to Operator's failure to pay invoices or bills subsequent to any reimbursement by the Port for such services or products for which Operator is responsible for under the Agreement.
16. For failure to purchase revenue control tickets or inaccuracy in the forecasting of supplies requiring purchase of tickets on a "rush" basis, the Administrative Fee applicable to this Class or, if greater, the difference between the cost of tickets purchased on a non-rush basis versus tickets purchased on a rush basis which may require rush order costs for printing, shipping and handling.

### **CLASS III - \$50 PER OCCURRENCE**

1. For each required report submitted late and each day such report(s) are late, or for each time such reports are submitted with material information missing or with material inaccuracies.

Required reports include, but are not limited to:

- a. Monthly Revenue Report
- b. Daily, Monthly, or Annual Activity Reports
- c. Monthly Management Reports

- d. Budget Reports, including Variance Analysis Statements, Payroll, And Payroll Expenses Notifications
  - e. Monthly Report of Reimbursable Expenses
  - f. Employee Training Program Reports
  - g. Incident Reports
  - h. Unaccounted for Ticket Reports
- 2. Each day that Operator fails to maintain the Parking Facilities neat and clean and in good condition and repair and to maintain in good condition and repair all equipment used for the performance of the Parking Services.
  - 3. Each day that payment of a Class I or Class II Administrative Fee assessed against the Operator hereunder is late, up to a maximum of \$500.

**Unaccounted For Tickets:** The Amounts Payable may, at the option of the Director, be reduced for “unaccounted for tickets” for Parking Services per day above 0.1% (.001) of the total number of tickets issued, as follows:

Over .1 to .2%	\$5.00 each ticket
Over .2 to .3%	\$10.00 each ticket
Over .3 to .4%	\$15.00 each ticket
Over .4%	\$20.00 each ticket



**EXHIBIT I**  
**ENVIRONMENTAL RESPONSIBILITIES**

**Section 1. Compliance with Port Environmental and Storm Water Ordinances.**

Operator (or "Tenant") shall comply with Port Environmental Ordinance No. 4345 (the "Environmental Ordinance") and Port Storm Water Ordinance No. 4311 (the "Storm Water Ordinance" and, together with the Environmental Ordinance, the "Port Ordinances"). All terms in this Environmental Responsibilities Exhibit shall have the meanings as defined in the Environmental Ordinance.

**Section 2. Notices and Disclosures Regarding Toxic Materials.**

Pursuant to H&S Code Section 25359.7, the Port notifies the Tenant that the Port has reasonable cause to believe that Toxic Materials have come to be located on, at, beneath or emanating from the Premises. Information regarding the Toxic Materials on the Premises may be included in reports available on DTSC's Envirostor Website <http://www.envirostor.dtsc.ca.gov/public/>, the RWQCB's Geotracker Website <http://geotracker.waterboards.ca.gov/>, or Alameda County's ftp site <http://gis.acgov.org/DEH/InspectionResults/?SITE=LOP>. In addition, the Tenant may request any non-privileged Toxic Material reports concerning the Premises that are in the possession of the Port.

**Section 3. Storage Tanks.**

Existing Storage Tanks: ☐ Yes ☒ No

If yes, list Storage Tank number, location, date of installation, material stored and size

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If there are Storage Tanks on the Premises, Tenant has certain responsibilities for operation, monitoring, reporting, maintenance and removal of such Storage Tanks, See Environmental Ordinance, Sections 3 and 10.

**Section 4. Covenant to Restrict Use of Property ("CRUP").**

Existing CRUP: ☐ Yes ☒ No

If the Yes box is checked, the attached CRUP is incorporated and Tenant shall comply with the CRUP. Required Disclosure:

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**Section 5. Performance Deposit.**

Tenant shall, not later than the Effective Date, deposit with the Port and during the entire Term shall maintain with the Port a deposit as specified in the Agreement, which deposit will be retained by the Port as a performance deposit (the "Performance Deposit") and may be used or applied as the Port, in its sole discretion, may determine to: (a) pay the Cost of Response Actions on the Premises that are the responsibility of Tenant; (b) repair any damage to the Premises caused by Tenant or Tenant's Representatives; (c) replace any Improvements which are the property of the Port and which have been damaged, removed or otherwise misplaced during the Term; (d) pay any other outstanding amounts due the Port from Tenant pursuant to any of the provisions of the Port Ordinances; (e) pay any compensation or other amount payable to the Port pursuant to the Port Ordinances that is not paid when due; (f) pay or reimburse the Port for any amount that the Port may spend or become obligated to spend in exercising its

rights under the Port Ordinances; or (g) compensate the Port for any expense, loss or damage that the Port may suffer because of a default with respect to any obligation of Tenant under the Port Ordinances.

The Performance Deposit shall be cash or an irrevocable letter of credit in the form required by the Port (a "Letter of Credit"), issued by a bank ("Issuer") located within the continental United States, acceptable to the Port and with a branch office located in Oakland or San Francisco, California, at which such Letter of Credit may be drawn. In the event the Port is required to utilize the Performance Deposit or any portion thereof during the Term for the purposes hereinabove set forth, Tenant shall deposit with the Port an additional sum or a replacement Letter of Credit sufficient to restore the Performance Deposit to the amount hereinabove set forth. Tenant waives the provisions of Section 1950.7 of the California Civil Code to the extent that such Section: (i) provides that the Performance Deposit can be applied only to remedy certain defaults by Tenant; (ii) requires that all or any unused portion of the Performance Deposit must be returned to Tenant within a specified period of time; or (iii) is otherwise inconsistent with this Section 5, it being the Parties' intention that this Section 5 shall be controlling.

#### **Section 6. Release**

Tenant, for itself, Tenant Representatives, successors and assigns, waives, releases, acquits, and forever discharges the Port of, from, and against any Actions, direct or indirect, at any time on account of, or in any way arising out of or in connection with: (i) the Port providing advice, guidance, or assistance to Tenant or Tenant Representatives regarding Tenant's compliance with Environmental Laws; and (ii) Toxic Materials existing at, on, or under the Premises as of the Effective Date, and any migration of Toxic Materials to, within, or from the Premises regardless of the origin or source of the Toxic Materials, whether known or unknown. A Tenant's release of the Port shall apply to all unknown and known Actions and contingent or liquidated Actions, and shall specifically cover any potential liability which may be based on any Environmental Laws.

The release shall also include a release of the rights provided under California Civil Code Section 1542 which states:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

As indicated by the initials below, it is Tenant's intention that it waive and relinquish any and all protections, privileges, rights and benefits it may have under Section 1542.

Tenant: \_\_\_\_\_

#### **Section 7. Storm Water**

Tenant represents and warrants that it shall comply with the use provisions in the Agreement and shall only perform activities on the Premises consistent with the Standard Industrial Classification ("SIC") code (or North American Industry Classification System ("NAICS") code if the SIC code is not available), listed below. SIC codes may be searched at <https://www.osha.gov/pls/imis/sicsearch.html>; NAICS codes may be searched at <https://www.bls.gov/bls/naics.htm>. Tenant shall seek and obtain prior written approval from the Port before performing any activities on the Premises that are inconsistent with the below-referenced SIC or NAICS code.

SIC or NAICS Code: 7521

**Section 8.      Tenant Environmental Contact Information**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Work Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**EXHIBIT J**  
**INSURANCE REQUIREMENTS**

Operator shall procure and maintain during the Operating Term insurance against claims for injuries to persons or damages to property, which may arise on the Parking Facilities or in connection with the performance of the services hereunder by the Operator, its agents, representatives, employees or subcontractors.

**A. MINIMUM SCOPE AND LIMITS OF INSURANCE**

Coverage to be maintained by Operator shall have limits of no less than:

1. Commercial General Liability: Subject to a limit of Five Million Dollars (\$5,000,000) combined single limit per occurrence and annual aggregate, including coverage for bodily injury and property damage including contractual liability, products and completed operations, broad form property damage, personal injury, advertising injury and independent contractors;
2. Business Automobile Liability for all owned, non-owned and hired vehicles: Subject to a limit of Two Million Dollars (\$2,000,000) combined single limit, each accident, for bodily injury and property damage for all owned, non-owned and hired vehicles (subject to ISO form number CA 0001 (Ed. 6/92) covering Automobile Liability, Code 1, "Any Auto);
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident for bodily injury or disease;
4. Fidelity/Crime Bond, including comprehensive dishonesty, destruction and disappearance, shall be obtained in an amount not less than One Hundred Thousand Dollars (\$100,000), with a deductible not to exceed \$25,000 per loss, payment of which shall be the obligation of the Operator, and shall be a blanket bond covering all employees. The Fidelity/Crime Blanket Bond shall also include the Port as Loss Payee; and
5. Garagekeepers Legal Liability (including Valet Parking, if applicable) for no less than Two Million Five Hundred Thousand Dollars (\$2,500,000) comprehensive coverage for each occurrence with a per vehicle limit of One Hundred Thousand Dollars (\$100,000) per loss at each location and Five Million Dollars (\$5,000,000) policy aggregate.

**B. OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability, Business Automobile Liability Coverage and Garagekeepers Legal Liability coverages described above shall include provisions that:
  - a. the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland", its agents, employees,

commissioners and officers are included as additional insured's, by endorsement, with respect to any liability arising out of activities performed by or on behalf of Operator, products and completed operations of Operator; premises owned, leased or used by Operator, the Parking Facilities or other locations from which the services are provided, or automobiles owned, leased, hired or borrowed or used by Operator; all without special limitations on the scope of protection afforded to Port, its agents, contractors, employees, commissioners and officers and that coverage includes a cross liability/separation of insureds provision.

2. All insurance policies required herein shall include provisions or endorsements enacting the following requirements:
  - a. the insurance is the primary insurance, without any obligation of any other insurance provided to the Port, its agents, employees, commissioners and officers or any insurance or self-insurance maintained by Port, its agents, employees, commissioners, and officers (including any self-insured retention or deductible) to contribute, share, or split pro rata any liability covered by the Operator's insurance, which other insurance or self-insurance shall be excess insurance only; and
  - b. the insurance waives all rights of subrogation against the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland", its agents, employees, commissioners, and officers.

### **C. ACCEPTABILITY OF INSURERS**

Insurance shall be placed with insurers that are acceptable to the Risk Manager of the Port (such insurers shall have a rating from A.M. Best of at least A VII).

