

REQUEST FOR PROPOSALS

Wireless Fidelity Communication and Internet (Wi-Fi) Services at Oakland International Airport



PORT OF OAKLAND

AVIATION PROPERTIES DEPARTMENT
OAKLAND INTERNATIONAL AIRPORT
1 AIRPORT DRIVE – TERMINAL 1, BOX 45
OAKLAND, CA 94621



PORT OF OAKLAND

REQUEST FOR PROPOSALS

Wireless Fidelity Communication and Internet (Wi-Fi) Services

The Port of Oakland (the "Port"), Oakland, California, is hereby soliciting competitive proposals for the purpose of selecting an experienced service provider to maintain and operate a wireless networking and connecting services system at Oakland International Airport (the "Airport" or "OAK"). The Successful Proposer will be required to furnish all labor, material, equipment, supplies, applicable taxes, insurance, bonding, and licenses to operate and maintain this Wi-Fi system.

Request for Proposals ("RFP") Information

RFP Title	Wireless Fidelity Communication and Internet ("Wi-Fi") Services at Oakland International Airport
RFP Type	Wi-Fi Services for Terminals 1 and 2 and surrounding vehicle parking lots and airfield ("Terminal Complex")
RFP Issue Date	Friday, September 28, 2018
Issuing Department	Aviation Properties Department; Aviation Division
Publication Date	Friday, September 28, 2018
Proposal Due Date	No later than 2:00 p.m. (PDT) on Friday, October 26, 2018

Instructions for Submitting Proposals

Submittal Address	Port of Oakland Aviation Properties Department Attn: Teddy Young Jr., Supervising Property Manager 1 Airport Drive – Box 45 Oakland, CA 94621
Submittal Copies	One (1) Original clearly marked " Original ", five (5) Copies marked " Copy ", and one (1) PDF electronic version on a flash memory device connectable to a computer by USB port.
Submittal Package Requirements	Proposal(s) must be <u>sealed</u> and have the following information <u>clearly marked</u> and visible on the outside of the envelope and/or box: <ul style="list-style-type: none">• Proposal Name• Name of Your Company ("Proposer")• Address• Phone Number
Late Submittals	Proposals received after the time and date stated above shall be returned unopened to the Proposer.

How to Obtain RFP Documents

Copies of the RFP documents may be obtained at:

Available	Location
Yes	Port of Oakland – Aviation Properties Department 1 Airport Drive Oakland, CA 94621 Monday through Friday 9:00 a.m. to 3:00 p.m. (510) 563-3676
Yes	Available at www.portofoakland.com/business/bids-rfps/

Questions about the RFP

Questions and/or Requests for Information ("RFI") can be submitted in writing via email as follows:

Port Representative	Teddy Young Jr., Supervising Property Manager Email: tyoung@portoakland.com
Question Submittal Due Date	Thursday, October 9, 2018 until 2:00 p.m. Please submit questions and or RFIs as soon as possible. No questions or RFIs regarding any sections and/or attachments to this RFP (as hereinafter defined) will be accepted after the above date. All pertinent questions will be responded to and answered in writing no later than the Response Date listed below.
Response Date	Thursday, October 12, 2018 All pertinent questions will be responded to via addendum which will be emailed to all prospective Proposers who submitted questions and also will be 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 ("Board") at a public Board meeting (or in cases where a recommendation for award does not require a public Board meeting, when the Successful Proposer is 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 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 Proposer's proposal being disqualified.

Full Opportunity

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

The Port reserves the right to reject any or all Proposals, to waive any irregularities or information not affected by law, to evaluate the Proposals submitted, and to award the opportunity (with the related *Space/Use Permit*) according to the submitted and accepted Proposal(s) that best serve the interests of the Port.

A handwritten signature in black ink, appearing to read "Brandon".

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

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Attachments:

Title		Must Be Returned with Proposal
1	Non-Collusion Declaration	Yes
2	Statement of Equal Employment Opportunity	Yes
3	RFP Acknowledgement and Signature Form	Yes
4	<i>This page was left intentionally blank</i>	N/A
5	Port of Oakland Airport Concession Disadvantaged Business Enterprise (ACDBE) Program A. Quarterly Reporting for Participation of Airport Concession Disadvantaged Business Enterprise B. Quarterly Report Certificate Letter	No (Note: Quarterly and final reports are required after contract award.)
6	Airport Concession Disadvantaged Business Enterprise (ACDBE) Program Affidavit	Yes
7	City of Oakland City Charter § 728 Living Wage Information A. Employer Self-Evaluation for Port of Oakland Living Wage B. Certificate of Compliance—Living Wage	No (Note: Attachment 7-A and 7-B are required after contract award.)
8	Statement of Living Wage Requirements	Yes
9	Insurance Requirements (Incorporated into the form of <i>Space/Use Permit</i>)	No
10	Insurance Acknowledgement Statement	Yes
11	Proposal Deposit	Yes
12	Form of <i>Space/Use Permit</i>	No

I. Project Overview

This Request for Proposals ("RFP") is issued by the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (the "Port") for the purpose of selecting an experienced service provider to provide Wi-Fi services throughout the interior and exterior areas of the various Terminal 1 and Terminal 2 buildings and surrounding vehicle parking lots and airfield at the Airport (the "Terminal Complex") that accommodate Airport passengers, Airport tenants and concessionaires, and the general public.

The Successful Proposer must provide complimentary (cost free) Wi-Fi services delivery model, and may propose a paid Wi-Fi services delivery model.

About the Port of Oakland

The Port was established in 1927 and oversees the Oakland seaport, Oakland International Airport (the "Airport" or "OAK"), Commercial Real Estate, and 20 miles of waterfront. The Oakland seaport is one of the top ten busiest container ports in the United States. The Port's real estate includes commercial developments such as Jack London Square and hundreds of acres of public parks and conservation areas. 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.

OAK is the fourth busiest airport in California and the second busiest in the San Francisco Bay Area. OAK serves over 13 million travelers annually with over 350 daily passenger and cargo flights and is the closest airport to the region's top business and tourism venues. OAK's air service roster provides service to over 60 destinations and is scheduled on 14 different airline brands – eight of which operate with OAK as their sole gateway to the San Francisco Bay region. International passenger volume is up over 150% from last year.

Approximately 4,000 to 5,000 daily users access the Wi-Fi network at the Airport.

II. Scope of Services

The Successful Proposer shall design, supply, install, operate and maintain a network that provides a public and complimentary (cost free) Wi-Fi system portal for the Terminal Complex at the Airport. The Wi-Fi system portal shall be compatible with the 802.11ac standard that supports the highest rate of data transmission with contemporary technology. Public access shall be limited to this portal, and linked to the Port's web pages posted thereon.

The portal shall support all wireless devices, including laptops, iPad and other personal devices used to access the available Wi-Fi service. The Successful Proposer shall be required to provide live, user support services, 24 hours a day, 7 days a week, and maintain a 99% satisfaction level of Wi-Fi service availability.

The Successful Proposer shall be responsible for all costs associated with installing, implementing, operating, and maintaining the Wi-Fi network, including as necessary repairs, upgrades and replacements of equipment throughout the term of the Space/Use Permit (SUP) and any subsequent extensions of the term.

The initial five (5) year term of the current SUP with the current Wi-Fi service provider, expired on June 30, 2017. This initial five (5) year term of the current SUP was subsequently extended for an additional one and a half (1.5) year period that will expire on December 31, 2018.

The Successful Proposer will be required to execute a SUP for a five (5) year term commencing on January 1, 2019 and expiring on December 31, 2023.

A. Goals of this RFP

This RFP is consistent with the Port's overall business strategy for the Airport and fulfilling its role as a low-cost and amenity-rich airport environment serving the San Francisco Bay Area. The Port's objective is to enter into a SUP with an experienced, customer service focused, and financially sound wireless service provider at the Airport that meet the following goals:

1. Maximize user experience, therefore, user satisfaction.
2. Provide high quality user experience with a user friendly Wi-Fi system that is intuitive for the user to operate, providing options for complimentary (no-cost) and options to provide paid higher speed/quality service.
3. The Successful Proposer will provide 24 hour, 7 day per week customer service to assist users with all service and access needs to OAK's Wi-Fi system. Any refunds due to service complaints shall be credited to the affected user's credit card within forty-eight (48) hours.
4. Participate to meet and make good faith effort to meet the Port's ACDBE goals.

B. Minimum Qualifications

The minimum qualifications for any Proposer are:

1. At least three (3) years of continuous experience in the operation and maintenance of a Wi-Fi network, providing service to a minimum of 50,000 users per month in the past 10 years at commercial airports, or other large public venues.
2. Demonstrated completion of a minimum of three (3) designs, installations, integrations, and implementations of systems for Wi-Fi services in the past five (5) years at commercial airports or other large public venues.
3. Must evidence the financial resources to finance, develop, and operate a Wi-Fi network as contained in this RFP. The financial condition of a third-party will not be considered unless such third-party signs the Proposal as Guarantor and agrees to guarantee each of the Proposer's obligations under a Guarantee in a form acceptable to the Port, and failure of such third-party to execute and return said Guarantee with the executed SUP will result in the forfeiture of the Proposer's surety and a potential change in the award of the SUP.
4. Any Proposer currently contracting with the Port must be in good standing for its Proposal to be considered responsive. For the purpose of this RFP, good standing refers to compliance with all contractual provisions, including payment of financial obligations. Each Proposer must demonstrate in its Proposal that it meets the minimum qualifications, or the Proposal will be rejected as non-responsive. The Port reserves the right to seek clarifications from Proposers and to conduct its own due diligence before ranking Proposals.

C. Schedule

	<u>DEADLINE</u>
• Issue Request for Proposals	September 28, 2018
• Pre-Proposal Conference	Not applicable
• Submit written questions	October 9, 2018
• Port's response to questions	October 12, 2018
• Submit Proposals (no later than 2pm)	October 26, 2018
• Interviews (if necessary) and ranking by the Evaluation Committee (location and specific dates to be determined)	October 31 – November 2, 2018
• Evaluate Proposals/Notify of Results	November 5-7, 2018
• Rankings submitted to Aviation Director	November 9, 2018
• Commencement of Space/Use Permit Term	January 1, 2019

The Port can modify the above dates as deemed necessary to be in the Port's best interests.

D. Pre-Proposal Conference

A Pre-Proposal Conference will NOT be held. Instead prior to October 9, 2018, the Port will consider questions, Request for Information (RFI), or comments submitted in writing concerning this RFP. Oral questions will not be accepted.

All written questions must be submitted to:

Port Representative, Teddy Young Jr.
E-mail at: tyoung@portoakland.com; or,
U.S. mail or express delivery to:
Aviation Properties, 1 Airport Drive, Oakland, CA 94621

In addition, Proposers may request a tour of the existing Wi-Fi equipment within Terminal 1 and Terminal 2 of the Airport, along with contractors, engineers and others on the Proposer's team on Thursday, October 4, 2018 from 1:00 p.m. to 2:00 p.m. by contacting Teddy Young Jr. by email at tyoung@portoakland.com.

E. Space/Use Permit

The form of *Space/Use Permit* ("SUP") is attached as **Attachment 12** to this RFP and should be carefully reviewed prior to submitting a Proposal. The Successful Proposer will be required to execute the SUP in substantially the same form attached, as amended by any Addenda to this RFP and as completed by the Port to conform to the Successful Proposer's Proposal. Questions or suggested changes concerning the SUP must be submitted in writing.

Term of the SUP shall be five (5) years, commencing on January 1, 2019 and expiring on December 31, 2023. The Port will insert the name, address and the address for service provided by Proposer on the Proposal Form and Acknowledgement of Addenda into the SUP for the Successful Proposer, based upon the Proposal.

Each Proposer must identify any changes required in the SUP by submitting such changes, including specific language, preferably as questions or RFI prior to submission of a Proposal, or in its Proposal. Proposals that request changes to the SUP are strongly discouraged and requested changes may adversely affect the ranking of the Proposal. Requested changes inconsistent with the terms of this RFP (including the SUP) may be grounds for disqualification and there is no obligation on the part of the Port to agree to any requested change.

Proposers seeking clarifications or changes to the SUP should avail themselves of the opportunity to submit written questions before the final date for questions specified in the Introduction section of this RFP, as such date may be amended by Addenda. Any proposed deviations from the form of SUP should be addressed by Proposer as questions, RFIs or comments, and delivered in writing to the Port's Representative for this RFP. The Port will endeavor to provide written responses, inasmuch as possible, and incorporate those comments and suggestions deemed to be acceptable to the Port in its sole discretion into the SUP by one or more Addenda to this RFP. Accordingly, each Proposer should assume that any comments and suggestions not incorporated by the Port into the form of SUP through an Addendum to this RFP are not acceptable to the Port and will not be incorporated into the final executed SUP. The SUP must be executed by the Proposer before the recommendation for award will be submitted to the Port Board of Port Commissioners.

F. Proposed Structure and Consideration

Proposers should submit a Proposal of structure and compensation that include a Fixed Monthly Fee, a Percentage of Gross Sales, or a combination of the two. Proposers should also submit a proposed structure and compensation for any future Distributed Antenna Systems (DAS), or future technologies and convergence.

III. Port Policy and Other Requirements

Successful Proposers will be required to comply with the following Port Policy Requirements:

A. Airport Concession Disadvantaged Business Enterprise (ACDBE) Program

The Successful Proposer is subject to the requirements of the U.S. Department of Transportation's regulations, 49 Code of Federal Regulations (CFR) Part 23 (the "ACDBE Rules") that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by the ACDBE Rules. The Successful Proposer shall also comply with all of the nondiscrimination requirements contained in the SUP.

The Port is currently administering a race neutral Airport Concession Disadvantaged Business Enterprise (ACDBE) program and as such is not establishing a contract-specific goal for this opportunity. The Port's overall ACDBE goal is 20.26% for federal fiscal years 2017-2020, and the Port expects to meet its ACDBE participation goals entirely through race-neutral means. The Port encourages all Proposers to take active race/gender neutral steps to include ACDBE's, including but not limited to local ACDBE's, in this opportunity. Race/gender neutral steps include: unbundling large contracts, subcontract work the Proposer may self-perform, providing capital and bonding assistance, business development programs and providing technical assistance. To facilitate the Port's compliance, each Proposer must in its Proposal identify those subcontractors or suppliers that are certified disadvantaged business enterprises under the ACDBE Rules, the percentage of each ACDBE's participation and each ACDBE's certification number.

The Port is required to report ACDBE accomplishments to the FAA, Part 23 - Uniform Report of ACDBE Participation) annually.

The Successful Proposer will be required to submit quarterly ACDBE attainment reports and letter (herein attached as **Attachments 5-A and 5-B**). The Successful Proposer shall carry out applicable requirements of the ACDBE Rules. Failure by the Successful Proposer to carry out these requirements will be a material breach of the SUP, which may result in the termination of the SUP or such other remedy as the Port deems appropriate.

The Successful Proposer shall cooperate with the Port in meeting its commitments and objectives with regard to ensuring nondiscrimination in the award and administration of the SUP and shall use its best efforts to ensure that barriers to participation of ACDBEs do not exist. In order for its participation to count toward ACDBE attainment, Proposers and/or its subcontractors must be certified as of the date of Proposal opening by an authorized agency of the California Unified Certification Program or www.dot.ca.gov/hq/bep/business_forms.htm

B. Insurance Requirements

All Proposers who plan on submitting a Proposal in response to this RFP must meet the Port's Insurance requirements incorporated into the SUP (**Attachment 12**), and must provide proof of insurance at the time of award of this opportunity. Proposers must include a statement (**Attachment 10**) with their Proposal agreeing to the Port's insurance requirements and indicate they will be able to obtain the proper insurances at the time of award of this opportunity.

C. Living Wage Policy

On March 5, 2002, the voters in the City of Oakland voted to add City Charter Section 728 ("§728") entitled "Living Wage and Labor Standards at Port-assisted Businesses." §728 requires certain Port Aviation and Maritime businesses that employ more than 20 employees working at the Port to pay nonexempt employees a Living Wage rate established by City Ordinance. The current Living Wage rate, which is adjusted annually, as of July 1, 2018 is at least \$13.75 with credit given to the employer for the provision to covered employees of health benefits, and \$15.78 without credit for the provision of health benefits. §728 also establishes a worker

retention policy, requires covered employers to submit quarterly payroll reports and requires covered employers to allow Port representatives access to payroll records in order to monitor compliance and labor organization representatives access to workforces during non-work time and on non-work sites. Additionally, Port Ordinance No. 3666, as amended by Ordinance No. 3719, additionally requires Port contractors to provide their employees with a minimum of 12 compensated days off per year ("Port Living Wage Ordinance"). The Successful Proposer, unless exempt under §728, must comply with §728 and the Port Living Wage Ordinance and any successor ordinance. When a contract is awarded, the Proposer will be required to fill out the attached Employer Self-Evaluation for Port of Oakland Living Wage Form (**see Attachment 7-A**) and Certificate of Compliance—Living Wage (**see Attachment 7-B**) and return them to the Social Responsibility Division. (i.e., do not include these forms in with your proposal). For more information, please call Connie Ng-Wong in the Port of Oakland's Social Responsibility Division at (510) 627-1390.

Proposer shall acknowledge reviewing the Port's Living Wage program and compliance, by submitting the Statement of Living Wage Requirement (**Attachment 8**) with their proposal.

IV. Submission Requirements

Please respond to the listed 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 with providing and operating a Wi-Fi network. Proposals must meet all requirements outlined in the minimum qualification section and in this section and must be received at the address indicated by the date and time specified in order to be considered by the Port. Please label your responses 1 through 7, in the order presented below. Please limit your Proposal to a reasonable number of pages. Your Proposal must be accompanied by the Proposal Deposit specified in **Attachment 11**.

Proposal Format:

There is no minimum or maximum number of pages for your Proposal, however refrain from including excessive brochures, attachments, and materials outside of the requirements of the RFP. Provide a reasonable number of pages to fully respond to this RFP printed on 8½" x 11" paper and formatted in no smaller than 10-point font. Each section shall be labeled according to the bolded section titles below. All Proposals must be bound.

1. **Company Information:** Provide the name of your Company and any proposed partners or subcontractors (including the name of any parent company) and their business address, email address, website (if any), Federal Tax ID number, and telephone and fax numbers. Please also provide:

- A. A brief statement of who is authorized to submit the Proposal on behalf of your Company. Please make sure that person signs and dates the statement.
- B. Names, titles, relevant experience, and duties of key personnel (including the local management team) for your Company who will be assigned to work under this opportunity. Please also provide an organizational/functional chart of relevant personnel.
- C. A brief history of your Company.
- D. Your company financial qualification to meet the obligations of this RFP.
- E. Provide a state that demonstrate your firm has met the Minimum Qualification listed in this RFP and if applicable, if the proposer is in good standing with the Port.

The Proposal must include two (2) years of audited financial statements for your Company (and if applicable, for any parent company and partner(s)).

2. **Knowledge and Experience:** Describe your Company's relevant knowledge, qualifications, and experience to undertake the opportunity described in this RFP. In particular, include the following information:

- A. Description of at least three (3) years of continuous experience in the operation and maintenance of a Wi-Fi network, providing service to a minimum of 50,000 users per month in the past 10 years at commercial airports, or other large public venues.
- B. Description of the completion of a minimum of three (3) designs, installations, integrations, and implementations of systems for Wi-Fi services in the past five (5) years at commercial airports or other large public venues.

3. **Plan and Approach:** Describe the approach, scope and level of services, methodology, and timeline to fulfill the requirements of this RFP. In particular, include the following information:

- A. **Proposal Timeline.** Describe all project milestones, including design, installation, integration, and implementation of systems for Wi-Fi services. Indicate that you have reviewed and accounted for all applicable local, state, and federal agency requirements in preparing your timeline.

- B. Proposal Concept and Design. Provide all relevant and available details of the concept and design.
- C. Management and Operations. Describe how your Company will operate and maintain these Wi-Fi Services in a way that maximizes user service and satisfaction to the traveling public, employees, and other visitors to the Airport
4. **Proposed Structure and Consideration:** Proposer should submit a Proposal of structure and compensation that include a Fixed Monthly Fee. Please note, the Fixed monthly fee can range from \$0 to any amount and should be in line with the services provided and the monies collected from user's. Proposer should also submit a proposed structure and compensation for any future Distributed Antenna Systems (DAS), or future technologies and convergence. Include the following rental structures and considerations:
- A. Fixed Monthly Fee
- The Fixed Monthly Fee ("FMF") amount proposed is \$_____ per year for a total of \$_____ over the five (5) year term of the SUP. Proposer will provide Wi-Fi services to all Airport users under the following structure. Please detail the following items or tiers of items: cost to users, sign-in advertising, paid membership or subscription, access speeds, and any other pertinent information. Please include estimated costs, advertising revenues, and membership or subscriptions revenues.
- B. DAS and Future Technologies
- Proposer will provide Wi-Fi services to all Airport users under the following structure and estimated implementation timeline. Please detail the following items or tiers of items: cost to Airport users, sign-in advertising, paid membership or subscription, access speeds, advantages to Port and passengers, timeline for implementation, and any other pertinent information. Please include estimated costs, advertising revenues, and membership or subscriptions revenues.
5. **Litigation Information:** Provide information describing any litigation, arbitration, investigations, or any other similar actions that your Company, the principals, the directors, and employees have been involved in during the last five (5) years relating to your Company's projects. Please list (a) name and court case identification number of each case, (b) jurisdiction in which it was filed, and (c) outcome of litigation (e.g. whether the case is pending, a judgment was entered, a settlement was reached or the case was dismissed). The Port will review the reason and timing of the action before it can determine if your Company can be considered for this opportunity. In the event that your Company has not been involved in any litigation, arbitration, investigations, or any other similar actions, the Proposal must contain an affirmative statement stating that fact. Failure to provide the litigation information may disqualify your Proposal.
6. **Adherence to Port Policy Requirements:** The Proposer must fill out all the forms included in this RFP (listed under the "Attachments" section and marked with a "Yes" in the column titled "Must Be Returned with Proposal"), and return them with your Proposal. By returning the listed forms, your Company is supporting and agreeing to the Port's Port Policy Requirements (listed in Section III (Port Policy Requirements).) Failure to provide any of the forms listed in this RFP may result in your Proposal being rejected for non-responsiveness.
7. **Exceptions to Form of Space/Use Permit:** The successful Proposer shall execute the Port's SUP, as substantially set forth in this RFP. Please specifically describe any exceptions to any written term within the SUP, the rationale for such exceptions, and proposed alternative language. Changes to the form SUP are discouraged.

Other Information:

1. Please review this RFP package to ensure that you have in your possession all of the necessary documents. The RFP, including all attachments and supporting materials, may be downloaded from the Port's website at www.portofoakland.com or www.oaklandairport.com. The documents included in this RFP package are:

1. Request For Proposals (RFP) Description
2. Attachments 1 through 12

Any Addenda to the RFP will be posted on the Port's website. Proposers should periodically check for Port posted Addenda, through October 26, 2018 (Due date for RFP submittals).

2. The submission of a Proposal shall be considered evidence that the Proposer has investigated all the conditions, provided information related to the services herein described and that said Proposer has ascertained that all areas are as specified to the extent possible and that said Proposer is aware of circumstances, procedures, and requirements affecting the conduct of the services to be provided, as well as the terms and conditions of the SUP to be entered into. The attention of the Proposer is specifically directed to, and Proposer will be conclusively presumed to have read and become familiar with, all the Proposal Documents. No claim for adjustment of the provisions of the concession to be awarded shall be honored on the ground that the Proposer was not fully informed as to the conditions that exist.
3. No verbal interpretation made to any Proposer as to the meaning or consequence of any portion of the Proposal or Proposal Documents shall be considered binding on the Port. Every request for clarification of the Proposal Documents shall be made in written or electronic form and delivered prior to October 9, 2018, to the Port Representative as follows:

Teddy E. Young Jr.
tyoung@portoakland.com
Port of Oakland – Aviation Properties
1 Airport Drive – Box 45
Oakland, CA 94621

4. Any response by the Port to a request by a Proposer for clarification will be made in the form of an addendum to this RFP. All Addenda so issued shall be posted on the Port's website and shall become part of this RFP and must be acknowledged in the Proposal. The Port will endeavor to notify by e-mail to the address of record of all parties to whom the RFP Documents have been issued of the issuance and posting of Addenda; provided, however, that the Port's failure to provide such notice shall not provide the basis for any protest by any Proposer. The Port will not be responsible for any instructions, interpretations or explanations received from any party other than in writing from Mr. Young, or his designated alternate.
5. The information contained in this RFP is provided for the convenience of the Proposer. It is the responsibility of the Proposer to assure itself that the information in the RFP is accurate and complete. The Port and the Board of Port Commissioners, and its employees and advisors, will have no liability arising out of the inaccuracy of any such information.
6. The Proposal must be submitted in such manner as to make it complete and free from ambiguity, without alterations or erasures. All blank spaces on the attachments must be filled in and the Forms properly signed in ink by the Proposer, or its legally authorized officer or agent. In case of conflict between words and numerals, the words, unless obviously incorrect, shall govern.

V. Evaluation Criteria

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

The Port will review all Proposals and determine if the Minimum Qualifications are met and that there is adherence to the Port Policy Requirements. This determination will be pass/fail. If a Proposer passes, they will be moved onto the next step of evaluation. In awarding the SUP for Wi-Fi services, the Port will evaluate a number of factors in combination. An Evaluation Committee will review and evaluate all Proposals received by the Port using the following selection criteria:

1. Must have a minimum of three (3) continuous years of experience in operation and maintenance of a Wi-Fi network, providing service to a minimum of 50,000 users per month in the past five (5) years at commercial airports, or other large venues – **up to 25 points;**
2. Must have completed a minimum of three (3) designs, installations, integrations and implementations of systems for Wi-Fi services in the past five (5) years at commercial airports, or other large public venues – **up to 20 points;**
3. Maximize user satisfaction as evidenced by the Proposed Structure and Consideration, including the design, installation, integration, and implementation of the Wi-Fi system; and the Plan and Approach – **up to 25 points;**
4. Maximize user satisfaction as evidenced by management experience, staffing levels, equipment maintenance schedules, meeting and exceeding user needs and responsiveness to problems and complaints – **up to 25 points;**
5. No changes in the SUP are preferred. Ranking to reflect range of changes from none (5 points) to substantial changes (0 points) – **up to 5 points;**

All Proposals received by the Proposal Due Date and which meet the RFP's requirements will be presented to the "Evaluation Committee" comprised of Port staff and/or external members. The Evaluation Committee will evaluate the Proposals and score all submissions according to the evaluation criteria above. The selection process may include interviews (at the discretion of the Evaluation Committee) for the top scoring Proposal(s). If interviews are held, the Port will notify the top scoring Proposer(s). Interview details and scoring requirements will be provided to selected Proposer(s) prior to the interviews.

VI. Additional Provisions

The terms "Company", "Consultant", "Contractor", "Proposer", "Seller", "Supplier", and "Vendor" whenever appearing in this RFP or any attachments, are used interchangeably to refer to the company or firm (and any of their partners) 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 and adjacent and related properties (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, California. 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 Proposer makes specific reference to data that is considered proprietary. Blanket designations of proprietary information shall be invalid. To the extent that a Proposer does not make specific reference to data that is considered proprietary, submission of an RFP constitutes the Proposer's express (i) grant and assignment of a perpetual, transferable (in whole or in part), non-exclusive royalty-free license to the Port for copyright, patent, or other intellectual property right (collectively referred to as "intellectual property"), and (ii) agreement that the Port may use any such intellectual property without charge for any lawful purpose in connection with other Port development projects, including without limitation the creation of derivative works and issuance of sublicenses.

C. Deadline for Receipt of Proposal

The Proposal must be sealed and delivered to the Submittal Address listed in the Introduction to this RFP no later than the time specified in the RFP. The Port suggests that the Proposal be hand delivered to the Submittal Address in order to ensure its timely receipt. Any Proposal 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 Port. Any Proposal 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

Under 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 opportunity. Any trade secrets or proprietary financial information, which a Proposer 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.

Proposer acknowledges and agrees that 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 and Proposer's Liability

If Proposer is awarded this opportunity, it will be required to agree to the indemnification clause contained in the SUP (**Attachment 12**). Proposer shall be responsible for any and all damages

to the Port's premises resulting from the negligent acts or willful misconduct of the Proposer's agents or employees.

F. 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 Proposers 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.

G. Race/Gender Neutral Solicitation

The requirements of 49 CFR Part 23 apply to this opportunity. It is the policy of the Port to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this opportunity. The Port encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

H. Port's Right to Modify; Amendments

The Proposer is 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 and development; to waive any informalities or minor irregularities in the RFP, and other inconsequential deviations from the RFP's requirements. The Board retains the right to award this opportunity in part or in total to the Proposer of its choice, and to decide to undertake the opportunity or to terminate the opportunity at any time prior to award of the opportunity and approval of SUP.

The Port may, at its sole discretion, issue amendments to this RFP at any time before the time set for receipt of Proposals. Proposer is 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 SUP. All questions or requests for clarification concerning material terms of this RFP or the SUP should be submitted in writing for consideration as an amendment.

I. Conflicts of Interest

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

J. Proposer to Bear Cost of RFP Response

All costs directly or indirectly related to responding to this RFP, attending any Mandatory Pre-Proposal Meetings, selection meetings, and interviews are entirely the responsibility of the Proposer and shall not be chargeable to the Port.

K. **Compliance With Laws**

The Proposer 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 SUP.

L. **Proposer's Relationship**

The Proposer's relationship to the Port shall be that of independent contractor and not deemed to be a partner, joint venture, principal, agent, employer, or employee of the Port.

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

The Port has absolute discretion with regard to acceptance and rejection of any Proposal. In order to be considered, the Proposer waives the right to bring legal proceedings challenging the Board's choice of the award.

N. **False Statements**

False statements in a Proposal will disqualify the Proposal.

O. **Taxes**

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

P. **Withdrawal or Modification of Offers**

The Proposer may modify a Proposal in writing at any time before the deadline for submission of a Proposal. The Proposer may withdraw a Proposal at any time after the Proposal Due Date, subject to forfeiture of the Proposal Deposit.

Q. **Acceptance**

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

R. **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 RFP, including any attachments, letters of transmittal, or any other related documents. The Proposer must rely solely on its own independent assessment as the basis for the submission of any Proposal made.

S. **Award Consideration**

The Port shall not be bound to accept the highest financial Proposal and will award the opportunity (if any) to the Company selected through the competitive process (and any subsequent interviews) outlined in this RFP.

T. **Protest Procedures**

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

1. Any protest must be submitted in writing to the Secretary of the Board, by 5:00 p.m. of the fifth (5th) business day following publication of the identity of the apparent Successful Proposer (or of notice of intended award, if such notice is issued).
2. The protest must include the name, address, and telephone number of the person representing the protesting party.
3. The initial protest document must contain a detailed and complete statement of the basis for the protest, including (without limitation) all facts, supporting documentation, legal authorities, and argument in support of the grounds for the protest; any matters not set

forth in the written protest shall be deemed waived. All factual contentions must be supported by competent, admissible, and creditable evidence.