### **D. DEDUCTIBLES OR SELF-INSURED RETENTIONS**

For all required insurance, deductibles or self-insured retentions may not exceed Twenty-Five Thousand Dollars (\$25,000), unless approved by the Port Risk Management Department.

### **E. RELEASE AND WAIVER**

Operator waives all right of recovery and causes of action against, and releases, the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland", its agents, employees, commissioners and officers, to the extent any claim, loss, damage or expense is covered by any insurance or self insurance required by this Agreement, or which would have been covered had the insurance obligations in the Agreement been complied with. Further, the Operator shall obtain endorsements from its insurance carriers evidencing that the insurance carriers waive any right of subrogation or recovery that the insurer may have against the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland", its agents, employees, commissioners and officers. Operator shall require all of its Contractors, Subcontractors and Consultants to maintain similar waivers in favor of such parties.

## **F. CANCELLATION OR REDUCTION OF COVERAGE**

The Operator or its agent shall provide at least thirty (30) days' prior written notice to Port (except ten (10) days prior written notice shall be allowed for non-payment of premium) in the event any of the above required insurance is suspended, voided, canceled, or reduced in coverage or in limits.

If Operator fails to provide the required insurance certificates and policies, that shall constitute an event of default under the Agreement and the Port may without further notice and, at its option, (1) exercise the Port's rights under the terms of the Agreement or any other rights available to the Port; (2) procure such insurance coverage at Operator's expense and Operator shall promptly reimburse the Port for such expense and (3) interrupt or limit Operator's operations or occupancy.

## **G. PROOF OF COVERAGE**

Prior to commencing the services under this Agreement and annually thereafter, Operator shall furnish a certificate of insurance, satisfactory to the Port of Oakland Risk Management Department, evidencing that the above insurance is in force in compliance with the terms of these insurance requirements, placed with insurance carriers financially acceptable to the Port, stating the name(s) of the insurance carriers, policy numbers, dates of expiration and limits of liability. In addition to the certificate of insurance, Operator shall provide the Port of Oakland with copies of the actual insurance policies if requested by the Port of Oakland at any time. The Port reserves the right to approve or disapprove of any deductible or self-insured retention under any insurance required by the Agreement.

Written binders may be acceptable as interim evidence of insurance. Send certificates to:

Port of Oakland  
Attn: Risk Management Department  
530 Water Street  
Oakland, CA 94607  
Fax #: 510-627-1626  
Email: risktransfer@portoakland.com

## **H. REVIEW OF COVERAGE**

Compliance with insurance requirements shall be subject to annual review by the Risk Manager of the Port. If the Risk Manager requires any change in coverage, Operator will be so advised in writing by Port and Operator shall comply with the conditions of change within 30 days of the date of receipt of such notice.

## **I. SUBCONTRACTORS**

Operator shall include all subcontractors as insured under its policies or shall obtain separate certificates of endorsement for each subcontractor.

**EXHIBIT K**  
**LICENSE AND CONCESSION AGREEMENT**

## LICENSE AND CONCESSION AGREEMENT

between

CITY OF OAKLAND, A MUNICIPAL CORPORATION,  
ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS  
as the “Port”

and

\_\_\_\_\_,  
A \_\_\_\_\_  
as "License



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## **EXHIBITS**

**EXHIBIT A** – Licensee and Licensee’s Notice Address

**EXHIBIT B-1** – Description of Premises

**EXHIBIT B-2** – Sketch of Property

**EXHIBIT C** – Term of Agreement

**EXHIBIT D** – Use of Premises

**EXHIBIT E** – [Reserved]

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**PORT OF OAKLAND  
BOARD OF PORT COMMISSIONERS**

**License and Concession Agreement**

**THIS LICENSE AND CONCESSION AGREEMENT** (this “**Agreement**”) is made as of the Commencement Date set forth on Exhibit A attached hereto, by and between the CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners (the “**Port**”), and the licensee identified on Exhibit A attached hereto (“**Licensee**”),

This Agreement is made solely in connection with, and in consideration for, the Parking Management Agreement between the Port and Licensee dated April 1, 2018 (the “**Parking Management Agreement**”).

**WITNESSETH**

For the better promotion of commerce and navigation and the development of the Port of Oakland, and on the condition of the faithful performance by Licensee of the terms, conditions and agreements hereinafter set forth, the Port hereby assigns to Licensee and Licensee hereby accepts the license, concession and privilege to use, solely for the purposes hereinafter set forth, those premises (the “**Premises**”) situated in the “Port Area” of the City of Oakland, County of Alameda, State of California, more particularly described in Section 0 below.

**Description of Premises.**

The description of the Premises is set forth on Exhibit B-1 attached hereto. A sketch of the Premises is attached hereto as Exhibit B-2.

**Term.** The term of this Agreement (the “**Term**”) is set forth on Exhibit C attached hereto.

**Performance Deposit; Monthly Rental.** There shall be no performance deposit or monthly license fee (“Monthly Rental”) due under this Agreement; provided, however, that the Parking Management Agreement remains in full force and effect during the Term.

**Use of Premises; Compliance with Applicable Laws.**

**Use of Premises.** The Premises shall be used for those purposes expressly set forth on Exhibit D attached hereto and for no other use or purpose. Licensee shall not do, bring, keep or sell anything in or about the Premises that is prohibited by, or that will cause a cancellation of or an increase in the existing premium for, any insurance policy covering the Premises or any part thereof. Licensee shall not permit the Premises to be occupied or used in any manner that will constitute waste or a nuisance, or disturb the quiet enjoyment of or otherwise annoy tenants or other licensees located in the vicinity of the Premises. The use of the Premises for residence or dwelling purposes is prohibited. Licensee shall not occupy, use or appropriate any space, premises or land other than or outside of the Premises.

**Compliance with Applicable Laws.**

Licensee, at Licensee's cost and expense, shall comply with all present and future Applicable Laws relating to the Premises, or the use, improvement or occupancy thereof.

For purposes of this Agreement, "**Applicable Laws**" means all laws, ordinances, resolutions, orders, writs, decrees, judgments, rulings, policies, plans, programs, general rules or regulations, codes, professional standards, permits, or land use restrictions or limitations at any time applicable thereto of any governmental authority, including the City of Oakland, the Port, the Bay Area Air Pollution Control District, the San Francisco Bay Conservation and Development Commission, and the Secretary of the Army, including the Federal Drug-Free Workplace Act of 1989, The Charter of the City of Oakland (including 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"), and any laws, ordinances, resolutions, orders, writs, decrees, judgments, rulings, policies, plans, programs, general rules or regulations, codes, professional standards, permits, or land use restrictions or limitations relating to human or public health, air pollution control, the environment, water, sanitation, safety or welfare, the filling of or discharges to the air or water, navigation or use of the harbor, or aerial navigation or use of the Oakland International Airport (the "**Airport**") and its facilities.

**Waiver and Release.** Licensee does hereby waive and release the Port Parties (as defined below) from any and all claims, known or unknown, including claims of negligence, and liability that may arise from any act or failure to act by the Port Parties in connection with the Port Parties' providing advice, guidance, or assistance to Licensee or any other licensee, sub-licensee or assignee regarding compliance with any Applicable Laws including the following actions or activities: furnishing educational materials to and organizing meetings for licensees; explaining the alleged requirements of any Applicable Laws, the regulations promulgated pursuant thereto, or the terms and conditions or means of complying with any permits required by or issued pursuant to any Applicable Laws; preparing or furnishing draft Storm Water Pollution Prevention Plans or Group Monitoring Plans, or acting as leader of any Group Monitoring Plan. "**Port Parties**" as used herein shall include the Port and all of its officers, commissioners, agents, departments, officials, representatives and employees, or any person claiming through or under the Port.

**No Vending Machines.** Licensee shall not sell, serve or vend, nor shall Licensee permit another person, firm or corporation to sell, serve or vend any food or food products, alcoholic or nonalcoholic beverages, cigarettes, cigars or tobacco on the described premises through coin operated vending machines, or otherwise, nor shall Licensee operate or maintain or permit to be operated or maintained on the described premises any coin operated nonmerchandising machines without the prior written consent of the Board of Port Commissioners and upon terms agreeable to the parties hereto; provided, however, that the provisions of this paragraph shall not prevent or prohibit Licensee from conducting or operating on the assigned premises the business or activity for which use, as hereinbefore in Paragraph 4 stated, said premises are assigned to Licensee.

**Commercial Charges.** In addition to the rental above provided, Licensee shall pay all commercial and other Port charges incurred by it, including all dockage, tolls, demurrage and service charges, and at the rates prescribed therefor by the Board of Port Commissioners.

**Licensee's Taxes.** "**Licensee's Taxes**" means: (a) all taxes, assessments, fees and other governmental charges or impositions levied or assessed against or with respect to the license granted hereunder, or upon any activity carried on under this Agreement, any interest in this Agreement or any possessory right which Licensee may have in or to any property covered hereby by reason of its use or occupancy thereof or otherwise; (b) all taxes, assessments, license fees and other governmental charges or impositions levied or assessed against or with respect to Licensee's personal property or Trade Fixtures (as defined below) in the Premises or related to Licensee's possession, licensing, operation, management, maintenance, alteration, repair, use or occupancy by Licensee of the Premises, whether any such imposition is levied directly against Licensee or levied against the Port or the Premises or the real

property on which the Premises are located (the "**Property**"); (c) all rental, excise, sales or transaction privilege taxes arising out of this Agreement (excluding, however, state and federal personal or corporate income taxes measured by the income of the Port from all sources) imposed by any taxing authority upon the Port or upon the Port's receipt of any rental payable by Licensee pursuant to the terms of this Agreement ("**Rental Tax**"); and (d) any increase in Taxes (as defined below) attributable to inclusion of a value placed on Licensee's personal property, Trade Fixtures or Alterations (as defined in Section 0 below). Licensee shall pay any Rental Tax to the Port in addition to and at the same time as the Monthly Rental is payable under this Agreement, and shall pay all other Licensee's Taxes before delinquency (and, at the Port's request, shall furnish the Port satisfactory evidence thereof). If the Port pays Licensee's Taxes or any portion thereof, Licensee shall reimburse the Port upon demand for the amount of such payment. "**Taxes**" means: (i) all federal, state, county, or local governmental or municipal taxes, fees, charges or other impositions of every kind, nature or origin, whether general, special, ordinary or extraordinary, imposed on or by reason of, or because of or in connection with the ownership, use, leasing or operation of the Premises or Property (including real estate taxes, general and special assessments, transit taxes, business taxes, leasehold taxes or taxes based upon the receipt of rent or license fees, including gross receipts or sales taxes applicable to the receipt of rent or license fees, unless required to be paid by Licensee; (ii) personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used in connection with the Premises or Property, or any portion thereof; (iii) service payments in lieu of taxes and taxes and assessments of every kind and nature whatsoever levied or assessed in addition to, in lieu of or in substitution for existing or additional real or personal property taxes on the Premises or Property or the personal property described above; and (iv) any increases in the foregoing caused by changes in assessed valuation, tax rate or other factors or circumstances). "**Trade Fixtures**" means furnishings, equipment, movable partitions, business equipment and other trade fixtures.