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



PORT OF OAKLAND

Attachment 1: Non Collusion Declaration

RFP: Wi-Fi Services at Oakland International Airport

(To Be Executed By Proposer and Submitted With Proposal)

I, _____, declare as follows:

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

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

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

Executed this _____ day of _____, 201__, at

_____, _____

Signature

Authority: Public Contract Code § 7106; Code of Civ. Proc. § 2015.5



PORT OF OAKLAND

Attachment 2: Statement of Equal Employment Opportunity

RFP: Wi-Fi Services at Oakland International Airport

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

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

BY: _____
Date

Print Name



PORT OF OAKLAND

**Attachment 3: RFP Acknowledgement and
Signature Form**

RFP: Wi-Fi Services at Oakland International Airport

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 I am familiar with Section 1090 and Section 87100 et seq. of the California Government Code, and that I do not know of any facts that constitute a violation of said sections in connection with the proposal.

Proposer Name and Title: _____

Company Name: _____

Address: _____

Telephone: _____ Fax: _____

Email: _____ Cell Number: _____

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

Federal Tax Identification Number: _____

Authorized Signature: _____ Date: _____

Decline RFP:

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

Reason: _____

Company: _____ Address: _____

Name: _____ Signature _____ Date: _____



Attachment 4:

RFP: Wi-Fi Services at Oakland International Airport

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PORT OF OAKLAND

**Attachment 5-A: Quarterly Reporting for Participation of Airport Concession
Disadvantaged Business Enterprises (ACDBE)**

Prime Concessionaire Submitting Report: _____ For Quarter Ending: _____

Name and Address of Prime Concessionaire and Airport Concession Disadvantaged Business Enterprise (ACDBE)	Telephone and Fax Numbers Email Address	ACDBE * Certification Number	Description of Prime and ACDBE Services	Dollar Amount of Sales, Purchase or Lease of Goods and Services	Lease Amount Or Minimum Annual Guarantee	Total Lease Amount

*The certified firm is issued a certificate by the California Unified Certification Program (CUCP). ACDBE status may be obtained by accessing the CUCP website: www.dot.ca.gov/hq/bep/index.htm or by calling (916) 324-1700 or (866) 810-6346. If the firm was certified as an ACDBE at the time it started work on this lease, but was decertified before completing its portion of the work, enter the dollar amount of ALL services performed by the firm, INCLUDING SERVICES PERFORMED AFTER THE CERTIFICATION DATE. This report must be submitted with the Form of Quarterly Report Certificate. For questions regarding this form, contact Lila Zinn at (510) 627-1485.



PORT OF OAKLAND

Attachment 5-B: Quarterly Report Certificate Letter

(Below is a sample Quarterly Report Certificate Letter that must be filed with the quarterly Airport Concession Disadvantaged Business Enterprise Report)

(Print on Company Letterhead)

(Date)

Mr. Bryant L. Francis
Director of Aviation
Port of Oakland
530 Water Street
Oakland, CA 94607

Dear Mr. Francis:

I, _____, do hereby certify as follows:

1. I am the [**insert a title - *Chief Financial Officer***] of _____, the Permittee/Lessee under a Permit/Lease with the Port of Oakland for (*fill in type of service*) with dated _____, 20xx (the "Permit/Lease").

2. The attached Quarterly Report of the Permittee/Lessee for the quarter ending _____, 20__, was prepared in accordance with all of the applicable requirements of the Permit/Lease, and all of the information contained in this Quarterly Report is true and correct.

Sincerely,

Signature

Name

Title



PORT OF OAKLAND

**Attachment 6: Airport Concession
Disadvantaged Business Enterprise (ACDBE)
Program Affidavit**

RFP: Wi-Fi Services at Oakland International Airport

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

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

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

BY: _____ Date

Print Name

Title



PORT OF OAKLAND

**Attachment 7: City of Oakland City Charter
§ 728 and Port Living Wage Policy
Information**

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

- 1) Pay all non-exempt employees the living wage rates (As of July 1, 2018, \$15.78 without health benefits or \$13.75 with health benefits). Port Ordinance No. 3666, as amended, also requires that covered businesses provide employees at least twelve compensated days off per year, including holidays.
- 2) Pay at least \$2.03 per hour worked toward the provision of health care benefits for employees and/or their dependents, if the employer claims credit for health benefits.
- 3) **Provide written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of these regulations.** The notification shall be provided in English, Spanish and other languages spoken by a significant number of the employees, and shall be posted prominently in communal areas at the work site. A copy of said notification is available from the Port Division of Social Responsibility.
- 4) Provide all employees earning less than \$12/hour notification in English, Spanish, and any other language spoken by a significant number of employees of their right to advance Earned Income Credit payments.
- 5) **Maintain a list of the name, address, date of hire, occupation classification, rate of pay, benefits paid for each of its employees, and compensated time off - and submit this list to the Port's Social Responsibility Division, Attention: Connie Ng-Wong, Living Wage Compliance Officer, by March 31st, June 30th, September 30th, and December 31st of each year.** If a covered employer has obtained a waiver from the Port Board of Directors, then the employer must still submit an annual payroll report covering each of its employees by December 31st of each year. Failure to provide the list within five days of the due date will result in a penalty of \$500 per day. Covered employers shall maintain payrolls and basic records for all employees and shall preserve them for a period of at least three years after the close of the compliance period.
- 6) Require subcontractors, tenants and subtenants, or licensees who are covered by these requirements to comply with the provisions of these regulations. **Covered employers shall be responsible for including language committing the subcontractor's, tenant's or licensee's agreement to comply, in the contract with the subcontractor.** Covered employers shall submit a copy of such subcontracts or other such agreements to the Port Division of Social Responsibility.
- 7) Permit authorized Port representatives access to work sites and, with employee consent, relevant payroll records for the purpose of monitoring compliance with these regulations, investigating employee complaints of non-compliance and evaluating the operation and effects of these regulations, including the production for inspection and copying of its payroll records for any or all of its employees for the applicable compliance period. Permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas to ensure compliance.

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



PORT OF OAKLAND

**Attachment 7-A: Employer Self-Evaluation
for Port of Oakland Living Wage**

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

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

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

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

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

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

_____ Company Name	_____ Signature of Authorized Representative
_____ Address	_____ Type or Print Name & Title
_____ Area Code and Phone	_____ Email Address
_____ Name of Primary Contact	_____ Date
_____ Project Name (Be Specific)	

Submit Completed Checklist To:

Connie Ng-Wong

Port of Oakland

Social Responsibility Division

530 Water Street

Oakland, CA 94607

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

Email: cng-wong@portoakland.com



PORT OF OAKLAND

Attachment 7-B: Certificate of Compliance – Living Wage

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

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

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

Please check the appropriate box and sign below

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

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

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

Company Name	Signature of Authorized Representative
Address	Type or Print Name & Title
Phone and Email	Date
Project Name (Be Specific)	

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



PORT OF OAKLAND

Attachment 8: Statement of Living Wage Requirements

RFP: Wi-Fi Services at Oakland International Airport

I hereby certify that _____ (Legal Name of Proposer/Supplier/Consultant/Contractor), has reviewed the Living Wage Requirements, included herein as **Attachment 7** to this Request for Proposal and will comply with said requirement. Upon execution of an Agreement, the selected consultant will be required to complete the attached Employer Self-Evaluation Form and Certificate of Compliance – Living Wage Form of this Request for Proposal, and submit them to the Social Responsibility Division.

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

Signature

Print Name

Title

Date



PORT OF OAKLAND

Attachment 9: Insurance Requirements

RFP: Wi-Fi Services at Oakland International Airport

All of the Port's Insurance requirements are incorporated into the *Space/Use Permit* attached to this Request for Proposal (**Attachment 12**).



PORT OF OAKLAND

Attachment 10: Insurance Acknowledgement Statement

RFP: Wi-Fi Services at Oakland International Airport

I hereby certify that _____ (Legal Name of Proposer) agrees to meet all of the Port's Insurance requirements included in the *Space/Use Permit* attached to this Request for Proposal (**Attachment 12**) and Proposer will be able to evidence such insurance when and if awarded the contract and will provide proof of insurance at the time of project award if awarded the contract.

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

BY: _____
Date

Print Name

Title



PORT OF OAKLAND

Attachment 11: Proposal Deposit

Deposit Required

Each Proposal must be accompanied by a Proposal Deposit in the form of a check in the amount of \$5,000, made payable to the Port of Oakland.

NOTE: In the event the Port cancels the RFP process or the award of the *Space/Use Permit* prior to its execution, all Proposers' Proposal Deposits will be returned within thirty (30) days.

Successful Proposer's Proposal Deposit

The Port will return or refund the Successful Proposer's Proposal Deposit within thirty (30) days after both the Port and the Successful Proposer have executed the *Space/Use Permit* so long as the Successful Proposer executes and returns the *Space/Use Permit* by the date required by the Port.

If the Successful Proposer...	Then the Proposal Deposit will be...
Executes and returns the <i>Space/Use Permit</i> by the date required by the Port	Refunded to the Successful Proposer
Fails to execute and return the <i>Space/Use Permit</i> by the date required by the Port	Forfeited to and retained by the Port as liquidated damages

NOTE: Claims by Proposer of error or mistake shall not be a basis for recovery of the Proposal Deposit.

Unsuccessful Proposer's Proposal Deposit

Proposal Deposits from the unsuccessful Proposer(s) will be returned or refunded within thirty (30) days of the Board's award of the opportunity to the successful Proposer.

In no event, however, shall the unsuccessful Proposer's Proposal Deposit be held by the Port beyond a period of one-hundred-twenty (120) days after the Proposal Due Date.



PORT OF OAKLAND

Attachment 12: Space/Use Permit

(attached on following page)

SPACE/USE PERMIT

Between

**CITY OF OAKLAND,
A MUNICIPAL CORPORATION,
ACTING BY AND THROUGH ITS
BOARD OF PORT COMMISSIONERS**

And

{PERMITTEE}

{DESCRIPTION}

Dated

January 1, 2019

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SPACE/USE PERMIT

For the better promotion of commerce and navigation and the development of the Port of Oakland and Oakland International Airport for the benefit of the public, the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners, by its execution hereof, hereby authorizes the person or entity identified in Paragraph 1 below, hereinafter referred to as “Permittee,” to conduct business and/or occupy space at Metropolitan Oakland International Airport, hereinafter referred to as the “Airport,” for the purpose or purposes and on the terms and conditions hereinafter stated in this Space/Use Permit (“Permit”)

As used in this Permit, the term “Port” shall mean Port of Oakland, which consists of the Port Department of the City of Oakland (“City”), under the exclusive control and management of the Board of Port Commissioners (the “Board”). In any case under this Permit that Port may or shall take any action, Port’s Director of Aviation (sometimes hereafter the “Director”) is authorized to take such action unless this Permit provides for action by the Board or by resolution or ordinance, and except as otherwise provided now or hereafter by law, the Charter of the City, or by resolution or ordinance of the Board. Capitalized terms used in this Permit and not otherwise defined shall have the meaning ascribed to such terms in Paragraph II of Attachment “A” hereto and incorporated herein.

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

Permittee Name:

Street Address:

City/State/Zip:

Contact Name:

Contact Telephone:

Contact E-Mail Address:

Contact Fax Number:

Agent for Service Name:

Agent Street Address:

Agent City/State/Zip:

Agent E-Mail Address:

2. **Permitted Uses.** The permitted uses include only those services attached hereto as Attachment G (Description of Permitted Use Requirements) (the “Permitted Uses”).

3. **Assigned Space to be Occupied.** This section does apply. If no Assigned Space is identified in this Section 3, then all references to Assigned Space in this Permit shall be inapplicable to Permittee and shall be deemed deleted from this Permit.

Location [†]	Class	Sq. Ft.
1. Core room: 15 sq. ft. in Rm. #TBD	N/A	15
2. Antennae: Various as located on the Coverage Plan.	N/A	N/A

The Assigned Space is (check all that apply):

Exclusive ☐
Preferential ☐
Common Use ☒

Space identified as “Exclusive” in this Section 3 shall be exclusive use space, of which Permittee shall have exclusive use during the Term, subject to the provisions of Section 8 below.

Space identified as “Preferential” in this Section 3 shall be preferential use space, of which Permittee shall have first priority of use for its own operations, subject to the provisions of Section 8 below. Port shall retain the right to schedule the use of this space so long as such use does not interfere with Permittee’s scheduled operations in such space.

Permittee agrees that the space identified as “Common Use” in this Section will be in such locations and will be available for use by Permittee at such times as shall be designated from time to time by the Port, subject to the provisions of Section 8 below. Permittee agrees that such Common Use space may be assigned by the Port to other operators at different times. Port reserves the right to reassign such Common Use space from time to time as may be warranted by then existing operational conditions.

Nonexclusive Preferential Rights in Apron Area. Permittee acknowledges and agrees that Permittee’s rights to use the aircraft apron, if any, identified on Exhibit 1 attached hereto (the “Apron Area”) shall not be exclusive and, to the extent permitted by the provisions of the Port’s existing or future agreements with the United States of America granting federal funds for the development of the Airport, shall be a non-exclusive preferential right (as hereinafter defined). “Nonexclusive preferential right” means that the Assistant Director of Aviation or his or her designee may permit the use of the Apron Area by members of the general public so long as such use does not unreasonably interfere with Permittee’s use of the Apron Area. As used herein, “members of the general public” does not include a competitor of Permittee.

4. **Consideration.** This section does apply. In consideration for the rights granted hereunder by Port, Permittee hereby agrees to pay to Port monthly, in advance, on the first (1st) day of each calendar month during the Term hereof, the Minimum Monthly Payment set forth in Section 4.1 below. In the event that the Term of this Permit shall commence or end on any day other than the first and last day, respectively, of a calendar month, such consideration due

hereunder for a portion of such month shall be prorated on a per-diem basis for such month, and the first payment shall be due on or before the Commencement Date (as defined in Section 6.2 below). As additional consideration for the rights granted hereunder by Port, Permittee hereby agrees to pay to Port the Percentage Fees, if any, as specified in Section 4.2 below and in accordance with the provisions of Paragraph I of Attachment “A” to this Permit. Amounts payable by Permittee under this Section 4 are sometimes collectively referred to as “Rent”.

4.1 **Consideration – Minimum Monthly Payment.** The Minimum Monthly Payment is \$ _____, subject to adjustment as provided in Section 4.2 and Section 4.5 below (the “Minimum Monthly Payment”).

4.2 **INTENTIONALLY OMITTED.**

4.3 **Remitting Payments.** All payments due under this Section 4 shall be remitted to: Port Department of the City of Oakland, P.O. Box 12545, Oakland, California 94604, or electronically to the following address:

Credit to: JPMorgan Chase Bank NA
San Francisco, California U.S.A. 94105
Wire ABA/ACH Routing #322271627
In favor of: Port Department of the City of Oakland
Account # 571803670

Reference: Port Department of the City of Oakland
(may add invoice no. or other identification)

or to such other address as shall be designated by Port by written notice to Permittee in accordance with the requirements of Paragraph Q of Attachment “A” to this Permit. To ensure proper credit for electronic transfers, Permittee shall notify the Port by facsimile transmission promptly after any such remittance, at (510) 839-7805, attention: Cashier / Financial Services Division, including the amount of the transfer, the date of the transfer and the invoice number or other identifying information. All such payments shall be made in lawful money of the United States, without demand, set-off or deduction of any kind.