**Signs.** Licensee shall not install, paint, inscribe or place any signs or placards either in or upon the Premises without the prior written consent of the Port. Licensee, at its own expense, shall remove or paint over, to the satisfaction of the Port, promptly upon termination of this Agreement, any and all signs or placards installed, painted, inscribed or placed by it upon the Premises; and should Licensee fail to so remove or paint over such signs or placards, the Port may do so at the expense of Licensee, and Licensee shall reimburse the Port for the cost thereof upon demand.

**Promotion of Port and Facilities.** Licensee shall in good faith and with all reasonable diligence employ its best endeavors and all practical means to promote and aid the development of the commerce of the Port and the use of its facilities.

**Condition of Premises.**

By taking possession of the Premises, Licensee agrees that the Premises are then in a good condition, and Licensee accepts the Premises in its presently existing condition, "as is," and that the Port shall not be obligated to make any improvements or modifications thereto except to the extent otherwise expressly provided in this Agreement. Licensee represents and acknowledges that it has made a sufficient investigation of the conditions of the Premises existing immediately prior to commencement of use of the Premises and is satisfied that the Premises are fully fit physically and lawfully for the uses required and permitted by this Agreement and that Licensee accepts all risks associated therewith.

Licensee specifically acknowledges that except as otherwise may be expressly provided herein the Port has made no representations, warranties or promises, express or implied, concerning the condition of the Premises or any improvements, the fitness of the Premises or any improvements for Licensee's intended use, or the compliance of the Premises or any improvements with any federal, state, or

local building code or ordinance or with any laws or regulations or guidelines regarding disabled or handicapped persons, including the Americans With Disabilities Act of 1990, and Licensee expressly waives any duty which the Port might have to make any such disclosures. Licensee further agrees that, in the event Licensee sublicenses all or any portion of the Premises or assigns its interest in this Agreement, Licensee will indemnify and defend the Port for, from and against any matters which arise as a result of Licensee's failure to disclose any relevant information about the Premises to any sublicensee or assignee.

A Certified Access Specialist ("CASp", as defined in California Civil Code Section 55.52) has not inspected the Premises or the Property. Licensee acknowledges the foregoing information and agrees that such statement is merely a statement of fact and is not an admission, covenant, representation, or warranty made by the Port for the benefit of Licensee and Licensee's employees, agents, contractors, customers, or other invitees as to the condition of the Premises, Property, or any other property owned or controlled by the Port. As required by California Civil Code Section 1938, the Port provides the following notification:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

### **Maintenance and Repairs; Alterations and Additions.**

#### **Maintenance and Repairs.**

Licensee shall, at its sole cost and expense, keep and maintain the Premises and appurtenances thereto and every part thereof, including all windows and other glass, doors and skylights, and the interior of the Premises, in good, clean and sanitary order, condition and repair; provided that Licensee shall not be required to maintain or repair any areas which are listed as exceptions in any provision of Exhibit G attached hereto which provision has been indicated to be applicable to this Agreement by the placement of a checkmark to the immediate left of such provision. Licensee's obligations under this Section 0 shall apply in all cases, including circumstances such as required maintenance, cleanup or remediation of any condition, contamination, pollution or nuisance caused by unknown parties or by known parties other than the Port or the Port's agents.

If any repairs or maintenance of exterior walls and roofs are required as the result, in part or in whole, of the act, neglect, fault or omission of any duty by Licensee Parties (as defined below), then Licensee shall pay to the Port the Port's cost of such repairs and maintenance. "**Licensee Parties**" as used herein shall include Licensee and all entities that are shareholders, trustees, members, partners, venturers, direct or indirect owners, parents, subsidiaries, affiliated entities, successors, assigns, beneficiaries, representatives, agents, contractors, sublicensees, visitors and invitees of Licensee, or any person or entity claiming through or under Licensee, and all individuals who occupy any of the foregoing capacities with respect to Licensee or any such entity, or who are officers, directors, employees or servants of any of the foregoing.

The Port shall not be liable for any failure to make any repairs or perform any maintenance for which the Port is responsible hereunder unless such failure (i) shall persist for an

unreasonable amount of time after written notice of the need for such repairs or maintenance is given to the Port by Licensee and (ii) is due solely to causes within the Port's reasonable control. The Port shall not be liable for any damage or loss to any property on the Premises, or any loss of business by Licensee, which arises out of any need for repair or maintenance of the Premises.

Should Licensee fail to perform any repairs or maintenance it is obligated to perform hereunder, the Port shall have the option, but not the obligation, to perform such repairs or maintenance on behalf of Licensee, and Licensee shall immediately reimburse the Port for the cost thereof. The performance of such repairs or maintenance by the Port shall in no event be construed as a waiver of the duty of Licensee to repair and maintain the Premises as herein provided.

As a material part of the consideration for this Agreement, Licensee hereby waives any right to make repairs at the expense of the Port and waives the benefit of the provisions of any existing or future Applicable Laws which purport to create such a right, including if ever deemed applicable to this Agreement, Sections 1932(1), 1941 and 1942 of the California Civil Code relating thereto.

#### **Alterations and Additions.**

Licensee shall not make any alterations, additions, improvements, changes or betterments (collectively, "**Alterations**") to the Premises without first obtaining the prior written approval of the Port, and, at its own cost and expense, all necessary approvals and permits, including all necessary building, electrical or plumbing permits from the City of Oakland, and any necessary approvals and permits from the San Francisco Bay Conservation and Development Commission. Any such Alterations shall be completed by Licensee at Licensee's sole cost and expense: (i) with due diligence, in a good and workmanlike manner, using new materials; (ii) in compliance with plans and specifications approved by the Port in writing; (iii) in compliance with the construction rules and regulations promulgated by the Port from time to time; (iv) in accordance with all Applicable Laws (including all work, whether structural or non-structural, inside or outside the Premises, required to comply fully with all Applicable Laws and necessitated by Licensee's work); and (v) subject to all conditions which the Port may in its discretion impose. Such conditions may include requirements for Licensee to: (A) provide payment or performance bonds or additional insurance (from Licensee or Licensee's contractors, subcontractors or design professionals); (B) use contractors or subcontractors designated by the Port; and (C) remove all or part of the Alterations prior to or upon expiration or termination of the Term, as designated by the Port. The Port's right to review and approve (or withhold approval of) Licensee's plans, drawings, specifications, contractor(s) and other aspects of construction work proposed by Licensee is intended solely to protect the Port, the Premises and the Port's interests. No approval or consent by the Port shall be deemed or construed to be a representation or warranty by the Port as to the adequacy, sufficiency, fitness or suitability thereof or compliance thereof with Applicable Laws or other requirements.

Licensee shall not paint the Premises or any portions thereof without the prior written approval of the Port with respect to the method and color of such painting.

Licensee warrants that any Alterations proposed by Licensee, if constructed or installed consistently with the plans and specifications approved by the Port, will comply with all laws and regulations regarding disabled or handicapped persons, including the Americans With Disabilities Act of 1990. Licensee shall comply with all terms and conditions of permits whether secured by Licensee or the Port.

Upon Licensee's completion of any Alterations within the Premises, Licensee shall submit to the Port a copy of any certificate or permit which may be required by any federal, state, city or

other governmental agency in connection with the completion or occupancy of said Alterations by Licensee. Licensee shall furnish to the Port a set of reproducible, final "AS BUILT" drawings of any and all such Alterations not later than thirty (30) days following the completion, occupancy or initial use of such Alterations by Licensee, whichever comes first.

**Title to Improvements.** All structures, locks, bolts, repairs, Alterations, equipment and improvements affixed to or made upon the Premises by either of the parties hereto, shall be and become part of the realty and the property of the Port, and shall remain upon and be surrendered with the Premises as part thereof upon termination of this Agreement. Notwithstanding the foregoing, (a) Licensee, at the termination of this Agreement, may remove its machinery, boilers, tanks (excepting sprinkler systems and tanks used therewith and fixed fire protection apparatus), apparatus, conveyors, movable partitions and other Trade Fixtures heretofore or hereafter placed thereon by it, provided that Licensee is not in default under any of the provisions of this Agreement, and restores the Premises to their original or to a better condition, and (b) to the extent required by the Port pursuant to a written notice to Licensee, Licensee shall remove such Alterations as may be designated in such notice and restore the Premises to their original or better condition, unless the Port has waived such requirement with respect to specific Alterations by resolution of the Board of Port Commissioners upon application by Licensee prior to the making of any such Alterations.

**Exculpation and Indemnification.**

**Indemnification.** Licensee shall indemnify, protect, defend (with legal counsel chosen or approved by the Port) and hold the Port Parties harmless from and against any and all claims, loss, cost, damage, injury, expense and liability of every kind, nature and description ("**Claims**"), including incidental and consequential damages, court costs, in-house and outside attorneys' fees, 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 (a) the acts or omissions of any Licensee Parties in or about the Premises, or (b) any construction or other work undertaken by Licensee on the Premises (including any design defects), or (c) any breach or default under this Agreement by Licensee, or (d) any loss, injury or damage, howsoever and by whomsoever caused, to any person or property, occurring in or about the Premises during the Term, excepting only Claims described in this clause (d) to the extent they are finally determined by a court of competent jurisdiction to have been caused by the willful misconduct or grossly negligent acts of the Port or its authorized representatives.

**No Limitation.** The indemnification obligations under this Section 0 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Licensee or any sublicensee or other occupant of the Premises under workers' compensation acts, disability benefit acts, or other employee benefit acts. Licensee waives any immunity from or limitation on its indemnity or contribution liability to the Port Parties based upon such acts.

**Costs.** The foregoing indemnity and hold harmless agreement shall include indemnity for all costs, expenses and liabilities (including attorneys' fees and disbursements) incurred by any of the Port Parties in connection with any such Claim or any action or proceeding brought thereon, and the defense thereof. In addition, in the event that any action or proceeding shall be brought against one or more of the Port Parties by reason of any such Claim, Licensee, upon request from any of the Port Parties, shall resist and defend such Claim on behalf of any of the Port Parties by counsel appointed by Licensee's insurer (if such Claim is covered by insurance without reservation) or otherwise by counsel reasonably satisfactory to the Port. The Port Parties shall not be bound by any compromise or settlement of any such claim, action or proceeding without the prior written consent of such Port Parties.



**Damage to Licensee and Licensee's Property.** The Port shall not be liable to Licensee for any loss, injury or other damage to Licensee or to Licensee's property in or about the Premises from any cause (including defects in the Premises or in any equipment in the Premises; fire, explosion or other casualty; bursting, rupture, leakage or overflow of any plumbing or other pipes or lines, sprinklers, tanks, drains, drinking fountains or washstands in, above, or about the Premises; or acts of tenants or other licensees with respect to the real property on which the Premises are located). Licensee hereby waives all claims against the Port for any such loss, injury or damage and the cost and expense of defending against Claims relating thereto, including any loss, injury or damage caused by the Port's negligence (active or passive). Notwithstanding any other provision of this Agreement to the contrary, in no event shall the Port be liable to Licensee for any punitive or consequential damages or damages for loss of business by Licensee.

**Insurance.** Licensee shall comply with all insurance requirements and limits set forth on Exhibit H attached hereto.

**Environmental Responsibilities.** Licensee shall comply with all provisions contained in the Environmental Responsibilities Exhibit attached hereto as Exhibit "F".

**Default.**

**Events of Default.** The occurrence of any of the following shall constitute an "Event of Default" by Licensee:

Licensee fails to make any payment of (i) Monthly Rental when due, (ii) any amount required to replenish the Performance Deposit as provided in Section 0 above, or (iii) any other rental or other sums due hereunder, in each case if payment in full is not received by the Port within three (3) days after written notice that it is due;

Licensee (i) abandons the Premises, (ii) ceases to use the Premises for a period of thirty (30) consecutive days, except when prevented by fire, earthquake, war, strikes, or other calamity beyond its control, or (iii) uses the Premises in any manner or for any purposes inconsistent with those set forth on Exhibit D attached hereto;

Licensee violates the restrictions on assignment and sublicensing set forth in Section 0 below;

Licensee (i) ceases doing business as a going concern, (ii) makes an assignment for the benefit of creditors, (iii) is adjudicated an insolvent, files a petition (or files an answer admitting the material allegations of a petition) seeking relief under any state or federal bankruptcy or other statute, law or regulation affecting creditors' rights, (iv) all or substantially all of Licensee's assets are subject to judicial seizure or attachment and are not released within thirty (30) days, or (v) Licensee consents to or acquiesces in the appointment of a trustee, receiver or liquidator for Licensee or for all or any substantial part of Licensee's assets;

Licensee fails, within ninety (90) days after the commencement of any proceedings against Licensee seeking relief under any state or federal bankruptcy or other statute, law or regulation affecting creditors' rights, to have such proceedings dismissed, or Licensee fails, within ninety (90) days after an appointment, without Licensee's consent or acquiescence, of any trustee, receiver or liquidator for Licensee or for all or any substantial part of Licensee's assets, to have such appointment vacated; or

Licensee fails to perform or comply with any provision of this Agreement other than those described in Sections 0 through 0 above, and does not fully cure such failure within five (5) days after notice to Licensee or, if such failure cannot be cured within such five (5) day period, Licensee fails within such five (5) day period to commence, and thereafter diligently proceed with, all actions necessary to cure such failure as soon as reasonably possible but in all events within thirty (30) days of such notice; provided, however, that if the Port in its reasonable judgment determines that such failure cannot or will not be cured by Licensee within such thirty (30) days, then such failure shall constitute an Event of Default immediately upon such notice to Licensee.

**Remedies.** Upon the occurrence of an Event of Default, the Port shall have the following remedies, which shall not be exclusive but shall be cumulative and shall be in addition to any other remedies now or hereafter allowed by law or in equity:

The Port may terminate Licensee's license with respect to the Premises at any time by written notice to Licensee. Licensee expressly acknowledges that in the absence of such written notice, no other act of the Port, including re-entry into the Premises, efforts to re-license the Premises, re-licensing of the Premises for Licensee's account, storage of Licensee's personal property and Trade Fixtures, acceptance of keys to the Premises from Licensee or exercise of any other rights and remedies under this Section 0, shall constitute an acceptance of Licensee's surrender of the Premises or constitute a termination of this Agreement or of Licensee's license with respect to the Premises. Upon such termination in writing of Licensee's license with respect to the Premises, as herein provided, this Agreement shall terminate and the Port shall be entitled to recover damages from Licensee.

The Port may cure the Event of Default at Licensee's expense. If the Port pays any sum or incurs any expense in curing the Event of Default, Licensee shall reimburse the Port upon demand for the amount of such payment or expense.

**Right of Entry as Agent.** In addition to the remedies described in Section 0 above, upon the occurrence of an Event of Default, the Port may enter upon the Premises and remove all Licensee's property therefrom, and such property may be stored by the Port in a public warehouse or elsewhere at the sole cost and for the account of Licensee. If the Port does not elect to store any or all of Licensee's property left in the Premises, the Port may consider such property to be abandoned by Licensee, and the Port may thereupon dispose of such property in any manner deemed appropriate by the Port. Any proceeds realized by the Port on the disposal of any such property shall be applied first to offset all expenses of storage and sale, then credited against Licensee's outstanding obligations to the Port under this Agreement, and any balance remaining after satisfaction of all obligations of Licensee under this Agreement shall be delivered to Licensee. Licensee hereby exempts and agrees to save harmless the Port from any cost, loss or damage arising out of or caused by any such entry or reentry upon the Premises and the removal of persons and property and storage of such property by the Port or its agents. Licensee hereby irrevocably appoints the Port as the agent of Licensee to so enter upon the Premises and remove Licensee's property in accordance with this Section 0.

**Surrender and Holding Over.**

**Surrender.** Licensee covenants that at the expiration of the Term, any extension thereof, any holding over that the Port or the Port's Director of Commercial Real Estate has not otherwise objected to, or upon this Agreement's earlier termination, Licensee will quit and surrender the Premises in good state and condition, reasonable wear and tear excepted, and Licensee shall remove therefrom all machinery, apparatus, boilers, tanks (excepting sprinkler tanks), equipment, conveyors, Trade Fixtures and personal property belonging to Licensee. Licensee further covenants and agrees that the Premises and all structures, foundations and improvements thereon which by and under the terms of this Agreement

are provided to then remain on the Premises and which have become the property of the Port, shall be well and sufficiently repaired and in good tenantable order and condition, with allowance for reasonable wear and tear, and the Port shall have the right on such termination, to enter upon and take possession of all the Premises.

**Monthly Rental During Holdover.** If the Port or the Port's Director of Commercial Real Estate has not otherwise objected to Licensee's holding over the use of the Premises after the Term has terminated in any manner, such holding over shall be deemed merely a license from month-to-month on the same terms and conditions as herein provided except as follows:

**Port Ordinance.** The Monthly Rental during any such holding over shall be the Monthly Rental that is established from time-to-time by Port Ordinance for a particular annual period of holding over. If the Monthly Rental for the Premises is covered by a Port Ordinance, Sections 0 and 0 below shall not apply.

**Consumer Price Index.** At the end of the Term, and at the end of every twelve (12) months of holding over thereafter ("**Monthly Rental Adjustment Date**"), the Monthly Rental in effect immediately before the Monthly Rental Adjustment Date shall be increased by the percentage increase, if any, in the last Consumer Price Index (as defined below) published prior to the date of each succeeding Monthly Rental Adjustment Date from the last such index published prior to the twelve (12) month period immediately preceding the subject Monthly Rental Adjustment Date; provided that in no event shall the adjusted Monthly Rental be less than the theretofore existing Monthly Rental.

"**Consumer Price Index**" as used herein means 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. If said index is changed so that the base year differs from the base year used in the last index published prior to the commencement of the Term, the former index shall be converted to the new index in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If said index is discontinued or revised during the Term or any holding over that is not objected to by the Port or the Port's Director of Commercial Real Estate, such other government index or computation with which it is replaced, as determined by said Department or said Bureau, or, failing such determination, such other government index or computation which is most similar to said index, shall be used in order to obtain substantially the same result as would be obtained if said index had not been discontinued or revised; provided, that in the event the parties are unable to agree upon such other government index or computation, it shall be selected by arbitration pursuant to the rules of the American Arbitration Association.

**Fixed by Port.** If the Monthly Rental is not otherwise fixed by Port Ordinance for any such holding over period as provided in Section 0 above, the Monthly Rental for such period may be fixed by the Port from time-to-time by giving to Licensee written notice thereof at any time not less than seven (7) days before the expiration of any such month, to be effective upon the expiration of such month. The Monthly Rental fixed under this Section 0 shall be in addition to adjustment of the Monthly Rental using the CPI process as described in Section 0 above.

**Holdover Terms Other Than Monthly Rental.** In addition to Section 0 above, the Port, upon thirty (30) days written notice to Licensee, may change any of the other terms and conditions of the holding over.

**Director of Commercial Real Estate's Authority to Change Holdover Terms.** The Port's Director of Commercial Real Estate may act on behalf of the Port to change any of the terms and conditions of the holding over except for any Monthly Rental covered by a Port Ordinance, decreases

in the Monthly Rental below what Monthly Rental would have been under the CPI process as described in Section 0 above, and changes in Licensee's permitted use of the Premises.