4.4 **Tenant Improvement Administration Fee.** For Tenant Improvements costing in excess of \$25,000, the Tenant Improvement Administration Fee (“TIA Fee”) shall be the greater of \$1,000 or 1% of the cost of the alterations or improvements to the Assigned Space, up to \$1,000,000 in such cost, plus .05% of such cost over \$1,000,000. Permittee shall pay to Port the applicable TIA Fee and Port’s cost for outside consultants at the time and in the manner described in Paragraph A(4) of Attachment “A” to this Permit.

4.5 **INTENTIONALLY OMITTED.**

5. **Performance Deposit.** Permittee shall maintain with the Port a performance deposit (the “Performance Deposit”) in the initial amount of \$50,000, complying with and subject

to the provisions of Paragraph T of Attachment “A” to this Permit, including without limitation the provisions of Paragraph T of Attachment “A” relating to adjustments to the amount of Permittee’s Performance Deposit. The existence or amount of the Performance Deposit shall not limit Permittee’s liability or the Port’s rights in the event Permittee fails to make any payments to the Port required by this Permit or to comply with any of Permittee’s other obligations under this Permit.

6. Term and Commencement Date.

6.1 **Term.** The period of use or occupancy permitted under this Permit (the “Term”) will commence on the Commencement Date and expire on December 31, 2023. Notwithstanding the foregoing, however, either party hereto shall have the right to terminate this Permit prior to the date upon which it would otherwise expire by giving the other party at least one hundred and eighty (180) days prior written notice of its intention to do so, and the Port shall have the right, by written notice to Permittee, to terminate this Permit at any time after any portion of the Assigned Space or the improvements thereon have been damaged by any casualty or taken by any public or quasipublic- authority under the power or threat of eminent domain.

6.2 **Commencement Date.** The date on which the term of this Permit shall commence (the “Commencement Date”) shall be (specify one):

☐ The date the Permit is executed by the Permittee and the Port, and signed by the Port Attorney.

☒ January 1, 2019

7. **Insurance Requirements.**

Permittee shall maintain the following minimum insurance coverages in accordance with the requirements of Paragraph L of Attachment “A” to this Permit: ☒ Business Automobile

Liability

☐ Aircraft Liability

☐ Aircraft Hangarkeepers’ Liability

☒ Commercial General Liability

☒ Fire Legal Liability

☒ Premises or Operations liability

☒ Completed Operations and Products Liability

☒ Contractor’s Pollution Liability

☒ Workers Compensation

☒ Employers’ Liability

☒ Professional Liability (Including Technology, Network, Media, and Privacy coverage)

☒ All risk property insurance covering Permittee’s additions, alterations to the leased space (including builder’s risk), Permittee’s furniture, fixtures, equipment and loss of rents

\$5,000,000 combined limit for bodily injury and property damage, each accident

\$5,000,000 combined limit for bodily injury and property damage, each accident

\$5,000,000 combined limit for bodily injury and property damage, per occurrence and aggregate

\$5,000,000 combined limit for bodily injury and property damage each occurrence and \$5,000,000 annual aggregate

\$100,000 any one fire sublimit to

Commercial General Liability above

Included in Commercial General Liability above

Included in Commercial General Liability above

\$1,000,000 per occurrence and annual aggregate (Required if use involves construction or digging)

Statutory limits, as required by the laws of California.

\$1,000,000 each accident, \$1,000,000 bodily injury each employee, and \$1,000,000 policy limit for bodily injury by disease

\$5,000,000 each claim and annual aggregate

Replacement cost value of the property covered and 12 months loss of rents

Written binders are acceptable as interim evidence. Operations or occupancy may be interrupted without proper evidence. Send certificates to:

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

Evidence of insurance coverage required by this Section 7 or by Paragraph L of Attachment "A" to this Permit is to be kept on file with Port in accordance with the requirements of Paragraph L of said Attachment "A".

8. **Relocation Right.** The Port shall have the right to reassign or relocate Permittee from and to any Assigned Space under this Permit, whether Exclusive, Preferential or Common Use, upon giving of thirty (30) days prior written notice to Permittee, after which the provisions of Paragraph O of Attachment "A" to this Permit shall become applicable to Permittee. No relocation assistance or benefits shall accrue to Permittee resulting from such reassignment or relocation.

9. **Permittee's Operating Hours.** This section does apply. If this Section 9 is applicable to Permittee, then Permittee agrees to conduct the Permitted Uses, with an adequate staff, and only from the Assigned Space, during all of the following times, subject to change upon written notice from the Director:

Twenty-four (24) hours a day, seven (7) days a week

10. **Maintenance and Repair.** This section does apply. Port shall have the following maintenance and repair obligations:

Structural repairs not caused by the negligence or willful misconduct of Permittee, its officers, agents, employees, contractors, subcontractors, subtenants, or invitees or licensees (but excluding invitees or licensees who are merely subscribers to or customers of Permittee's wireless services).

11. **Utilities.** This section does not apply. Port shall provide the following utilities to the Assigned Space (the cost of which may be separately metered or it may be part of the Rent, or Port may prorate such cost among multiple tenants occupying the same Assigned Space or among Permittee and other tenants if a common meter for any utility is shared by the Assigned Space and any space assigned to other tenants), which Permittee agrees to pay promptly after its receipt of Port's invoice:

12. **Sublicense.** This section does not apply. The sublicense processing fee for Permittee's sublicense of any of the Assigned Space shall be \$2,500. Prior to entering into any sublicense, Permittee shall pay to Port the sublicense processing fee and shall comply fully with the provisions of Paragraph M of Attachment "A" of this Permit.

13. Permittee's Due Diligence; No Representations or Warranties by Port. Permittee acknowledges that it has conducted its own due diligence investigation of its prospects for successfully operating its Permitted Uses at the Airport, and has made its own determination of the accuracy of any information provided by Port with respect to the financial results of any prior operator of any similar business at the Airport, that Port has made no representations or warranties to Permittee with respect to any of such matters, and that all prior discussions between Port and Permittee with respect to such matters are superseded by this Permit pursuant to Paragraph FF(9)(a) of Attachment "A" to this Permit. In addition, Permittee must perform its own due diligence on all matters relating to the Assigned Space, including all technical and construction matters. Any "as-built" drawings, utility matrixes, or other technical information (including but not limited to architectural drawings or AutoCAD or other computer files) provided by the Port may not be accurate or complete. Permittee's use of or reliance on any such information shall be at its sole risk, and the Port shall have no liability arising therefrom.

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

(a) Permittee agrees that within 30 days after the expiration of each calendar quarter during the Term of this Permit, it will provide a report to the Port, in substantially the form set forth on Exhibit 6 or another form acceptable to the Port, describing the Gross Receipts in such calendar quarter of each such ACDBE (and each substitute ACDBE that may be obtained pursuant to subparagraph (c) below), in each case calculated in accordance with the requirements of this Permit. If there is no ACDBE participation a quarterly report must still be submitted, in substantially the form set forth on Exhibit 7 hereto.

(b) Permittee agrees that it will also submit within the same period described in subparagraph (a) above a quarterly report to the Port, in the form of the Sales Report required to be submitted by Permittee to Port pursuant to Paragraph I(3) of Attachment "A to this Permit, describing the Permittee's total Gross Receipts in such calendar quarter under this permit, calculated in accordance with the requirements of this Permit.

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

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

15. Port Not Liable for Employment Issues. Nothing contained in this Permit shall be deemed or construed by the parties hereto or by any third party as creating an employment, agency, joint venture or partnership relationship between Port and Permittee. All employment arrangements and labor agreements are, therefore, solely Permittee's and its authorized sublicensee's rights, obligations and liabilities, and Port shall have no obligations or liability with respect thereto. Permittee and Permittee's authorized sublicensees shall defend, indemnify, and hold Port harmless from any claims or causes of action of whatever nature that may be brought by present or former employees, present or former independent contractors, or present or former labor unions, including any labor unions seeking to represent the employees or applicants for employment by Permittee or any of its authorized sublicensees.

16. Port Living Wage Requirements. Permittee shall comply with all of the provisions of Section 728 of the Charter of the City and the Port's living wage ordinance (the "**Living Wage Law**").

17. Additional Terms and Conditions. Permittee does hereby further agree to abide fully by all of the Additional Terms and Conditions set forth in Attachments "A" through "E" to this Permit, which are incorporated herein and form a part of this Permit. If the Assigned Space is located in the Buildings known as Buildings 367 or 368 at the Airport ("Terminal 2 Extension"), then Permittee shall also be obligated to comply with the provisions contained on Attachment "F", which is also incorporated herein and forms a part of this Permit.

18. Amendments. Modifications to this Permit may be made by an addendum thereto, or by the inclusion of Special Conditions, executed by Permittee and Port, or unilaterally by Port on prior written notice to Permittee accompanied by a revised Attachment or the submission and addition of Special Conditions executed only by Port and specifying an effective date for such revised Attachment or Special Conditions, which effective date shall not be earlier than thirty (30) days after the date of such written notice.

19. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, PERMITTEE AND PORT DO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATED TO, ARISING OUT OF OR IN CONNECTION WITH THE TERMS, CONDITIONS AND COVENANTS OF THIS PERMIT.

20. Noise Abatement. This section does not apply. If applicable, Permittee shall execute the Acknowledgment in Exhibit 4.

21. **Special Wireless Fidelity Communication Services Provisions.** See attached Attachment G (Description of Permitted Use Requirements). Permittee has been awarded this Permit based, in part, on its covenants and representations and warranties included in the Proposal for Wireless Fidelity Communication and Internet Wi-Fi Services at Oakland International Airport dated _____ and attached hereto as Exhibit 5 (“Proposal”), and Port has relied thereon. All representations, warranties, and covenants in such Proposal are incorporated herein by reference as through fully set forth herein. In the event of any actual conflict between any provision in this Permit, Attachment G , and/or the Proposal, any such conflict shall be resolved in the following order of precedence: (1) the Permit, (2) Attachment G (Description of Permitted Use Requirements), and (3) the Proposal.

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

By: _____
J. Christopher Lytle
Executive Director

PERMITTEE:

a

By: _____

Name: _____

Title: _____

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

Approved as to form and legality this
____ day of _____, 20__.

Port Attorney
Port Resolution/Ordinance No.

P.A. # _____

For corporations only: Chairman, President or Vice
President

Attest:

By: _____

Name: _____

Title: _____

If corporation: Secretary, Assistant Secretary, Chief
Financial Officer, Treasurer or Assistant Treasurer.
This Attest signature block is only required for
corporations.

ATTACHMENT “A”

OTHER TERMS AND CONDITIONS OF SPACE/USE PERMIT

A) Maintenance, Repair, and Alteration of Assigned Space; Signage.

- (1) EXCEPT WITH RESPECT TO THOSE CONSTRUCTION OBLIGATIONS OF PORT, IF ANY, SPECIFIED AS “PORT WORK” IN THE WORK LETTER ATTACHED HERETO AS EXHIBIT 3 (THE “WORK LETTER”), PERMITTEE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT PORT IS LEASING THE ASSIGNED SPACE TO PERMITTEE ON AN “AS IS WITH ALL FAULTS” BASIS AND THAT PERMITTEE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM PORT OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THE ASSIGNED SPACE, INCLUDING: (i) the quality, nature, adequacy and physical condition and aspects of the Assigned Space, including, but not limited to, landscaping, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Assigned Space, (iv) the development potential of the Assigned Space, and the use, habitability, merchantability, or fitness, suitability, value or adequacy of the Assigned Space for any particular purpose, (v) the zoning or other legal status of the Assigned Space or any other public or private restrictions on use of the Assigned Space, (vi) the compliance of the Assigned Space or its operation with all applicable Laws (as defined in Paragraph H(1) below) including without limitation, the ADA Requirements (as defined in Paragraph A(4) below), (vii) the presence of Toxic Materials (as defined in Port Environmental Ordinance No. 4345) on, under or about the Assigned Space or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any improvements in the Assigned Space, (ix) the condition of title to the Assigned Space, and (x) the agreements affecting the Assigned Space, including covenants, conditions, restrictions, ground leases, and other matters or documents of record or of which Permittee has knowledge or would have knowledge with due investigation. The taking possession of the Assigned Space by Permittee shall, in itself, constitute acknowledgement by Permittee that the Assigned Space is in a condition satisfactory for its use; provided, however, that notwithstanding the foregoing acknowledgment, the Port acknowledges that the Permittee has not conducted an audit or inspection of the Assigned Space that would disclose the presence of, or contamination of the Assigned Space by, Toxic Materials and therefore, except as expressly provided in Port Environmental Ordinance No. 4345, the Permittee bears no responsibility for the removal, remediation or clean-up of Toxic Materials that were on the Assigned Space prior to Permittee taking possession thereof.
- (2) Except as otherwise expressly provided in Section 10 of this Permit or in this Paragraph A(2), the Port shall have no duty to maintain the Assigned Space or any improvements located thereon. Port shall maintain that portion of the HVAC system that serves the Assigned Space but that is located outside of the Assigned Space. Permittee shall be responsible to maintain all duct work within the Assigned Space. Permittee agrees that during the Term of this Permit, at its own cost and expense, it shall keep and maintain the Assigned Space in clean and first-class order and repair and in compliance with all applicable Laws, including the replacement of any facility of the Port which requires replacement by reason of Permittee’s use or damage thereof or due to damage by others, excepting (a) ordinary wear and tear, (b) structural repairs to the Assigned Space, unless caused by the act or omission of Permittee or any principal, affiliate, contractor, employee, agent, licensee or invitee of Permittee, or (c) damage caused solely by the Port’s gross negligence or willful misconduct, which shall be repaired by the Port at its expense. Permittee hereby waives all right

to make repairs at the expense of Port or in lieu thereof to vacate the Assigned Space, and waives the benefit of the provisions of California Civil Code Sections 1941 and 1942 or any successor statute thereto and any other similar law, statute or ordinance now or hereafter in effect. If after thirty (30) days written notice from the Port, Permittee has failed to commence and diligently pursue completion of any and all such maintenance, replacement and repair which may be required to restore the Assigned Space and any of its improvements, fixtures, equipment and mechanical systems to the condition required by the fourth sentence of this Paragraph A(2), then Port shall have the right, but not the duty, to perform such maintenance, replacement and repair at Permittee's expense and Permittee shall reimburse Port for such costs promptly upon Port's written demand. The performance of maintenance and repair by the Port shall in no event be construed as a waiver of the Permittee's duty to maintain and repair as herein provided. Unless the written approval of the Manager of Airport Properties or his or her designee has been first obtained in each instance, Permittee shall not alter the point of supply of any utilities in the Assigned Space. Permittee shall not install any racks, stands or other display of merchandise or trade fixtures at the Airport outside of the Assigned Space without the prior written consent of the Manager of Airport Properties or his or her designee. Permittee shall not permit a work of visual art, as defined in 17 U.S.C. § 101, or any work of fine art, as defined in the California Art Preservation Act (California Civil Code Section 987, et seq.) to be installed in the Assigned Space without providing Port with a written waiver, in form acceptable to Port, of the artist's rights under the Visual Artists Rights Act of 1990, Pub. L. 101-650, and under such provisions of California law, and without obtaining Port's prior written approval.

The parties acknowledge and agree that Permittee's obligations under this Paragraph A(2) are a material part of the bargained-for consideration under this Permit. Permittee waives any rights now or hereafter conferred upon it by any existing or future requirement to terminate this Permit, to receive any abatement, diminution, reduction or suspension of payment of rent, or to compel Port to make any repairs to comply with any such requirement, on account of any such occurrence or situation.