**Destruction of Premises.** Whenever the Premises, or any essential part thereof shall be destroyed by fire or other casualty, this Agreement shall, in case of total destruction, terminate, and in case of partial destruction or injury, shall terminate at the option of the Port, upon giving at least thirty (30) days' notice to Licensee after such fire or injury, and no rental shall accrue to the Port after such termination. Should the Port elect, in such event, not to terminate this Agreement, it will, with reasonable diligence, restore the Premises as nearly as practicable to their former condition, and Licensee's obligation to pay Monthly Rental hereunder shall be abated during the time and in proportion to the extent that the Premises are not tenantable. In no event shall the Port be liable to Licensee by reason of any injury to or interference with Licensee's business or property arising from fire or other casualty or by reason of any repairs to any part of the Premises necessitated by such casualty. Port and Licensee each hereby waives any right to terminate this Agreement as the result of damage or destruction other than as expressly provided in this Section 0, and waives the benefit of any existing or future Applicable Laws which purport to create such a right, including Sections 1932(2) and 1933(4) of the California Civil Code.

**Security and Protection of Premises.** Licensee shall assume the sole responsibility for all personal security and for guarding and safekeeping of and risk of loss to the Premises and all property, stock merchandise and equipment stored or located upon or used in connection with the Premises.

**Waivers.** No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this Agreement or of any default or forfeiture shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of the Port to reenter the Premises or to exercise any right, power, privilege or option arising from any default, nor subsequent acceptance of any rental then or thereafter accrued shall impair any such right, power, privilege or option, or be construed to be a waiver of any such default or relinquishment thereof, or acquiescence therein, and no notice by the Port shall be required to restore or revive time as of the essence hereof after waiver by the Port of default in one or more instances. No option, right, power, remedy or privilege of the Port shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. Each and all of the rights, powers, options or remedies given to the Port by this Agreement are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law or in equity, and that exercise of one right, power, option or remedy by the Port shall not impair its rights to any other right, power, option or remedy.

**Assignment and Sub-license Prohibited.**

Licensee shall not at any time, in any manner, either directly or indirectly, assign, hypothecate, encumber or transfer this Agreement or any interest, right or privilege appurtenant thereto, or license or sub-license, or suffer any other person to occupy, use or manage (except management by Licensee's employees or servants), the whole or any part of the Premises (each and all a "Transfer") without the prior written consent of the Port. If Licensee is a business entity, any direct or indirect transfer of fifty percent (50%) or more of the ownership interest of the entity or change of control of the entity (whether in a single transaction or in the aggregate through more than one transaction) shall be deemed a Transfer.

Licensee agrees that as a condition to the Port's consideration of any request by Licensee for approval of a Transfer of this Agreement, Licensee shall deliver to the Port a nonrefundable processing fee of not less than \$5,000. Within 10 days of receipt of said fee, the Port may give to Licensee notice that said fee shall be increased by a sum, not to exceed an additional \$5,000, that the Port

in its discretion determines is necessary to cover the anticipated Port administrative costs and expenses, including labor, in processing and investigating Licensee's request and obtaining necessary information from Licensee. Licensee agrees that unless and until said fee, and any request for such additional fee, is delivered to the Port, Licensee shall be deemed to have made no request to the Port to Transfer this Agreement.

Licensee further covenants and agrees that neither this Agreement nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment or execution against Licensee, or in voluntary or involuntary proceedings taken under the authority of any bankruptcy act or provision thereof, or in any proceedings in insolvency or receivership taken by or against Licensee or by any process of law, and that possession of the whole or any part of the Premises shall not be divested from Licensee in such proceedings or by any process of law, without the prior written consent of the Port; and any such divesting of possession by Licensee or any assignment, sale or transfer of this Agreement, or any interest therein, either voluntarily or by judgment, execution, bankruptcy, arrangement, receivership, insolvency proceedings, or by process or operation of law, shall at the option of the Port be null and void and of no force or effect and shall cause this Agreement to terminate immediately at the option of the Port.

The Port's consent to any assignment, transfer, sublicensing or occupation or use shall not be construed or deemed to be a waiver of the restrictions hereinabove contained or to be a consent to any subsequent assignment, transfer, sublicensing, or occupation or use by another person. Licensee shall promptly provide to the Port's Director of Commercial Real Estate or his or her designee all documentation and information that the Port's Director of Commercial Real Estate reasonably may request in order for the Port to verify Licensee's compliance with this Section 0.

Licensee agrees that its personal business skills and philosophy were an important inducement to the Port for entering into this Agreement and that the Port may reasonably object to the transfer of the Premises to another whose proposed use, while permitted by the use clause of this Agreement, would involve a different quality, manner or type of business skills than that of Licensee, or would result in the imposition upon the Port of any new or additional requirements under the provisions of any Applicable Laws.

#### **Entry, Inspection and Closure; Licensee's Records.**

**Entry, Inspection and Closure.** Upon reasonable oral or written notice to Licensee (and without notice in emergencies), the Port and its authorized representatives may enter the Premises at all reasonable times to: (i) determine whether the Premises are in good condition; (ii) determine whether Licensee is complying with its obligations under this Agreement; (iii) perform any maintenance or repair of the Premises or the Building that the Port has the right or obligation to perform; (iv) install or repair improvements for other tenants where access to the Premises is required for such installation or repair; (v) serve, post or keep posted any notices required or allowed under the provisions of this Agreement; (vi) show the Premises to prospective brokers, agents, buyers, transferees, mortgagees or tenants; or (vii) do any other act or thing necessary for the safety or preservation of the Premises or the Building. When reasonably necessary the Port may temporarily close entrances, doors, corridors, elevators or other facilities in the Building without liability to Licensee by reason of such closure. The Port shall conduct its activities under this Section 0 in a manner that will minimize inconvenience to Licensee without incurring additional expense to the Port. In no event shall Licensee be entitled to an abatement of rent on account of any entry by the Port, and the Port shall not be liable in any manner for any inconvenience, loss of business or other damage to Licensee or other persons arising out of the Port's entry on the Premises in accordance with this Section 0. No action by the Port pursuant to this Section 0 shall constitute an eviction of Licensee, constructive or otherwise, entitle Licensee to an abatement of rent or to

terminate this Agreement or otherwise release Licensee from any of Licensee's obligations under this Agreement.

### **Licensee's Records.**

**Maintenance of Records.** Licensee shall maintain all documents and records prepared by or furnished to Licensee which relate to this Agreement, the Premises or the obligations of the Licensee hereunder. Such records include, but are not limited to, correspondence, internal memoranda, calculations, books and accounts, accounting records related to this Agreement, the Premises or the obligations of the Licensee hereunder, and invoices, payrolls, records and all other data related to matters covered by this Agreement. Any records maintained in electronic form must be machine readable using readily available, commonly used commercial software and must be free of any corruption or viruses that may damage the Port's software or hardware systems. Licensee shall permit the Port to audit, examine and make copies, excerpts and transcripts from such records. The rights of the Port set forth in this Section 0 shall be specifically enforceable. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred on the Port by this Section 0.

**Inspection by the Port, Statutes of Limitations.** If the books and records described in this Section 0 are not kept and maintained by Licensee within a radius of fifty (50) miles from the offices of the Port at 530 Water Street, Oakland, California, Licensee 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 Licensee shall pay to the Port the reasonable and necessary costs incurred by the Port in inspecting Licensee's books and records, including travel, lodging and subsistence costs. Licensee shall deliver any such records maintained in electronic form by email or transcribed into discs or other suitable media, as the Port directs, at no cost to the Port. Licensee shall provide such assistance as may be reasonably required in the course of such inspection at no cost to the Port. Notwithstanding any statute of limitation or other law to the contrary:

The Port may examine and reexamine said books, records and data during the three (3) year period (the "**Inspection Period**") following the last to occur of: (A) termination of this Agreement; (B) the date on which Licensee makes the final or last payment of any amounts due hereunder to the Port; or (C) the date on which any pending issues between the Port and Licensee with respect to this Agreement have been closed; provided that the Inspection Period with respect to all records relating to Environmental Documents (as defined in Exhibit F) shall be as provided in Exhibit F;

Licensee shall in no event erase, delete, dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever during the Inspection Period;

Licensee agrees to toll (A) commencing on the first day of 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 Licensee's books, records or data with respect to this Agreement (an "**Audit**") and ending four (4) years thereafter, 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;

in addition to any tolling provided for in this Section 0, and regardless of whether or not the Port commences an Audit, Licensee shall waive, to the greatest extent permitted by

Applicable Laws, the defense of laches, statute of limitations, or any other defense based upon the Port the Port the Port's failure to timely file an action with regard to any matter arising out of this Agreement or an Audit; and

the tolling agreement and waiver set forth in this Section 0 shall be inadmissible in any proceeding to determine liability or damages or any issue in dispute (other than such tolling or waiver itself) under this Agreement or an Audit.

**Premises to be Kept Clean.** Licensee at all times shall keep the Premises in a neat, clean and orderly condition, and shall prevent the accumulation of and shall maintain the Premises free of any weeds, refuse or waste materials which present an unattractive appearance or which might be or constitute a fire hazard, or the accumulation of which might increase the rates of or suspend existing fire insurance on the Premises. If Licensee fails to maintain the Premises free of any weeds, refuse or waste materials, the Port shall have the option to remove the same, and Licensee shall immediately reimburse the Port for the cost thereof. The performance of such removal by the Port shall in no event be construed as a waiver of the duty of Licensee to keep the Premises clean as herein provided. Licensee's duty to keep the Premises clean as set forth in this Section 0 shall include the removal of weeds, refuse and waste materials which emanate from the Premises and scatter onto adjoining property.

**Fire Extinguishers.** Licensee shall keep on the Premises, at its own expense, fire extinguishers and other portable firefighting and emergency equipment of such number, type and material as may be prescribed from time to time by the regulations of the Board of Port Commissioners, the Fire Prevention Bureau of the City of Oakland, or other competent authority.