Permittee shall comply with the requirements of Attachment "F" in the construction of Permittee's Work in any Assigned Space located in the Terminal 2 Extension.

- (3) (a) and areas or corridors adjacent to the Assigned Space any garbage, debris or refuse. Permittee must install and maintain, and regularly clean and empty, any grease traps in the Assigned Space and dispose of the contents thereof in compliance with all applicable Laws, and Permittee will use its own EPA identification number and list itself as the owner on the Uniform Hazardous Waste Manifest or other Profile sheets if any need to be filled out in order for Permittee to comply with its obligations under this sentence. Upon the termination of this Permit, the Port may, at its sole option, require Permittee to remove any or all grease traps at Permittee's sole cost and expense, and in compliance with all Laws. Areas or corridors adjacent to the Assigned Space any garbage, debris or refuse. Permittee must install and maintain, and regularly clean and empty, any grease traps in the Assigned Space and dispose of the contents thereof in compliance with all applicable Laws, and Permittee will use its own EPA identification number and list itself as the owner on the Uniform Hazardous Waste Manifest or other Profile sheets if any need to be filled out in order for Permittee to comply with its obligations under this sentence. Upon the termination of this Permit, the Port may, at its sole option, require Permittee to remove any or all grease traps at Permittee's sole cost and expense, and in compliance with all Laws. Areas or corridors adjacent to the Assigned Space any garbage, debris or refuse. Permittee must install and maintain, and regularly clean and empty, any grease traps in the Assigned Space and dispose of the contents thereof in compliance

with all applicable Laws, and Permittee will use its own EPA identification number and list itself as the owner on the Uniform Hazardous Waste Manifest or other Profile sheets if any need to be filled out in order for Permittee to comply with its obligations under this sentence. Upon the termination of this Permit, the Port may, at its sole option, require Permittee to remove any or all grease traps at Permittee's sole cost and expense, and in compliance with all Laws. The Uniform Hazardous Waste Manifest or other Profile sheets if any need to be filled out in order for Permittee to comply with its obligations under this sentence. Upon the termination of this Permit, the Port may, at its sole option, require Permittee to remove any or all grease traps at Permittee's sole cost and expense, and in compliance with all Laws.

(b) Permittee shall at its own expense keep and maintain within the Assigned Space 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 Airport Rules, Policies and Regulations (as defined in Paragraph H(1) below), any agency, department or bureau of the City, or other governmental authority having jurisdiction.

- (4) Permittee shall not make or suffer to be made any alterations, additions, or improvements to the Assigned Space or any part thereof or attach any fixtures or equipment thereto (collectively, "Alterations"), without Port's prior written consent. All Alterations shall be at Permittee's sole cost and expense. Without limiting the generality of the foregoing, the initial layout and design of all Alterations shall conform to the Port's established architectural design scheme for the Airport, and, if and to the extent adopted by the Port, the provisions of the Port's tenant improvement guide, or if none has been adopted by the Port, in accordance with tenant improvement standards adopted by the Port (such guide or standards are hereafter the "TI Guide"). Prior to the construction of any Alterations, Permittee shall pay the Port the applicable TIA Fee set forth in Section 4.4 of this Permit, and all other applicable fees payable under all Port ordinances and resolutions, including without limitation Port Ordinance No. 3859 (or any successor thereto), and submit detailed plans and specifications to the Airport's Design Review Committee for written approval. Port's approval rights will extend to and include architectural and aesthetic matters and Port reserves the right to reject any designs submitted and to require Permittee to resubmit designs and layout proposals until they meet Port's approval. In the event of disapproval by Port of any portion of the plans and specifications, Permittee will promptly submit necessary modifications and revisions thereof. No changes or alterations will be made in said plans or specifications after approval by Port without the prior written approval of the Director or his or her designee. Port agrees to act within a reasonable period of time upon such plans and specifications and upon requests for approval of changes or alterations in said plans or specifications. One copy of plans and specifications for all improvements or subsequent changes therein or alterations thereof will, within fifteen (15) days after approval thereof by Port, be signed by Permittee and deposited with Port as an official record thereof. Without limiting the requirements set forth above, Permittee acknowledges and agrees that Permittee may be required to obtain approvals for any desired Alterations from the Port's Engineering Permit Department. In the event that Permittee fails to submit plans and specifications which meet the approval of Port within thirty (30) days after the Commencement Date, Port may terminate this Permit. Nothing herein contained shall be construed to delay or otherwise affect the Commencement Date.

Permittee warrants that all construction shall be in conformity with the Work Letter, the latest edition of the TI Guide, and the plans and specifications submitted by Permittee and approved in writing by Port, the City and the Alameda County Health Department, and shall meet all applicable local building codes and ordinances and all other applicable Laws (as defined in Paragraph H of

this Attachment “A”). Permittee also warrants that the proposed improvements, if constructed or installed consistently with the plans and specifications approved by the Port, will comply with all applicable Laws, including without limitation the Americans With Disabilities Act of 1990 and any amendments thereto (hereafter the “ADA Requirements”). The Port’s approval of any plans and specifications submitted by Permittee shall not constitute the assumption of any liability by the Port for the compliance or conformity of such plans and specifications with such Laws, or for the accuracy or suitability of such plans and specifications for Permittee’s intended purposes, and Permittee shall be solely responsible for such plans and specifications.

Permittee 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 Assigned Space, that Permittee is in compliance with the Port Policy including the payment of applicable prevailing wages and the Maritime and Aviation Project Labor Agreement (MAPLA) which may be found in its entirety at , and as amended from time-to-time, with respect to such permit.

- (5) Permittee shall give written notice to Director not less than seven (7) days prior to the commencement of any Alterations in order that Port may post appropriate notices of nonresponsibility, and agrees that such notices may remain posted until the acceptance of such work by Port. Prior to commencing any such work or allowing Permittee’s contractors to have access to the Assigned Space, Permittee shall (i-) coordinate all such work with Port’s aviation or engineering staff designated in writing by the Director (or with the Port’s contractor, if so directed in writing by the Director) so that Permittee’s Work will not interfere with or cause a delay in any other construction activities authorized by Port, and (ii) provide Port with such completion bonds and labor and material bonds and builders all risk insurance in such form and amount and issued by such company or companies as shall be acceptable to Port. Permittee shall be liable for any and all losses, liabilities, judgments, suits, claims, damages, costs and expenses (including attorneys fees, investigation costs, remediation costs, and court costs) of any kind or nature (collectively “Losses”) incurred by Port arising out of Permittee’s breach of its obligations under the prior sentence. Permittee shall obtain, and pay all fees for all permits and business licenses required by the Port, the City of Oakland or other governmental authority having jurisdiction, for any Alterations, and it shall furnish copies of all such permits to Port prior to the commencement of any work.
- (6) If and to the extent that Permittee’s activities or proposed Alterations trigger an obligation or requirement on the part of Port to make changes to the Airport (including ADA Requirements), Permittee shall indemnify, defend, and hold harmless Port from and against any Losses arising out of such activities or Alterations.
- (7) Permittee shall pay for all labor done and materials furnished in any repairs or Alterations to the Assigned Space, and shall keep the Assigned Space and such improvements free and clear of any liens or encumbrances of any kind whatsoever created by or through Permittee. If any such lien or encumbrance is filed, Permittee shall not be deemed to be in default if within ten (10) days after the filing thereof, Permittee, at its sole cost and expense, has provided or caused to be provided to the Port a lien release bond in accordance with California Civil Code, Section 3143 or successor statute, or such other assurance approved in writing by the Port. If Permittee fails to do so, the Port shall have the right and option, but not the duty, to obtain such lien release bond or pay or otherwise discharge, stay or prevent the execution of any lien or encumbrance. In such event, the Port shall not be deemed to have waived the Port’s right to declare Permittee in default under this Permit, and Permittee shall reimburse the Port for all sums expended in connection with such lien or

encumbrance, including Port's attorneys fees and costs, with interest as provided in Paragraph S below, and such reimbursement shall be due and payable 10 days after Port's written demand for any such payments, fees or costs. Within ninety (90) days after Permittee's completion of any Alterations within or to the Assigned Space, Permittee shall furnish to the Port a set of reproducible, final "as built" drawings of all such alterations, additions or improvements, together with evidence acceptable to Port of Permittee's out-of-pocket cost of such alterations, additions or improvements.

- (8) Permittee may not install any signage outside its Assigned Space, or any signage inside its Assigned Space that is visible from outside a terminal building except signage advertising the name or logo, or both, of the business conducted by Permittee for the Permitted Uses in the Assigned Space. Any signage that is not prohibited by the first sentence of this Paragraph A(8) that Permittee wants to install or display in or on the Assigned Space must be approved in advance and in writing by the Director or his or her designee, including but not limited to, the number, size, height, location, color and general type and design of each such sign.
- (9) A Certified Access Specialist ("CASP", as defined in California Civil Code Section 55.52) has not inspected the Assigned Space or the property. Permittee 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 Permittee and Permittee's employees, agents, contractors, customers, or other invitees as to the condition of the Assigned Space or any other property owned or controlled by the Port. As may be 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."

B) Permittee's Property.

Any and all property belonging to, or brought onto the Airport by Permittee or any of its officers, employees, agents, invitees or licensees shall be at the sole risk of Permittee. Subject to Port's right of approval as set forth in Paragraph A of this Attachment "A", Permittee may place and install trade fixtures and other personal property in the Assigned Space for use in connection with its operations hereunder, and the same shall be and remain the property of Permittee. Permittee shall, however, be responsible for the cost of repairing any damage to the Assigned Space or any other improvements at the Airport which are caused by the removal of any such trade fixtures and personal property. Notwithstanding the foregoing, however, if Permittee shall at any time be in default hereunder, then Port shall have the benefit of any statutory liens on Permittee's property located in the Assigned Space or otherwise on the Airport which are available to it under the laws of the State of California, and Permittee shall not remove or permit the removal of any of such property until all amounts secured by such liens have been paid and all other defaults under this Permit have been cured. In addition, if on the expiration or earlier termination of the Term, Permittee has not removed such property, Port shall

have the right, at Permittee's expense, to remove and store or dispose of such property without liability of Port to Permittee.

C) Port's Right to Enter.

Port and its designated agents shall have the right to enter the Assigned Space at any reasonable time for inspection, maintenance, repair, attending to emergencies or any other reasonable purpose. Such entry shall not constitute a forcible entry or detainer of the Assigned Space. The Port will make a reasonable effort, except in case of an emergency, to provide advance notice of its intent to enter the Assigned Space, which notice (notwithstanding the provisions of Paragraph Q to the contrary) may be given in person to Permittee's manager on duty, or by telephone or by e-mail as designated by Permittee in Section 1 of this Permit, but Port will have no liability to Permittee if Port fails to give such notice or if such notice is given by Port but not received by Permittee.

D) Utilities.

Except as otherwise provided in Section 11 of this Permit, Permittee shall be responsible for obtaining and paying for all utilities (including, without limitation, electricity, water, telephone, wireless access fee and sewer) used or consumed in the Assigned Space, and for any associated charges. Permittee shall pay the Port's applicable Cost of Service Fee, calculated pursuant to the provisions of Port Resolution No. 02410, as such resolution may hereafter be amended or replaced, or under any other Port resolution or ordinance, either existing or hereafter adopted by the Port, and shall also pay the cost of a Port supplied electrical meter. Permittee shall also be obligated to pay any Port electrical inspection fee.

E) WI-FI System.

This paragraph applicable only in the terminal facilities (Buildings M101, M102, M103, M130, M152, M157, M363, M367 and M368): Permittee acknowledges that Airport has an Airport-wide, open access wireless fidelity system (802.11g) that provides Wi-Fi services to the employees, passengers, tenants, and visitors at the Airport (the "Wi-Fi System"). Permittee agrees that: (a) it shall obtain the Port's written consent before installing any wireless network, and (b) it shall cooperate with the Port to eliminate radio frequency interference (RFI) from its competing wireless network. Permittee hereby agrees that during the Term it shall be obligated, on Port's request, to participate with Port and Port's other tenants in Port's designated dispute resolution process to resolve any RFI issues. Notwithstanding anything in this Permit to the contrary, in the event of any RFI between the Wi-Fi System and any third party wireless network, Port shall not be liable for any cost or damage arising directly or indirectly from such RFI, including, but not limited to, any degradation or inoperability of the third party wireless network.

F) Access.

Permittee and its officers, employees, agents and invitees shall, subject to the reasonable rules and regulations of Port, have the right of ingress and egress to and from the Assigned Space.

G) Taxes and Assessments.

- (1) This Permit may create a property interest that is subject to property taxation and Permittee, in whom the possessory interest is vested, may be subject to the payment of property taxes levied on such interest. If the taxing authority assesses to Permittee a possessory interest tax with respect to

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

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

H) Compliance with Laws, Rules, Policies and Regulations.

- (1) Permittee covenants and agrees to observe and comply with (and to cause all of its sublicensee authorized under Paragraph M below to comply with) all present and future Laws, and all rules, regulations and policies of Port, including without limitation, all safety, security and operations directives of the Director or his or her designee, which now exist or may hereafter be promulgated from time to time governing conduct on and operations at the Airport or the use of facilities at the Airport (hereafter collectively the "Airport Rules, Policies and Regulations"). The Airport Rules, Policies and Regulations may, without limitation, require Permittee to participate in a parking validation program at the Airport if one is established by the Port. The Port shall not have any duty or obligation to Permittee to enforce the Airport Rules, Policies and Regulations or the terms and conditions in any permit, lease or other agreement against any third party, and the Port shall not be liable to Permittee for violations of same by third parties, their employees, contractors, agents, invitees or licensees. Permittee further covenants and agrees to observe and comply with (and to cause all of its sublicensees authorized under Paragraph M below to comply with) any and all valid

and applicable requirements of all duly-constituted public authorities (including, without limitation, the Department of Transportation, the Department of Homeland Security, the Federal Aviation Administration, and the Transportation Security Administration). Permittee agrees to pay or reimburse Port for any civil penalties or fines which may be assessed against Port as a result of the violation by Permittee or any such sublicensee of any of the foregoing requirements, which payment shall be made by Permittee within fifteen (15) days from receipt of Port's invoice for such amount and documentation showing that payment of such penalty or fine is Permittee's responsibility hereunder. As used in this Permit, "Laws" shall mean all present and future federal, state and local statutes, ordinances and regulations and Port ordinances applicable to Permittee, the Assigned Space, the Permitted Uses or the Airport and judicial interpretations thereof, including but not limited to all acts and regulations relating to security (including without limitation those regulations promulgated by the Department of Homeland Security), the ADA Requirements, all acts and regulations relating in any way to food and drugs, worker's compensation, sales and use tax, credit card processing, social security, unemployment insurance, hours of labor, wages, working conditions, the Immigration Reform and Control Act of 1986, the Charter of the City (including without limitation Section 728 entitled "Living Wage and Labor Standards at Port-Assisted Businesses"), and all Environmental Laws (as defined in Port Environmental Ordinance No. 4345).

Without limiting the generality of the foregoing, to the extent Permittee's operations or activities or the operations or activities of any sublicensee or assignee of Permittee approved by the Port on the Assigned Space constitute industrial activities within the meaning of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, et seq. ("CWA") and the regulations promulgated thereunder, Permittee agrees that it will be responsible for faithfully obeying and complying with such law and regulations, including, but not limited to, obtaining, if required, an individual National Pollutant Discharge Elimination System ("NPDES") permit or, if required, requesting coverage under and faithfully obeying and complying with the terms and conditions of any applicable General Permit issued pursuant to such law or regulations.

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

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

Permits; approvals; reports and correspondence; applications for permits, Notices of Intent, Storm Water Pollution Prevention Plans, Annual Comprehensive Site Compliance

Evaluations, Annual Reports or monitoring results, or notice of violations relating or pertaining to the Assigned Space.

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

I) Percentage Fees.

- (1) In the event that the consideration to be paid under Section 4 hereof of this Permit is based in whole or in part on a percentage of Permittee's "Gross Receipts," such term as used herein shall mean all receipts derived by Permittee or any agent of Permittee from its business at the Airport, excluding only (i) the amount of all sale refunds previously included in Permittee's Gross Receipts and actually made by Permittee, (ii) the amount of any federal, state or municipal sales or other similar taxes separately stated to and paid by customers of Permittee now or hereafter levied and imposed, and actually remitted by Permittee to the taxing authority in connection with Permittee's Permitted Uses at the Airport, and (iii) the proceeds from the sale of capital assets.
- (2) No deduction shall be made from Gross Receipts by reason of any credit loss sustained or financing discount that may be applicable by reason of the acceptance or use of credit and/or debit cards or by reason of any other credit arrangements. If any charge customarily made by Permittee for goods or services is not assessed, charged or collected, irrespective of the reason therefor, then the full amount of Permittee's customary charge therefor shall nevertheless be included in determining Gross Receipts. If Permittee shows the percentage of Gross Receipts payable to Port as a separate charge to Permittee's customers, then this separate charge must also be included in Permittee's Gross Receipts. All computations in the determination of Gross Receipts shall be made in accordance with the terms of this Permit.
- (3) On or before the fifteenth (15th) day of each calendar month during the Term hereof, commencing with the first calendar month after the Commencement Date, and ending on or before the fifteenth (15th) day of the calendar month immediately following the end of the Term, Permittee shall deliver to the Port's finance department a report and account, with a copy in electronic form, in a form acceptable to the Director (the "Sales Report"), certified as true and correct by an officer of Permittee, segregated by each source or general type of article sold or service rendered, or in such other manner as the Port shall direct, and in such form and with such detail as Port may reasonably request, setting forth Permittee's Gross Receipts (as the same are hereinbefore defined) during the preceding calendar month, and separately identifying all receipts derived by Permittee from or at the Airport during such month which have been excluded from the computation of Gross Receipts and identifying the locations at the Airport at which such excluded Gross Receipts were derived, together with payment of the Percentage Fees due by reason thereof. If Permittee shall fail to provide Port by the fifteenth (15th) day of a calendar month with the Sales Report complying with the requirements of this Paragraph I(3), then Port may invoice Permittee for estimated Percentage Fees for the prior calendar month in an amount equal to the monthly Percentage Fees that would be payable based on 1.5 times Permittee's actual Gross Receipts from or at the Airport for the last

month reported by Permittee to Port, or if Permittee has filed no such report with Port, then as estimated in good faith by Port. Permittee shall, within five (5) days after its receipt of such invoice, pay the invoiced amount to Port; provided, however, that when Permittee determines its actual Gross Receipts for the preceding month, Permittee may tender the actual percentage fees payment to Port, but only if it is accompanied by the Sales Report for such prior calendar month. The acceptance of such estimated Percentage Fees by Port, and the acceptance of any delinquent Sales Report by Port, shall be without prejudice to any of Port's rights under Paragraph N of this Attachment "A". Any underpayment of Percentage Fees shall be paid with the Sales Report provided by Permittee to Port covering the period for which estimated Percentage Fees have been paid together with a delinquency charge, for violation of the terms of this Permit and as liquidated damages, of the fifty dollar (\$50.00) fee provided for in Paragraph S below plus interest on any unpaid amount from the date the estimated percentage fees became payable until payment has been received by the Port, at the rate provided in Paragraph S of this Attachment "A". Any failure to timely deliver to Port any report required by this subparagraph (3), excluding only delinquent reports for which a delinquency fee has already been paid by Permittee pursuant to the prior sentence, shall require payment by Permittee to Port, as liquidated damages, of a delinquency charge in the amount of Fifty Dollars (\$50.00), payable at the time the delinquent report is submitted to Port. Any overpayment of Percentage Fees shall be credited by Port against the next Percentage Fees payable by Permittee to Port.

Within ninety (90) days after the end of each calendar year during the Term, Permittee shall submit to Director an unqualified year-end financial report (the "Annual Report") certified by an independent Certified Public Accountant or, only if Permittee's financial statements have not been reviewed by an independent Certified Public Accountant, a year-end financial report certified by Permittee's chief financial officer if such officer is approved by the Director, showing Gross Receipts achieved with respect to the prior calendar year and identifying the location at the Airport where such Gross Receipts were derived. If such Annual Report shows that the total Rent actually paid by Permittee with respect to the prior calendar year was less than the Rent payable with respect to such calendar year, then Permittee shall immediately pay to Port such deficiency, together with a delinquency charge and liquidated damages of the fifty dollar (\$50.00) fee provided for in Paragraph S below, plus interest on such deficiency for each day from the date such Rent became due and payable until payment has been received by the Port, at the rate provided in Paragraph S below. If such Annual Report shows that the Rent actually paid by Permittee with respect to such prior calendar year exceeded the Rent payable with respect to such calendar year, and if such Annual Report is acceptable to the Port, then on the issuance by Port to Permittee of a credit memorandum in the amount of such excess, such excess shall be applied as a credit against the amounts next coming due from Permittee to Port under this Permit. Notwithstanding anything to the contrary herein, in no event will the Rent payable to Port in any calendar month on the Assigned Space be less than the Minimum Monthly Payment for such calendar month. In addition, Permittee shall submit to Port such other financial or other reports as Director may reasonably require. Permittee shall include with each Annual Report a certificate signed by the chief financial officer or other authorized representative of Permittee acceptable to the Director certifying that the Annual Report is true and correct.

- (4) Permittee shall maintain in a true and accurate manner and in accordance with generally accepted accounting principles, complete and accurate books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing a separate audit or examination of Permittee's Gross Receipts. This includes, but not limited to: Financial statements, general ledgers, trial balances, subsidiary books of record, sales

journals, daily or periodic summary reports, inventory and purchasing records, cash register or computer terminal tapes, POS records, sales invoices, bank deposit slips, bank statements, and tax reports filed with federal, state, county, city or other agencies. Such books and records shall contain records of Permittee's pertinent activity under this Permit in a form consistent with good accounting practice which may include, without limitation, electronic media compatible with computers available to the Port, computer generated hard copies or legible microfiche or microfilm copies. Such books and records shall be maintained in a form consistent with generally accepted accounting practices. Upon seven (7) calendar days notice from Port, all such books and records shall be made available, as Permittee shall elect by written notice to Port given within such seven (7) calendar day period, either at the Assigned Space, if any, or at the offices of the Port, for inspection by Port or through its duly authorized representatives at any time for up to seven (7) years after the calendar year to which such books and records pertain, whether or not the Term has expired or been earlier terminated; provided, however, that if prior to the expiration of such seven (7) year period, any audit, review or investigation is commenced by the Port, or any claim is made or litigation is commenced relating to this Permit by the Port, such books and records shall continue to be maintained by Permittee, and Port shall continue to have the right to inspect such books and records in the manner stated above, until the audit, claim or litigation is finally resolved (including the determination of any and all appeals or the expiration of time for an appeal), whether or not the Term has expired or been earlier terminated. In the event that the Port determines, in its reasonable discretion, that any exclusions, deductions or allocations reducing Gross Receipts are not supported or substantiated by such books and records, all such amounts shall be deemed Gross Receipts for purposes of determining the Percentage Fees payable to the Port. The right to inspect shall include the right to photocopy said books, records and data as the Port determines in its discretion to be necessary or convenient in connection with its review or audit thereof. Any such inspection at the Assigned Space will be conducted during reasonable business hours and in such a manner and at such time as to not unduly interfere with the conduct of Permittee's business. In the event such books and records cannot be made available at the Assigned Space or at the offices of the Port, then Permittee shall pay for all reasonable and actual costs incurred by the Port in inspecting and auditing such books and records, including but not limited to travel, lodging and subsistence costs. Port shall further have the right, upon reasonable written notice to Permittee, to cause an audit to be made of the books and records of Permittee and its assignees and agents which relate to its operations at the Airport to determine the correctness of the Percentage Fees paid by Permittee hereunder. If, as a result of such audit conducted within any of the time periods permitted by this subsection, whether or not the Term has expired or been earlier terminated, it is established that Percentage Fees have been underpaid to Port, Permittee shall forthwith, upon written demand from Port, pay the difference to Port, together with a delinquency charge and liquidated damages of the fifty dollar (\$50.00) fee provided for in Paragraph S below, plus interest on such underpaid amount for each day from the date such underpaid amount became due and payable until payment has been received by Port, at the rate provided in Paragraph S below. Unpaid delinquency charges that accrue may be compounded monthly at the Port's sole election. Further, if such audit establishes that Permittee has understated and underpaid the total Percentage Fees due hereunder in any calendar year during the audit period by two percent (2%) or more, then all of the Port's reasonable and actual costs (including without limitation the costs of the audit firm designated by the Port's Chief Audit Officer to perform the audit, or the prorated salary, fringes and overhead allocation of the Port's auditors) incurred by the Port in auditing such books and records shall be paid by Permittee to Port. The delinquency charge, liquidated damages and audit costs provided by this subsection (4) are in addition to all other remedies Port may have that are provided by this Permit or otherwise by law or in equity with respect to any payment that has become due and has not been paid. Further, if such audit establishes that Permittee has understated and underpaid total

Percentage Fees due hereunder in any calendar year during the audit period by five percent (5%) or more, Port shall have the right to terminate this Permit as if Permittee had committed a default under Paragraph N below that had not been cured prior to the expiration of any applicable grace period. The Permittee's obligations under this subsection shall survive the expiration or earlier termination of the Term, to the extent provided herein.

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

J) Indemnification.

- (1) Permittee agrees to indemnify, defend and hold completely harmless Port (including, without limitation, members of Port's Board of Commissioners), and Port's officers, employees and agents, from and against all liabilities (including, without limitation, liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601, et seq., or any other applicable Laws, Losses, suits, claims, demands, judgments, damages, fines, penalties, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, expert fees and reasonable paralegal and attorneys' fees (including an allocation of the costs of attributable to the use of in-house counsel) prior to institution of legal proceedings and at both trial and appellate levels, and in any mediation or arbitration agreed to by Port), which may be incurred by, charged to or recovered from any of the foregoing indemnified parties (i) by reason or on account of damage to or destruction of any property of Port, or any property of, injury to or death of any person resulting from or arising out of Permittee's construction of any Alterations, or its use, occupancy, maintenance or repair of the Assigned Space or any improvements thereto, of Permittee's operations thereon or anywhere else on the Airport, or the acts or omissions of Permittee's officers, agents, employees, contractors, subcontractors, subtenants, invitees, vendors, suppliers or licensees, regardless of where the damage, destruction, injury or death occurred, unless such liability, Losses, suit, claim, demand, judgment, damage, fine, penalty, cost or expense was caused solely by Port's gross negligence or willful misconduct, or (ii) arising out of any allegation that Permittee, or the Port in concert with Permittee, has infringed on or violated any Federal, state, or common law patent, trademark, copyright, or trade secret rights, or violated any Federal or state labor laws, or (iii) resulting from or arising out of the failure of Permittee to keep, observe or perform any of the covenants or agreements in this Permit to be kept, observed or performed by Permittee. In carrying out its obligations hereunder, Permittee shall use counsel acceptable to Port Attorney.

- (2) The foregoing provisions of this Paragraph J of this Attachment “A” are not intended and shall not be construed to limit in any manner whatsoever the protection or benefits to which Port otherwise would be entitled as an additional insured under any liability insurance maintained or required to be maintained by Permittee under this Permit.
- (3) The provisions of this Paragraph J of this Attachment “A” shall survive the expiration or earlier termination of this Permit with respect to any acts or omissions by Permittee.

K) Waiver of Damage.

Permittee hereby expressly waives and releases any cause of action or right of recovery for compensation for any and all loss or damage sustained by reason of any fire, defect, deficiency or impairments of any of the services in or to the Assigned Space or the Airport, including, but not limited to, electrical power, gas, telephone service, steam, heating, air conditioning, water supply, drainage or sewage systems, or from wires leading to or inside of any space or structure, or by reason of any loss resulting from the failure of any such system or facility unless such loss or damage is due solely to the willful misconduct of Port or its officers, agents or employees. It is understood that Permittee shall take such steps as Permittee may consider necessary to protect Permittee’s trade equipment and other personal property from any damage that may be caused to same in the event of any failure or interruption of such utility service. Whenever the Port shall find it necessary for the purpose of making repairs or improvements to any utility supply system it shall maintain, it shall have the right to suspend temporarily the delivery of gas, electricity, water or other utility service, or any thereof, but in all such cases (except in the event of an emergency) reasonable notice of such suspension will be given to Permittee.

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

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

L) Insurance Requirements.

- (1) Permittee shall, at its own cost and expense, purchase and maintain throughout the Term of this Permit the following insurance:

- a) Business Automobile Liability Insurance. Such insurance shall cover liability for all owned, non-owned and hired automobiles, trucks and trailers and shall provide coverage not less than that provided in the Business Automobile Liability policy ISO form number CA 00011293, with a combined single limit of not less than Five Million Dollars (\$5,000,000.00) each accident for bodily injury and property damage. Such insurance shall include as additional insureds the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees; such insurance also shall contain a waiver of subrogation in favor of such additional insureds, and shall be primary insurance; no insurance or self-insurance of the Port shall be called upon to contribute to a loss. If Permittee's insurance company gives Permittee the right to select or recommend counsel, Permittee will select or recommend counsel reasonably acceptable to the Port.
- b) Commercial General Liability Insurance. Such insurance shall not be less than that provided in ISO Commercial General Liability Insurance occurrence form number CG 00011093. The limits of such insurance shall not be less than Five Million Dollars (\$5,000,000.00) per occurrence and annual general aggregate, Five Million Dollars (\$5,000,000.00) products and completed operations aggregate, One Million Dollars (\$1,000,000.00) personal and advertising injury and One Hundred Thousand Dollars (\$100,000.00) fire legal liability. Coverage shall include premises and operations liability, blanket contractual liability, broad form property damage and independent contractors' liability. Such insurance shall include as additional insureds the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees, with additional insured coverage at least as broad as that provided in ISO endorsement CG 20 10 11/85, and shall be primary insurance; no insurance or self-insurance of the Port shall be called upon to contribute to a loss. Such insurance shall have a cross liability/separation of insureds provision and a waiver of subrogation in favor of the Port, its commissioners, officers, agents and employees. If Permittee's insurance company gives Permittee the right to select or recommend counsel, Permittee will select or recommend counsel reasonable acceptable to the Port.
- c) Contractor's Pollution Liability – Such insurance shall not be less than One Million Dollars (\$1,000,000.00) per occurrence and annual general aggregate and is required when use involves construction or digging or aircraft servicing, repair, and maintenance. Such insurance shall include as additional insureds the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees, with additional insured coverage at least as broad as that provided in ISO endorsement CG 20 10 11/85, and shall be primary insurance; no insurance or self-insurance of the Port shall be called upon to contribute to a loss. Such insurance shall have a cross liability/separation of insureds provision and a waiver of subrogation in favor of the Port, its commissioners, officers, agents and employees. If Permittee's insurance company gives Permittee the right to select or recommend counsel, Permittee will select or recommend counsel reasonable acceptable to the Port.
- d) Workers Compensation and Employers Liability Insurance. Such insurance shall be statutory workers compensation coverage and also include employer's liability insurance in the amount of at least One Million Dollars (\$1,000,000.00) per accident, One Million Dollars (\$1,000,000.00) bodily injury each employee and One Million Dollars (\$1,000,000.00) policy limit for bodily injury by disease. Such insurance shall contain a waiver of subrogation in favor

of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.