**Equal Opportunity; Nondiscrimination.** In furtherance of the Port's long-standing policy to ensure that equal employment opportunity is achieved and nondiscrimination is guaranteed in all Port-related activities, Licensee for itself, its heirs, its personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree with respect to Licensee's activities upon the Premises:

That Licensee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex (including gender identity), actual or perceived sexual orientation, national origin, age (over 40), physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, cancer-related medical condition, a known genetic predisposition to a disease or disorder, marital status or veteran's status. Licensee 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. Licensee shall 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 Section 0;

That Licensee shall, in all solicitations or advertisements for employees placed by or on behalf of Licensee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex (including gender identity), actual or perceived sexual orientation, national origin, age (over 40), physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, cancer-related medical condition, a known genetic predisposition to a disease or disorder, marital status or veteran's status;

That Licensee 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 Licensee's commitments under this Section 0, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

That Licensee shall not discriminate by segregation or otherwise against any person or persons because of race, color, religion, sex (including gender identity), actual or perceived sexual orientation, national origin, age (over 40), physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, cancer-related medical condition, a known genetic predisposition to a disease or disorder, marital status or veteran's status in furnishing, or by refusing to furnish, to such person or persons the use of any public facility upon the Premises, including any and all services, privileges, accommodations, and activities provided thereby;

That Licensee 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;

That if Licensee has fifteen (15) or more employees, Licensee shall within ninety (90) days of the Commencement Date provide the Port's Director of Commercial Real Estate or his or her designee with a copy of its affirmative action program outlining the steps Licensee will undertake to promote effective utilization of minorities, women, persons with disabilities, and veterans approved by an appropriate federal or state agency or by the Port or an affirmative action program required as a result of a court ordered consent decree. Thereafter any change(s) in the Licensee's affirmative action program shall be forwarded to the Port within thirty (30) days of its adoption. Such submissions shall be accorded the same level of confidentiality as provided for by the state or federal regulations or court order under which it was originally submitted;

That in the construction of any improvements on, over or under such land and the furnishings of services thereon, no person, on the grounds of race, color, religion, sex (including gender identity, actual or perceived sexual orientation, national origin, ancestry, age (over 40), cancer-related medical condition, a known genetic predisposition to a disease or disorder, marital status, physical or mental disability as set forth in the Americans with Disabilities Act of 1990, or veteran's status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

That Licensee shall use the Permitted Area in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

That Licensee assures that it will undertake an affirmative action program as required by 14 CFR Part E, to ensure that no person shall on the grounds of race, color, religion, sex (including gender identity), actual or perceived sexual orientation, national origin, ancestry, age (over 40), cancer-related medical condition, a known genetic predisposition to a disease or disorder, marital status,, physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, or veterans' status 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. Licensee 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. Licensee assures that it will require that its covered suborganizations provide assurances to Licensee 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.

That Licensee's noncompliance with the provision of this Section 0 shall constitute a material breach of this Agreement. In the event of a breach of any of the above-stated nondiscrimination and affirmative action covenants, the Port shall have the right to consider but not be limited to the following:

Terminate this Agreement and re-enter and possess the Premises, and hold the same as if this Agreement had never been made, without liability therefor; or

Seek judicial enforcement of said covenants.

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

### **Consents and Approvals.**

**Determination in Good Faith.** Wherever the consent, approval, judgment or determination of the Port is required or permitted under this Agreement, the Port may exercise its good faith business judgment in granting or withholding such consent or approval or in making such judgment or determination without reference to any extrinsic standard of reasonableness, unless the specific provision contained in this Agreement providing for such consent, approval, judgment or determination specifies that the Port's consent or approval is not to be unreasonably withheld, or that such judgment or determination is to be reasonable, or otherwise specifies the standards under which the Port may withhold its consent. If it is determined that the Port failed to give its consent where it was required to do so under this Agreement, Licensee shall be entitled to injunctive relief but shall not be entitled to monetary damages or to terminate this Agreement for such failure.

**No Liability Imposed on the Port.** The review or approval by the Port of any item or matter to be reviewed or approved by the Port under the terms of this Agreement or any Exhibits or Addenda hereto shall not impose upon the Port any liability for the accuracy or sufficiency of any such item or matter or the quality or suitability of such item for its intended use. Any such review or approval is for the sole purpose of protecting the Port's interest in the Property, and no third parties, including any Licensee Parties or any person or entity claiming by, through or under Licensee, shall have any rights as a consequence thereof.

**Building Permits.** Licensee shall establish to the reasonable satisfaction of the Port, as a prerequisite to the issuance of a permit from the Port for any building permit for the Premises, that Licensee is in compliance with the Port's Non-Discrimination and Small Local Business Utilization Policy, as amended from time-to-time, with respect to such permit.

### **Utilities.**

Unless otherwise expressly provided herein, Licensee shall pay for all water, gas, heat, electricity, fuel, power, telephone service, and other utilities, as well as janitor or watchman services and mechanical fire alarm or security services, which may be furnished to or used in or about the Premises during the Term; provided that Licensee shall not be required to pay for any utilities which are listed as exceptions in any provision of Exhibit G attached hereto which provision has been indicated to be applicable to this Agreement by the placement of a checkmark to the immediate left of such provision.

In cases where arrangements have been made between Licensee and the Port for the Port to furnish and deliver gas, electricity or water, the Port will exercise reasonable diligence and care to furnish and deliver the same; provided, however, that the Port does not guarantee the continuity or sufficiency of such supply. The Port will not be liable for interruptions or shortages or insufficiency of supply or any loss or damage of any kind or character occasioned thereby if the same is caused by accident, act of God, fire, strikes, riots, war, inability to secure a sufficient supply from the utility company furnishing the Port, or any other cause except such as arises from the Port's failure to exercise reasonable diligence. Licensee shall take such steps as Licensee may consider necessary to protect Licensee's 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 or water, or any thereof, but in all such cases, except emergency, reasonable notice of such suspension will be given to Licensee, and the making of such repairs or improvements will be prosecuted as rapidly as practicable and, if possible, so as to cause the least amount of inconvenience to Licensee.

**No Relocation Assistance or Benefits.** Nothing contained in this Agreement shall give Licensee any right to occupy the Premises at any time after expiration of the Term or its earlier termination, and that this Agreement shall not create any right in Licensee for relocation assistance or payment from the Port upon the expiration of the Term or upon its earlier termination or upon the termination of any period of holding over pursuant to Section 0 above. Licensee 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 California Government Code (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 its earlier termination or upon the termination of any period of holding over pursuant to Section 0 above, and Licensee hereby waives and releases to the Port all rights, if any, to which Licensee may be entitled under said provisions or other laws or regulations.

**Attorneys' Fees and Costs.** In the event of any dispute between the Port and Licensee in any way related to this Agreement, and whether involving contract or tort or other claims, the non-prevailing party shall pay to the prevailing party all reasonable attorneys' fees and costs and expenses of any type, without restriction by statute, court rule or otherwise, incurred by the prevailing party in connection with any action or proceeding (including any appeal and the enforcement of any judgment or award), whether or not the dispute is litigated or prosecuted to final judgment (collectively, "**Fees**"). The "prevailing party" shall be determined based upon an assessment of which party's major arguments or positions taken in the action or proceeding could fairly be said to have prevailed (whether by compromise, settlement, abandonment by the other party of its claim or defense, final decision, after any appeals, or otherwise) over the other party's major arguments or positions on major disputed issues. Any Fees incurred in enforcing a judgment shall be recoverable separately from any other amount included in the judgment and shall survive and not be merged in the judgment. For purposes of this Agreement, any reference to "attorneys' fees and costs," "legal fees and costs" or words of similar import shall, when applied to the Port, include (i) fees and costs of the Port Attorney's Office, as the same may be updated from time to time, and (ii) a reasonably allocated portion of the salary of non-attorney Port staff based on the time such staff have devoted to the dispute at issue, in each case based on the Port's schedule of hourly rates as in effect from time to time.

**Termination.** The Port or the Port's Director of Commercial Real Estate shall have the right to terminate this Agreement by giving Licensee at least thirty (30) days' prior written notice of such proposed termination.

**Successors.** Each of the provisions, agreements, terms, covenants and conditions herein contained to be performed, fulfilled, observed and kept shall be binding upon the successors and assigns of the respective parties hereto, and the rights hereunder, and all rights, privileges and benefits arising under this Agreement and in favor of either party, shall be available in favor of the successors and assigns thereof, respectively; provided no assignment by or through Licensee in violation of the provisions of this Agreement shall vest any rights in any such assignee or successor.

**No Interest in Land Created.** This Agreement is a license and concession and not a lease and that no interest or estate in real property, or improvements thereon, is created hereby.

**Time of Essence.** Time is of the essence in respect of (a) all provisions of this Agreement in which a definite time for performance is specified, and (b) all obligations of Licensee pursuant to this Agreement.

**Notice.** All notices, demands, designations, waivers, approvals or other communications given or required to be given under this Agreement shall be effective only if rendered or given in writing and shall be (a) sent by certified mail with a return receipt requested, (b) delivered by overnight delivery service (such as Federal Express, UPS, or similar company), or (c) delivered personally, as follows: (i) if for Licensee, (A) at Licensee's address set forth on Exhibit A attached hereto, if sent prior to Licensee's commencing use of the Premises; or (B) at the Premises or at Licensee's additional address set forth on Exhibit A attached hereto if sent subsequent to Licensee's commencing use of the Premises; or (C) at any place where Licensee or any agent, officer or employee of Licensee may be found if sent subsequent to Licensee's vacating, deserting, abandoning or surrendering the Premises; or (ii) if for the Port at its address set forth below; or (iii) to such other address as either the Port or Licensee may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section 0. Any such notice or other communication shall be deemed to have been rendered or given: (x) five (5) days after the date when it shall have been mailed if sent by certified mail; (y) one (1) business day after the date when it shall have been sent by overnight delivery service; or (z) upon the date personal delivery is made. Any notice given by an attorney on behalf of the Port or by the Port's managing agent shall be considered as given by the Port and shall be fully effective.

**Port's Address  
for Notices:**

Director, Commercial Real Estate Division  
Port of Oakland  
530 Water Street  
Oakland, CA 94607

With a copy to:

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

**Agreement in Multiple Copies.** This Agreement may be executed in one or more counterparts, and each such counterpart will be deemed to be an original instrument, and all such counterparts together constitute one agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means

of electronic transmission will have the same legal effect as delivery of an original signed copy of this Agreement.

**Additional Provisions.** All of those additional terms and provisions set forth on Exhibit I attached hereto are hereby incorporated herein by this reference.

**Reserved.**

**Modifications.** The above written provisions of this Agreement constitute the entire agreement between Licensee and the Port regarding the Premises and the parties' rights and obligations with respect thereto. No representation, covenant or other matter, oral or written, that is not expressly set forth in this Agreement, shall be a part of, modify or affect this Agreement; provided, however, that this Agreement may be modified if the modification is in writing authorized by resolution or ordinance of the Board of Port Commissioners.

**Dispute Resolution.**

In the event any dispute between the parties arises under this Agreement, the Parties shall make their best efforts to meet and confer in good faith in order to attempt to resolve the dispute on a basis satisfactory to both Parties.