- e) Professional (Errors and Omissions) Liability Insurance. Such insurance shall include Technology Errors and Omissions, Network Security, Media Liability and Privacy Liability Insurance covering liabilities for financial loss resulting or arising from acts, errors or omissions in rendering computer or information technology services, or from data damage/destruction/corruption, including without limitation, failure to protect privacy, unauthorized access, unauthorized use, virus transmission, denial of service and loss of income from network security failures in connection with the services provided under this Agreement with a minimum limit of Five million dollars (\$5,000,000) each claim and annual aggregate.

If any of the above insurance is written on a claims-made basis, then such insurance shall be maintained for two (2) years after the termination of this Agreement.

- f) All risk property Insurance – Such insurance shall include all risk, 100% replacement cost coverage for Permittee’s additions, alterations to the Assigned Space, Permittee’s furniture, fixtures, equipment including coverage for any increased costs of construction resulting from changes in applicable building codes and regulations and include coverage for 12 months loss of rents. Such insurance shall include the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners as additional insured and loss payee as their interests may appear; such insurance also shall contain a waiver of subrogation in favor of such additional insured, and shall be primary insurance; no insurance or self-insurance of the Port shall be called upon to contribute to a loss. Additional property insurance requirements are as follows:

- f.1 Permittee shall be required to maintain builder’s risk insurance during construction of all improvements (additions/alterations). Each policy shall be subject to the approval of Port, which approval shall not be unreasonably withheld.

- f.2 Unless Permittee’s policy of property insurance contains a rental income endorsement insuring the payment of the Minimum Monthly Payment for a period of not less than twelve (12) months, Permittee shall also be required to maintain business interruption insurance insuring that the Minimum Monthly Payment will be paid to Port for a period of not less than twelve (12) months if the Assigned Space is destroyed or rendered inaccessible by a risk insured against by the policy or policies of property insurance Permittee is required to maintain under subsection (h) above. Said insurance shall provide that the insurer waives its rights of subrogation against Port. Permittee shall maintain on file with Port, commencing with the Commencement Date and thereafter throughout the Term hereof, an endorsement or endorsements evidencing said rental income or business interruption insurance.

- (2) Port and Permittee hereby waive the provisions of California Civil Code Sections 1932 and 1933, and of any other statutes which relate to the termination of a lease when leased property is destroyed and agree that any such event shall be governed by the terms of this Permit.

- (3) Independent Contractors. Permittee shall also require its independent contractors to maintain Business Automobile Liability, Commercial General Liability, Workers’ Compensation and Employers’ Liability and Contractor’s Pollution Liability, if applicable, as described above and

provide evidence reasonably acceptable to Port that such contractor has complied with the provisions of this Paragraph L.

- (4) Permittee hereby waives any right which it may have against Port on account of any loss or damage occasioned to Permittee arising from any risk covered by the insurance that Permittee is required to carry under this Paragraph L or covered by any other insurance maintained by Permittee insuring the Assigned Space, its contents, or any improvements thereto.
- (5) All policies of insurance required by this Permit to be maintained by Permittee or any sublessee shall be issued by insurance carriers whose financial condition is acceptable to Port, but in no event less than an A.M. Best Guide rating of A VII or better.
- (6) Cancellation or Reduction of Coverage. The Permittee 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) and seven (7) days notice shall be allowed for cancellation of war risk) in the event any of the above required insurance is suspended, voided, canceled, or reduced in coverage or in limits.

If Permittee fails to provide the required insurance certificates and policies, 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 Permittee shall promptly reimburse the Port for such expense and (3) interrupt or limit Permittee's operations or occupancy.

- (7) Proof of Coverage. Prior to commencing the services under this Agreement and annually thereafter, Permittee 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, Permittee shall provide the Port 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 or
Email: risktransfer@portoakland.com

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

- a) Permittee agrees that for any such deductible or selfinsured retention amount, Permittee shall provide to the Port defense and indemnification at least equal to the defense and indemnification to which the Port would be entitled as an additional insured had Permittee provided the -abovespecified- coverages respectively under Insurance Services Office form number GL 0001, and Insurance Services Office form numbers CA 0001 and CA 0404, or such other successor forms as may be deemed appropriate by the Port's Risk Manager from time to time, as evidenced by a written notice from Port to Permittee. It is understood that Permittee's agreement to provide such defense and indemnification to the Port includes cases where such defense and indemnification would be required under said insurance policy forms for claimed loss, damage, injury or death which was caused solely by the active or passive negligence or other wrongful conduct of the Port.
 - b) Permittee agrees that it shall be reasonable in all cases for the Port to condition its approval of any deductible in excess of the first Twenty Five Thousand Dollars (\$25,000.00) ("unsecured amount") on Permittee's first depositing with the Port, as additional security deposit and subject to all of the other provisions of this Permit applicable to a security deposit, a sum determined by the Port up to the amount of the deductible or selfinsured retention in excess of the unsecured amount. Such additional security deposit shall be in the form specified for the Performance Deposit under Paragraph T below, but- shall not be considered for purposes of increasing any performance or security deposit pursuant to provisions of this Permit other than this subsection (8)(b). The additional security deposit is solely for the benefit of the Port to secure Permittee's agreement in Paragraph J) Indemnification above to defend and indemnify the Port.
- (9) Port reserves the right, during the Term of this Permit, to reasonably amend the monetary limits or coverages herein specified, but in so doing will give Permittee at least thirty (30) days prior written notice.

M) Assignment and Subletting.

Permittee may not sublet the Assigned Space or any portion thereof except to sublet no more than forty-nine percent (49%) of the Assigned Space to a sublicensee pursuant to a written sublicense agreement, provided that Permittee shall (i) charge the sublicensee no more than one hundred and twenty-five percent (125%) of the proportionate charges Permittee pays Port for such portion of the Assigned Space, (ii) pay Port a sublicense processing fee in the amount indicated in Section 13 of this Permit, (iii) provide Port with a copy of said written sublicense agreement, and (iv) obtain the prior express written consent of Port's Director or his or her designee in each instance which may be granted or withheld in Port's sole discretion. No approval by the Port of any sublicense pursuant to the provisions of this Paragraph M shall result in any privity of contract between the Port and any such sublicensee, and the Port shall have no obligations to such sublicensee arising under any such sublicense, and no liability to sublicensee arising out of Permittee's breach of any of its obligations under such sublicense, or violation of the sublicensee's rights under any Laws. The Port shall not review any provisions of a sublicense dealing with labor agreements, including without limitation, labor peace, labor harmony or similar provisions, and the Port's approval of a sublicense pursuant to the provisions of this Paragraph M shall not include the approval of any provisions dealing with such labor agreements.

Permittee may not assign this Permit without the prior written consent of the Port, which consent shall be evidenced by resolution of its Board, which consent shall not be unreasonably withheld if the use of the Assigned Space under such assignment is a Permitted Use, and if the financial condition of the assignee is at least as strong as the financial condition of Permittee. Permittee agrees that its business

skills and philosophy, and its experience in constructing improvements like any that it is required to construct under this Permit, were an important inducement to the Port for entering into this Permit, and that the Port may reasonably object to an assignment of this Permit to another whose proposed use, while a Permitted Use, would involve a different quality, manner or type of business skills and experience than that of Permittee. For purposes of this Paragraph M, an assignment shall include, if Permittee is a corporation (except if Permittee is a corporation whose stock is publicly traded), a limited liability company or other state-chartered entity, any dissolution, merger, consolidation or other reorganization of Permittee, or the sale, issuance or other transfer of a controlling percentage of the capital stock or other units representing ownership interests of Permittee, or the sale of more than 35% of the value of the assets of Permittee whether in one conveyance or cumulatively in the aggregate in more than one conveyance. The phrase "controlling percentage" means the ownership of and the right to vote, stock or other units representing ownership interests possessing at least 35% of the total combined voting power of all classes of Permittee's capital stock issued, outstanding, and entitled to vote for the election of directors, or at least 35% of the total combined voting power of all classes of other units representing ownership interests entitled to vote for the election of managers or entitled to vote on management matters of an entity managed by its members. If Permittee is a joint venture or a limited or general partnership, an assignment for purposes of this Paragraph M shall include a withdrawal, or change, voluntary, involuntary, or by operation of law, of any general partner, or of any limited partner owning more than 35% of the limited partnership interests in that limited partnership, or a dissolution of Permittee or any general partner of Permittee, or a change in control of any general partner of Permittee or a change in control of any limited partner of Permittee owning more than 35% of the limited partnership interests in Permittee. If Permittee is a limited liability company, an assignment for purposes of this Paragraph M shall include a change in the manager (or a change in control of the manager), if such entity is manager managed, or a transfer of an interest in the limited liability company that results in a change in control of such entity, if such entity is member managed. If a "controlling percentage" of Permittee is owned by another entity, or if another entity otherwise controls Permittee (such entity is hereafter the "Parent"), then an assignment for purposes of this Paragraph M shall include any transaction involving the Parent that would have been an assignment for purposes of this Paragraph M if that transaction had involved Permittee. If Permittee is a joint venture or a limited or general partnership, an assignment for purposes of this Paragraph M shall include a withdrawal, or change, voluntary, involuntary, or by operation of law, of any general partner, a change in control of any general partner, or a dissolution of Permittee or any general partner of Permittee.

No sublicense or assignment shall relieve the sublicensor or assignor from any of the obligations of Permittee under this Permit, whether they accrue before or after the date of such sublicense or assignment.

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

N) Default.

In the event that Permittee shall fail to remit any payment due to Port under this Permit, or shall fail to submit any financial report required to be submitted in connection therewith, within five (5) days after the due date thereof, or shall violate any of the provisions of Paragraph M above in this Attachment "A", or shall fail, within the applicable time period provided in Paragraph T below in this Attachment "A", to post any additional performance deposit required thereunder, or shall violate any of its obligations under Attachment "B" to this Permit, or shall fail to perform or observe any term or

condition of this Permit which, because of its character, would immediately jeopardize the Port's operations or expose the Port to liability (such as, but without limitation, any failure to carry required insurance or any action that would subject the Port to liability or present a safety or security hazard), or would constitute a violation of the security or public safety requirements of this Permit or any applicable Federal Aviation Regulation, including without limitation 14 CFR Parts 107 or 108, or Transportation Security Regulations, 49 CFR, Chapter XII, Parts 1500, et seq., or if Permittee shall fail three (3) times within any period of one hundred eighty (180) consecutive days to fulfill any of its obligations under this Permit, which failure is set forth in a written notice from Port to Permittee, whether or not such failure is corrected within any applicable grace period provided in this Permit, or in the event that Permittee or any of its officers, employees, agents, invitees or licensees violates any other term, covenant or condition of this Permit and (except where otherwise expressly provided in this Permit) such violation continues for ten (10) days after Port has given written notice thereof to Permittee, or if Permittee commits an Event of Default under any other agreement between Permittee and Port, or if Permittee makes a general arrangement or assignment for the benefit of creditors or becomes a "debtor" as defined in 11 U.S.C. § 101 or any successor statute (unless in the case of a petition filed against Permittee, the same is dismissed within sixty (60) days), or if a trustee or receiver is appointed to take possession of substantially all of Permittee's assets located in the Assigned Space or of Permittee's interest in this Permit, where possession is not restored to Permittee within thirty (30) days, then in any such event Permittee will be in default under this Permit. On the occurrence of any such default, Port, in addition to its other remedies available under the terms of this Permit or pursuant to law or in equity, may elect to terminate this Permit (which termination shall only be evidenced by a written notice of termination from Port to Permittee) and resume possession of the Assigned Space, thereafter using the same for its own purposes without having to account to Permittee therefor; or Port may elect to retake possession of and relet the Assigned Space as agent for Permittee, collecting and applying the proceeds first, toward the payment of all costs and expenses (including reasonable attorneys fees) incurred in connection with such retaking and reletting, and next, toward the payment of any consideration and other charges due Port under this Permit, in which event Permittee shall be responsible for paying any deficiency to Port. In addition, Port shall have any and all other rights or remedies available to it under applicable Laws, in equity, or in judicial decision of the State of California by reason of any such default. Permittee hereby expressly waives any notice of default from Port not expressly provided for in this Permit as a prerequisite to surrender of possession of the Assigned Space. Any partial payment of any payment due to Port under Section 4 of this Permit from Permittee and accepted by Port shall not render ineffective any notice given by Port to Permittee pursuant to the terms of this Permit or California Code of Civil Procedure Section 1161, et. seq., or any successor statute thereto.

O) End of Term.

In addition to the requirements set forth in Attachment "C" hereof, upon the expiration or earlier termination of the Term, Permittee shall deliver to Port possession of the Assigned Space and (except as otherwise expressly provided in this Permit) all of the fixtures and equipment thereon in their original condition in all respects, reasonable use and wear excepted, and (except as otherwise expressly provided in this Permit) Permittee agrees to reimburse Port for the cost of any alterations, replacement, repairs or cleaning required to restore the same to such condition. All alterations, additions and improvements made pursuant to Paragraph A of this Attachment "A" shall immediately become Port's property and, at the expiration or earlier termination of the Term, shall remain in the Assigned Space without compensation to Permittee unless Port advises Permittee that Permittee will be required to remove the same, in which event, at Port's election, Permittee shall promptly restore the Assigned Space to its condition prior to the installation of such alterations, additions and improvements. At Port's election,

Permittee shall remove all cabling and wiring, including telephone lines located within the Assigned Space, which are in excess of that determined by Port to be required for normal use of the Assigned Space. In addition, Permittee shall repair, to Port's reasonable satisfaction, all damage to the Assigned Space and the Airport resulting from Permittee's removal of such alterations, additions, improvements, cabling and wiring. Permittee's obligations under this Paragraph O shall survive the expiration or earlier termination of the Term.

- (1) Notwithstanding the foregoing, nothing contained in this Permit shall give Permittee any right to occupy the Assigned Space at any time after the expiration or earlier termination of the Term or any right to occupy the Assigned Space for more than one (1) year without an Ordinance duly authorized by the Board. Permittee acknowledges and agrees that upon such expiration or termination, it shall not be entitled to any relocation assistance, payment or other benefits pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.), pursuant to 42 USC § 4601-4655 (Uniform Relocation Assistance and Real Property Acquisition Policies Act), or pursuant to any other laws or regulations with respect to any relocation of its business or activities upon the expiration of the Term or upon the termination of any holdover tenancy pursuant to this Paragraph, and Permittee hereby waives and releases to Port all rights, if any, to which Permittee may be entitled under said provisions or other law or regulations.
- (2) If Permittee or any assignee or sublicensee thereof shall continue to occupy the Assigned Space after the expiration or earlier termination of the Term and Port has objected thereto, then Port shall be entitled to double the Minimum Monthly Payment specified in Section 4 of this Permit, and acceptance by Port of any sums after any such objection shall not constitute a renewal of this Permit or a consent to such occupancy, nor shall it waive Port's right of re-entry or any other right available to it under the laws of California or the provisions of this Permit.
- (3) If Percentage Fees were payable during the Term of this Permit, Permittee shall continue to be obligated to pay Percentage Fees during any period that Permittee or any assignee or sublicensee thereof continues to occupy the Assigned Space after the expiration or earlier termination of the Term.