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 actions arising out of or filed in connection with this Agreement shall be filed solely in the state and federal courts in Alameda County, California, and Licensee consents to the exclusive jurisdiction of such courts.

If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorney's fees and costs of suit.

**Covenant Against Contingent Fees.** Licensee warrants and agrees that no person or agency has been employed or retained to solicit or obtain this Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or bona fide agency. For breach or violation of this warranty, the Port, at its sole option, may annul this Agreement or recover from Licensee any damages to the Port resulting from such breach or violation, up to the full amount of any such contingent fee.

"Bona Fide Agency," as used in this Section 0, means an established commercial or selling agency, maintained by Licensee 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(s) through improper influence.

"Bona Fide Employee," as used in this Section 0, means a person, employed by Licensee and subject to Licensee'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(s) through improper influence.

"Contingent Fee," as used in this Section 0, 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.

"Improper Influence," as used in this Section 0, 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.

**Prevailing Wage Requirements.** In the performance of any work under or in connection with this Agreement (including any Alterations), Licensee shall comply with 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. 4321, as amended, to the extent such requirements are applicable to Licensee's work.

**Waiver of Claims.** Licensee hereby waives any claim against the Port Parties for damage or loss caused by any claim, suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof or right granted thereby or asserting any right or interest in the Premises inconsistent with rights granted to Licensee by this Agreement, or by any judgment or award in any suit or proceedings instituted by a party other than the Port directly or indirectly attacking the validity of this Agreement, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the same, or any part thereof, from being carried out; provided, however, that such waiver shall not apply or run to any damage or loss in any way caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement which suit or proceeding is based in whole or in part upon an alleged "conflict of interest" of any elected or appointed official, officer, agent or employee of the City of Oakland or the Board of Port Commissioners of the Port, including any "conflict of interest" or other matter alleged to violate or violating California Government Code Sections 1090 or 1092. The Port and Licensee shall not in any way attempt to have this Agreement declared null or void, and each shall reasonably cooperate with the other to defend the validity of this Agreement and of the rights and obligations granted by this Agreement.

**The Port's Liability.** The liability of the Port to Licensee for any default by the Port under this Agreement or arising in connection herewith or with the Port's operation, management, leasing, repair, renovation, alteration or any other matter relating to the Premises shall be limited solely and exclusively to an amount which is equal to the lesser of (i) the interest of the Port in the Premises or (ii) the equity interest the Port would have in the Premises if the Premises were encumbered by third-party debt in an amount equal to sixty percent (60%) of the value of the Premises (as such value is determined by the Port), provided that in no event shall such liability extend to any sales or insurance proceeds received by the Port in connection with the Premises. Neither the Port nor any other Port Parties shall have any personal liability therefor, and Licensee hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Licensee. The limitations of liability contained in this Section 0 shall inure to the benefit of the Port, the Port Parties and their respective partners, heirs, successors and assigns. Notwithstanding any contrary provision herein, the Port shall not be liable under any circumstances for any indirect or consequential damages or any injury or damage to, or interference with, Licensee's business, including loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

**Miscellaneous.**

**Interpretation; Terms; Captions.** The word "Licensee" as used herein shall include the plural as well as the singular. If there is more than one Licensee, the obligations under this Agreement imposed on Licensee shall be joint and several. Wherever the term "including" is used in this Agreement, it shall be interpreted as meaning "including, but not limited to" the matter or matters thereafter enumerated. The captions preceding the sections of this Agreement have been inserted solely as a matter of convenience and such captions in no way define or limit the scope or intent of any provision of this

Agreement. Each party and its counsel have participated or had the opportunity to participate fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

**Binding Effect.** If any provision of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid, unenforceable, or prohibited under Applicable Laws, such law is hereby waived to the greatest extent permitted by Applicable Laws so this Agreement is valid, binding and enforceable to such extent, and if such law cannot be fully waived, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the full extent permitted by Applicable Laws.

**No Light, Air or View Rights.** Licensee covenants and agrees that no diminution of light, air or view by reason of any repairs, improvements, maintenance or cleaning in or about the Property or by any structure that may hereafter be erected (whether or not by the Port) shall entitle Licensee to any reduction of the Monthly Rental or other sums payable under this Agreement, result in any liability of the Port to Licensee, or in any other way affect this Agreement or Licensee's obligations hereunder.

**Prohibition Against Recording.** Neither this Agreement, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by Licensee or by anyone acting through, under or on behalf of Licensee.

**Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between the Port and Licensee.

**No Warranty.** In executing and delivering this Agreement, Licensee has not relied on any representations that is not set forth herein or in one or more of the exhibits attached hereto.

**Days.** All references to "days" in this Agreement are references to calendar days, unless otherwise specified.

**Public Trust.** This Agreement and the Premises shall at all times during the Term be subject to the limitations, conditions, restrictions and reservations contained in and prescribed by Section 6009 of the California Public Resources Code.

**IN WITNESS WHEREOF**, the parties hereto thereunto duly authorized, have executed this Agreement the day and year first above written.

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

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

**[LICENSEE],**  
**[entity]**

By \_\_\_\_\_  
(Signature)

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

Attest \_\_\_\_\_  
(Signature)

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

**THIS AGREEMENT 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  
\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Port Attorney  
Port Ordinance No.: \_\_\_\_\_  
P.A.#: \_\_\_\_\_

**EXHIBIT A**

**LICENSEE AND LICENSEE'S NOTICE ADDRESS**

Date: This Agreement is dated as of **April 1, 2018** (the "**Commencement Date**").

**Licensee:**

**Entity/Person(s):**

**Notice Address:**



## **EXHIBIT B-1**

### **DESCRIPTION OF PREMISES**

As described in further detail below, the Premises shall consist of: (1) On-Site Office; and (2) Valet Booths.

#### **On-Site Office**

The On-Site Office consists of approximately 905 square feet of office space on the 2<sup>nd</sup> floor of the Washington Street Garage located at 101 Washington Street, Oakland, CA (Port Building F601).

#### **Valet Booths**

The Valet Booths are located in two locations south of Embarcadero West: one at the terminus of Broadway, and one at the terminus of Franklin Street.

Licensee acknowledges that the Port may from time to time require the relocation of the Valet Booths to other suitable locations. The Port reserves the right to relocate the Valet Booths to other suitable locations and shall notify and consult with the Licensee in selecting alternate locations.

## EXHIBIT B-2

### SKETCH OF PROPERTY



## **EXHIBIT C**

### **TERM OF AGREEMENT**

**TERM:** The Initial Term of this Agreement shall commence on the Commencement Date and shall terminate at midnight (Pacific Time) on March 31, 2021.

The Port shall have the unilateral right to extend the Initial Term for two (2) additional periods of one (1) year each (each additional term referred to as an “Extension Term”), according to the procedures set forth in the Parking Management Agreement between the Port and Licensee dated April 1, 2018 (“Parking Management Agreement”).

In no event shall the Term of this Agreement extend further than the Term set forth in the Parking Management Agreement, as such Parking Management Agreement may be amended.

## **EXHIBIT D**

### **USE OF PREMISES**

The Premises may only be used for managing and operating the Parking Facilities at Jack London Square, as further described in the Parking Management Agreement, consistent with all applicable laws and regulations and only during the Term of the Parking Management Agreement. The Premises may not be used for any other purpose.

**EXHIBIT D**

**[RESERVED]**

**EXHIBIT F**  
**ENVIRONMENTAL RESPONSIBILITIES**

**Section 1. Compliance with Port Environmental and Storm Water Ordinances.**

Licensee (or “Tenant”) shall comply with Port Environmental Ordinance No. 4345 (the “Environmental Ordinance”) and Port Storm Water Ordinance No. 4311 (the “Storm Water Ordinance” and, together with the Environmental Ordinance, the “Port Ordinances”). All terms in this Environmental Responsibilities Exhibit shall have the meanings as defined in the Environmental Ordinance.

**Section 2. Notices and Disclosures Regarding Toxic Materials.**

Pursuant to H&S Code Section 25359.7, the Port notifies the Tenant that the Port has reasonable cause to believe that Toxic Materials have come to be located on, at, beneath or emanating from the Premises. Information regarding the Toxic Materials on the Premises may be included in reports available on DTSC’s Envirostor Website <http://www.envirostor.dtsc.ca.gov/public/>, the RWQCB’s Geotracker Website <http://geotracker.waterboards.ca.gov/>, or Alameda County’s ftp site <http://gis.acgov.org/DEH/InspectionResults/?SITE=LOP>. In addition, the Tenant may request any non-privileged Toxic Material reports concerning the Premises that are in the possession of the Port.

**Section 3. Storage Tanks.**

Existing Storage Tanks: ☐ Yes ☒ No

If yes, list Storage Tank number, location, date of installation, material stored and size

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If there are Storage Tanks on the Premises, Tenant has certain responsibilities for operation, monitoring, reporting, maintenance and removal of such Storage Tanks, See Environmental Ordinance, Sections 3 and 10.

**Section 4. Covenant to Restrict Use of Property (“CRUP”).**

Existing CRUP: ☐ Yes ☒ No

If the Yes box is checked, the attached CRUP is incorporated and Tenant shall comply with the CRUP. Required Disclosure:

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**Section 5. Performance Deposit.**

Tenant shall, not later than the Effective Date, deposit with the Port and during the entire Term shall maintain with the Port a deposit as specified in the Agreement, which deposit will be retained by the Port as a performance deposit (the “Performance Deposit”) and may be used or applied as the Port, in its sole discretion, may determine to: (a) pay the Cost of Response Actions on the Premises that are the responsibility of Tenant; (b) repair any damage to the Premises caused by Tenant or Tenant’s Representatives; (c) replace any Improvements which are the property of the Port and which have been damaged, removed or otherwise misplaced during the Term; (d) pay any other outstanding amounts due the Port from Tenant pursuant to any of the provisions of the Port Ordinances; (e) pay any compensation or other amount payable to the Port pursuant to the Port Ordinances that is not paid when due; (f) pay or

reimburse the Port for any amount that the Port may spend or become obligated to spend in exercising its rights under the Port Ordinances; or (g) compensate the Port for any expense, loss or damage that the Port may suffer because of a default with respect to any obligation of Tenant under the Port Ordinances.

The Performance Deposit shall be cash or an irrevocable letter of credit in the form required by the Port (a "Letter of Credit"), issued by a bank ("Issuer") located within the continental United States, acceptable to the Port and with a branch office located in Oakland or San Francisco, California, at which such Letter of Credit may be drawn. In the event the Port is required to utilize the Performance Deposit or any portion thereof during the Term for the purposes hereinabove set forth, Tenant shall deposit with the Port an additional sum or a replacement Letter of Credit sufficient to restore the Performance Deposit to the amount hereinabove set forth. Tenant waives the provisions of Section 1950.7 of the California Civil Code to the extent that such Section: (i) provides that the Performance Deposit can be applied only to remedy certain defaults by Tenant; (ii) requires that all or any unused portion of the Performance Deposit must be returned to Tenant within a specified period of time; or (iii) is otherwise inconsistent with this Section 5, it being the Parties' intention that this Section 5 shall be controlling.

#### **Section 6. Release**

Tenant, for itself, Tenant Representatives, successors and assigns, waives, releases, acquits, and forever discharges the Port of, from, and against any Actions, direct or indirect, at any time on account of, or in any way arising out of or in connection with: (i) the Port providing advice, guidance, or assistance to Tenant or Tenant Representatives regarding Tenant's compliance with Environmental Laws; and (ii) Toxic Materials existing at, on, or under the Premises as of the Effective Date, and any migration of Toxic Materials to, within, or from the Premises regardless of the origin or source of the Toxic Materials, whether known or unknown. A Tenant's release of the Port shall apply to all unknown and known Actions and contingent or liquidated Actions, and shall specifically cover any potential liability which may be based on any Environmental Laws.

The release shall also include a release of the rights provided under California Civil Code Section 1542 which states:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

As indicated by the initials below, it is Tenant's intention that it waive and relinquish any and all protections, privileges, rights and benefits it may have under Section 1542.

Tenant: \_\_\_\_\_

#### **Section 7. Storm Water**

Tenant represents and warrants that it shall comply with the use provisions in the Agreement and shall only perform activities on the Premises consistent with the Standard Industrial Classification ("SIC") code (or North American Industry Classification System ("NAICS") code if the SIC code is not available), listed below. SIC codes may be searched at <https://www.osha.gov/pls/imis/sicsearch.html>; NAICS codes may be searched at <https://www.bls.gov/bls/naics.htm>. Tenant shall seek and obtain prior written approval

from the Port before performing any activities on the Premises that are inconsistent with the below-referenced SIC or NAICS code.

SIC or NAICS Code: 7521

**Section 8.      Tenant Environmental Contact Information**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Work Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_



## **EXHIBIT G**

### **EXCEPTIONS AND OTHER CONDITIONS**

Only the following provision(s) which are checked shall apply:

- ☒ **Repairs, Alterations and Additions:** Excepting exterior walls, roof, and HVAC, which the Port agrees to repair.
- ☐ **Utilities:** Excepting water, gas, heat, electricity, fuel and power.

## EXHIBIT H

### LICENSEE INSURANCE REQUIREMENTS

1. Liability Insurance. Licensee shall maintain in full force throughout the Term, commercial general liability insurance providing coverage on an occurrence basis with limits of not less than \$5,000,000 each occurrence for bodily injury and property damage combined, \$5,000,000 annual general aggregate, \$5,000,000 products and completed operations aggregate, 1,000,000 personal and advertising injury liability limit and \$100,000 fire legal liability limit. Licensee's liability insurance policy or policies shall: (i) include coverage for premises and operations, products and completed operations, independent contractors, advertising injury, personal injury and blanket contractual liability including, to the maximum extent possible, coverage for the indemnification obligations of Licensee under this Agreement; (ii) provide that the insurance company has the duty to defend all insureds under the policy; and (iii) provide that defense costs are paid in addition to and do not deplete any of the policy limits. Such insurance shall be provided by an insurance form with terms and conditions at least as broad as contained in the standard Insurance Services Office (ISO) form CG0001 10 93.
2. Property and Business Interruption Insurance. Licensee shall at all times maintain in effect with respect to any Alterations and Licensee's Trade Fixtures and personal property, commercial property insurance providing coverage, on an "all risk" or "special form" basis, in an amount equal to the full replacement cost of the covered property. Licensee may carry such insurance under a blanket policy, provided that such policy provides coverage equivalent to a separate policy. During the Term, the proceeds from any such policies of insurance shall be used for the repair or replacement of the Alterations, Trade Fixtures and personal property so insured. Licensee shall also carry business interruption insurance insuring loss of income, including all Monthly Rental payable to the Port under this Agreement for a period of up to twelve (12) months if the property is destroyed or rendered inaccessible by a risk insured against by the property insurance Licensee is required to maintain under this Section 2 of this Exhibit H. Licensor shall be provided coverage under the insurance required by this section to the extent of its insurable interest and, if requested by Licensor, both Licensor and Licensee shall sign all documents reasonably necessary or proper in connection with the settlement of any claim or loss under such insurance. Licensor will have no obligation to carry insurance on any Alterations or on Licensee's Trade Fixtures or personal property.
3. Builder's Risk Insurance. When Licensee undertakes construction on the Property, Licensee shall maintain builder's risk insurance for one hundred percent (100%) of the completed replacement cost value of construction on an "all risk" or "special form" basis, in an amount equal to the full replacement cost of the covered property. If requested by Licensor, both Licensor and Licensee shall sign all documents reasonably necessary or proper in connection with the settlement of any claim or loss under such insurance.
4. Automobile Liability Insurance. Throughout the term, Licensee shall obtain and maintain automobile liability insurance (covering any owned, non-owned or hired automobiles) issued on a form at least as broad as ISO Business Automobile Coverage form CA 00 01 12 93. Such automobile liability insurance shall be in an amount not less than \$1,000,000 combined single limit for each accident for bodily injury and property damage.
5. Workers' Compensation and Employer's Liability Insurance. Throughout the term, Licensee shall obtain and maintain workers' compensation insurance and employer's liability insurance. Such workers' compensation insurance shall carry minimum limits as statutorily required under California law. Such employer's liability insurance shall be in an amount not less than \$1,000,000 each accident, \$1,000,000 each employee, and \$1,000,000 policy limit for bodily injury by disease.
6. Additional Insureds.

(a) With regard to the insurance required by Sections 1 and 4 of this Exhibit H, each policy of liability insurance required thereby shall: (i) contain a cross liability or separation of insureds provision; (ii) provide for a waiver of subrogation in favor of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, the Port of Oakland, its commissioners, officers, agents and employees; (iii) provide that the insurance is primary to and not contributing with, any policy of insurance carried by Licensor; and (iv) name the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, the Port of Oakland, its commissioners, officers agents and employees, and such other parties as Licensor may from time to time reasonably designate to Licensee in writing, as additional insureds. Such additional insureds shall be provided at least the same extent of coverage as is provided to Licensee under such policies with respect to liability arising out of the ownership, maintenance or use of the Premises and the Property.

(b) With regard to the insurance required by Sections 2 and 3 of this Exhibit H, above, such insurance shall include the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland" as additional insured as their interests may appear and loss payee; such insurance also shall contain a waiver of subrogation in favor of City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, the Port of Oakland, its commissioners, officers agents and employees, and such other parties as Licensor may from time to time reasonably designate to Licensee in writing, as additional insureds, and shall be primary insurance; no insurance or self-insurance of the Port shall be called upon to contribute to a loss.

(c) With regard to the insurance required by Section 5 of this Exhibit H, such insurance shall contain a waiver of subrogation in favor of City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, the Port of Oakland, its commissioners, officers agents and employees, and such other parties as Licensor may from time to time reasonably designate to Licensee in writing.

7. Requirements For All Policies. Each policy of insurance required under this Exhibit H shall: (i) be in a form, and written by an insurer, reasonably acceptable to Licensor; (ii) be maintained at Licensee's sole cost and expense; and (iii) require at least thirty (30) days' written notice to Licensor prior to any cancellation, nonrenewal or modification of insurance coverage, except such notice may be ten (10) days for non-payment of premium. Insurance companies issuing such policies shall have rating classifications of "A-" or better and financial size category ratings of "VI" or better according to the latest edition of the A.M. Best Key Rating Guide. All insurance companies issuing such policies shall be admitted carriers licensed to do business in the state where the Property is located. Any deductible amount under such insurance shall not exceed \$25,000. Licensee shall provide to Licensor, upon request, evidence that the insurance required to be carried by Licensee pursuant to this Exhibit H, including any endorsement evidencing the additional insured status and waiver of subrogation, is in full force and effect and that premiums therefor have been paid.

8. Updating Coverage. Licensee may be required to increase the amounts of insurance as required not more frequently than once every three (3) years, if Licensor's risk manager determines that the amount of insurance required under this Agreement is not adequate. Any limits set forth in this Agreement on the amount or type of coverage required by Licensee's insurance shall not limit the liability of Licensee under this Agreement.

9. Certificates of Insurance. Prior to occupancy of the Premises or the Property by Licensee, and not less than thirty (30) days prior to expiration of any policy thereafter, Licensee shall furnish to the Port Risk Management Department, certificate(s) of insurance satisfactory to the Port Risk Management Department, evidencing that the insurance required by this Section is in force, accompanied by any endorsement or other documentation showing the required additional insureds, loss payees and waivers of subrogation. Notwithstanding the requirements of this paragraph, Licensee shall, at Licensor's request, provide to Licensor

copies of insurance policies required to be in force at any time pursuant to the requirements of this Agreement. Certificates of Insurance must be sent to:

Port of Oakland  
Attn: Risk Management Dept.  
530 Water Street  
Oakland, Ca 94607  
Fax: (510) 627-1626  
Email: risktransfer@portoakland.com

## **EXHIBIT I**

### **ADDITIONAL PROVISIONS**

#### **On-Site Office**

The On-Site Office has been assigned the following phone number: (510) 451-8700. This phone number shall be the number for the Port Parking Facilities and shall be the number published by the Operator. This number shall remain the Port's number.

Licensee shall be responsible for providing janitorial services of the On-Site Office as its own cost and expense.

Licensee shall be subject to all other cleaning, maintenance, and repair provisions in the Parking Management Agreement.

#### **Valet Booths**

Licensee shall not install, paint, inscribe, or place any signs or placards in, upon, or around the Valet Booths without the prior written approval of the Director.