P) Customer Complaints.

In the event Permittee receives any customer complaint with respect to Permittee's operations in the Assigned Space, Permittee shall promptly respond in writing to the complainant, with a copy to the Director, and shall make a good-faith attempt to explain, resolve or rectify the cause of the complaint.

Q) Notices, Approvals and Consents.

Any notice, approval or consent permitted or required to be given to Permittee hereunder shall be in writing and delivered either by hand to the Assigned Space, or by nationally recognized overnight courier service, or by U.S. Certified Mail, Return Receipt Requested, postage prepaid, to Permittee's address contained in Section 1 of this Permit or to such other address in the United States as Permittee may, by written notice to Port given in accordance with the requirements of this Paragraph, direct from time to time. Any notice permitted or required to be given to Port hereunder shall be in writing and delivered either by hand to the Office of the Manager, Airport Properties Department, Oakland International Airport, Oakland, California, provided Permittee obtains a written acknowledgment of

receipt therefor from Port, or by nationally recognized overnight courier service, or by U.S. Certified Mail, Return Receipt Requested, postage prepaid, addressed as follows:

Manager, Airport Properties Department
Oakland International Airport
1 Airport Drive – Box 45
Oakland, California 94621

with a copy to:

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

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

R) Sums Paid by Port.

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

S) Delinquency Charge.

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

T) Performance Deposit.

- (1) In the event that a Performance Deposit is required under Section 5 of this Permit, Permittee shall deposit the Performance Deposit with Port upon execution of this Permit, which sum (and any additions thereto required hereunder) shall be calculated pursuant to Port Policy No. AP 509 – Collection of Delinquent Accounts, as such Policy may be amended from time to time. The Performance Deposit shall be by cash or irrevocable letters of credit, each in a form and from an

issuer acceptable in Port's sole discretion. Any letter of credit provided as a Performance Deposit must be in the form of the letter of credit attached hereto as Exhibit 2, or such successor form as Port may from time to time require by written notice to Permittee, and shall be drawn on a bank located within the continental United States acceptable to the Port's Chief Financial Officer. The Port's preference is for a Letter of Credit that can be drawn at a site or counter of such a bank with a branch office located in Oakland or San Francisco, California. (Letters of credit issued through correspondent banks will not be accepted.) Unless the Port receives a written extension or replacement of the letter of credit at least sixty (60) days before the end of the term of the letter of credit, the Port without notice to Permittee, may draw on the letter of credit and retain all proceeds. From time to time, the Port shall have the right to increase the amount of the Performance Deposit to reflect any increases in the amount of the Minimum Monthly Payment (rounded to the nearest thousand), or to such greater amount required by AP 509, by giving Permittee fifteen (15) days written notice and Permittee shall be obligated to increase the Performance Deposit to such amount by the end of such fifteen (15) day period. Port shall have the right, but not the obligation, to apply said Performance Deposit to the payment of any sum due to Port which has not been paid, including, but not limited to, reimbursement of any expenses incurred by Port in curing any default of Permittee, or to the cost of restoring the Assigned Space or its furnishings, fixtures or equipment to their original condition, reasonable use and wear excepted, or to Port's future rent damages arising out of the termination of this Permit because of Permittee's default. In the event that all or any portion of the Performance Deposit is so applied, Permittee shall be obligated, within five (5) days after Port's written demand, to remit to Port the amount required to restore the Performance Deposit to the full amount required by this Paragraph T. If said Performance Deposit shall not have been applied for any of the foregoing purposes, it shall be returned to Permittee, without interest. The Port will not pay any interest on the Performance Deposit. Permittee hereby expressly waives the protections of California Civil Code Section 1950.7.

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

U) Brokerage Commissions.

Unless otherwise expressly provided in a written addendum to this Attachment "A" executed by Permittee and Port, Permittee warrants that no real estate commission is payable by Port to any person or entity in connection with this Permit, and Permittee hereby agrees to indemnify, defend and hold Port completely harmless from and against any and all liabilities, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, expert fees and paralegal and attorneys' fees prior to institution of legal proceedings and at both trial and appellate levels, and in any mediation or arbitration agreed to by Port) incurred by Port as a result of any claims therefor.

V) Port's Reserved Rights.

- (1) Port reserves the right for itself and others to utilize and maintain existing utility easements over, under, across and through the Assigned Space, and to run water, electrical, telephone, gas, drainage,

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

- (2) Permittee acknowledges that the Port has made no representations or warranties to Permittee regarding the location of airlines or pedestrian traffic, or the design, construction or location of security check points or other improvements in the terminal facilities at the Airport. Port reserves the right (a) to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may see fit, free from any and all liability to Permittee for loss of business or damages of any nature whatsoever to Permittee occasioned during the making of such improvements, repairs, alterations and additions, including but not limited to any damages resulting from negligence of Port or its employees, agents or contractors, and (b) to establish such fees and charges for the use of the Airport by Permittee and all others as Port may deem advisable, including, without limitation, parking charges to Permittee, its customers and employees and to Permittee's vendors making deliveries to Permittee anywhere on the Airport.
- (3) Permittee acknowledges that construction on the roads and other portions of the Airport during the Term may temporarily disrupt Permittee's use of the Assigned Space. Permittee agrees that Port will not be required to pay or credit any sums to Permittee to reimburse Permittee for any disruption or loss of use of the Assigned Space, and that there will be no abatement in the rent or other amounts payable by Permittee to Port under this Permit.
- (4) Permittee covenants and agrees that this Permit shall be subject and subordinate to the provisions of any rights of the United States in the land subject to this Permit and any existing or future agreement between Port and the United States Government relative to the operation or maintenance of Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds or the Port's right to impose or use Passenger Facility Charges ("PFC's") for the development or operation of Airport. In the event that the Federal Aviation Administration or its successors shall require any modifications to this Permit as a condition precedent to the granting of such federal funds or the Port's right to impose or use PFC's, Permittee shall promptly consent in writing to such modifications.
- (5) Port may, at any time and from time to time, using Port personnel, or using an outside audit firm designated by the Port's Chief Audit Officer, conduct an audit of Permittee's operations at the Airport (in addition to Port's audit rights provided elsewhere in this Permit) to confirm that such operations comply with the requirements of this Permit. Permittee shall cooperate fully with the Port in such audit and shall require all of its authorized sublessees to fully cooperate in such audit. If such audit shows that Permittee is not complying with any of such requirements, then without

limiting any of this Port's rights under this Permit, Permittee shall promptly remedy any noncompliance shown in such audit, and Port may require Permittee to reimburse Port for all of its costs of such audit.

W) Discrimination Not Permitted.

During the performance of this Permit, Permittee agrees to comply with its obligations set forth on Attachment "B" to this Permit, which is incorporated herein by this reference.

X) Federal Aviation Administration Requirements.

- (1) Permittee shall comply with all applicable regulations of the Federal Aviation Administration and the Transportation Security Administration relating to Airport security and shall control the Permitted Uses and the Assigned Space so as to prevent or deter unauthorized persons from obtaining access to the air operations area of the Airport.
- (2) Port reserves unto itself, and unto its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft through the airspace above the surface of the Assigned Space, together with the right to cause in said airspace such noise, light, vibrations, smoke, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of or as may be inherent in the operation of aircraft now known or hereafter used, and for navigation of or flight in the said airspace, and use of said airspace for landing on, taking off from or operating on the Airport. Permittee accepts this Permit and the Assigned Space subject to the risks and activities herein described.
- (3) Permittee expressly agrees, on behalf of itself and its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Assigned Space in compliance with the requirements of Federal Aviation Regulations, 14 CFR Part 77. In the event the aforesaid covenants are breached, the Port reserves the right to enter upon the Assigned Space and to remove the offending structure or object and cut the offending natural growth, all of which shall be at the expense of Permittee.
- (4) Permittee agrees to require any lights in the Assigned Space to be constructed, focused or arranged in a manner that will prevent them from casting their beams in an upward direction so as to interfere with the vision of pilots in aircraft landing at or taking off from the Airport.
- (5) Permittee expressly agrees, on behalf of itself and its successors and assigns, to prevent any use of the Assigned Space which would interfere with or adversely affect the operation or maintenance of the Airport, or which would otherwise constitute a hazard or nuisance at the Airport.
- (6) Permittee agrees that it will not exercise or grant any right or privilege which would operate to prevent any person, firm or corporation operating aircraft on the Airport from performing any service (including, but not limited to maintenance and repair) on its own aircraft with its own employees that it may choose to perform. Except as permitted in Section 2, this Permit confers no right on Permittee or any other person, firm or corporation to fuel aircraft at the Airport.
- (7) If the Permitted Uses under this Permit include the operation of a "concession", as defined in 49 CFR Part 23, then this Permit is subject to the requirements of 49 CFR Part 23. Permittee agrees that it will not discriminate against any business owner because of the owner's race, color, national

origin, or sex in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23 or any successor regulation. Permittee also agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it is authorized to enter under this Permit and to cause those businesses to similarly include the statements in further agreements. This clause does not authorize the operation of a concession at the Airport that is not part of the Permitted Uses under Section 2 of this Permit.

Y) Environmental Responsibilities.

During the performance of this Permit, the Permittee agrees to comply with its obligations set forth on Attachment "C" to this Permit, which is incorporated herein by this reference. If Permittee does not engage in an activity that is described in Attachment "C", then the provisions related to that activity would not apply. For illustrative purposes only, if the Premises are indoors, then most of the construction storm water provisions would be inapplicable to the Permittee.

Z) Prevailing Wage Requirements.

During the performance of this Permit, Permittee agrees to comply with its obligations set forth on Attachment "D" to this Permit, which is incorporated herein by this reference.

AA) Emergency and Public Contacts.

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

BB) No Accord and Satisfaction.

No payment by Permittee or receipt by Port of a lesser amount of any sum due hereunder, shall be deemed to be other than on account of the earliest due rent or payment, nor shall any endorsement or statement on any check or any letter accompanying any such check or payment be deemed an accord and satisfaction, and Port may accept such check or payment and pursue any other remedy available in this Permit, or at law or in equity. A duplicate copy of all communications concerning disputes about debts that are owed or may be owed pursuant to this Permit, and instruments in less than the full amount claimed by Port and tendered as full satisfaction of a disputed debt or other amount owed, shall be provided to Port's Chief Financial Officer, either by hand delivery, provided Permittee obtains a written acknowledgment of receipt thereof from Port, or by nationally recognized overnight courier service, or by U.S. Certified Mail Return Receipt Requested, postage prepaid, addressed as follows:

Chief Financial Officer
Finance Division
530 Water Street
Oakland, California 94607

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

CC) Maritime and Aviation Project Labor Agreement.

During the performance of this Permit, Permittee agrees to comply with its obligations set forth in Attachment “E” to this Permit, which is incorporated herein by this reference.

DD) Right to Modify.

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

EE) Security Mandates.

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

FF) Miscellaneous.

- (1) The section and paragraph headings contained in this Permit are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision hereof.
- (2) It is expressly understood and agreed that, except for Permittee’s right to possession of the Assigned Space described as Exclusive in Paragraph 3 of this Permit, and except to the extent otherwise expressly provided for in a written addendum or Special Conditions to this Permit signed by Port, the rights granted Permittee under this Permit are non-exclusive.
- (3) Where the approval or consent of the Port, the Director or other member of the Port’s staff is required under this Permit, then except as otherwise expressly provided in this Permit, such approval or consent may be granted or withheld by the Port, the Director or such other member of

the Port's staff in the exercise of its, his or her sole discretion. Permittee hereby waives any claim against Port which it may have based upon any assertion that Port has unreasonably withheld or unreasonably delayed any consent, and Permittee agrees that its sole remedy shall be an action or proceeding to enforce any such provision or for specific performance, injunction or declaratory judgment. In the event of such a determination, the requested consent shall be deemed to have been granted. Permittee's sole remedy for Port's unreasonably withholding or delaying of consent shall be as provided in this Paragraph FF(3).

- (4) Except as expressly prohibited herein, the provisions of this Permit shall bind and inure to the benefit of the successors and assigns of the parties hereto.
- (5) Time is expressed to be of the essence of this Permit.
- (6) This Permit shall be governed by and construed in accordance with the laws of the State of California (without regard to principles of conflict of laws). It is agreed that if any covenant, condition or provision contained herein is held to be invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of any other covenant, condition or provision herein contained, and the invalid or unenforceable provision shall be limited to the extent necessary for it to be valid and enforceable.
- (7) No recourse under or upon any obligation, covenant or agreement contained in this Permit, or any other agreement or document pertaining to the operations of Permittee hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or under any judgment obtained against Port, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Permit, shall be had against any member (including, without limitation, members of Port's Board and its citizens advisory committees), officer, employee or agent, as such, past, present and future, of Port, either directly or through Port or otherwise, for any claim arising out of this Permit or the operations conducted pursuant to it, or for any sum that may be due and unpaid by Port. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any Port member, officer, employee or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of this Permit or the operations conducted pursuant to it, or for the payment for or to Port, or any receiver therefor or otherwise, of any sum that may remain due and unpaid by Port, is hereby expressly waived and released as a condition of and as consideration for the execution of this Permit.
- (8) Permittee represents and warrants to Port that, to the best of its knowledge, except as may be disclosed in an Addendum hereto, no member, officer, employee or agent of Port has any material interest, either directly or indirectly, in the business of Permittee to be conducted hereunder.
- (9) (a) representation or statements heretofore or contemporaneously made with respect to such subject matter, whether oral or written (including, without limitation, any answers provided by Port to questions asked by Permittee or others in conjunction with any request for proposals for the rights granted by this Permit), are merged herein. Except as otherwise expressly provided in this Permit, this Permit may be altered or amended only by written instrument executed by both parties hereto. Permittee or others in conjunction with any request for proposals for the rights granted by this Permit), are merged herein. Except as otherwise expressly provided in this Permit, this Permit may be altered or amended only by written instrument executed by both parties hereto.

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

(10) Dispute Resolution:

(a) In the event any dispute between the parties arises under this Permit, 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.

(b) All actions arising out of or filed in connection with this Permit shall be filed solely in the state and federal courts in Alameda County, California, and Permittee hereby consents to the exclusive jurisdiction of such courts.

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

(d) In addition to the foregoing, pursuant to California Code of Civil Procedure, Section 416.10, Permittee hereby designates the agent for service of process ("Agent") as shown in Section 1.

(11) Permittee warrants that no person or agency has been employed or retained to solicit or obtain this Permit upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, Port, at its option, may annul or immediately terminate this Permit or recover from Permittee the full amount of the contingent fee. As used in this section, "bona fide agency" means an established commercial or selling agency, maintained by Permittee for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence; "bona fide employee" means a person, employed by Permittee and subject to Permittee's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence; "contingent fee" means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract; and "improper influence" means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter."

(12) For all passengers boarding aircraft being operated or ground handled by Permittee, Permittee shall be solely responsible for compliance with all provisions of applicable Laws (including, without limitation, 49 CFR Part 27 and 14 CFR Part 382) that require Permittee, the Airport or an air carrier to provide assistance to individuals with disabilities using mechanical lifts, ramps or other devices that do not require employees to lift or carry passengers up stairs, and Permittee shall maintain all such lifts and other accessibility equipment in proper working condition, and shall properly train its employees and any third party contractors in the proper use and maintenance of such equipment. This provision will not give Permittee the right to conduct any activity or to engage in any business at the Airport that is not part of the Permitted Uses under Section 2 of this Permit.

GG) Force Majeure.

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

HH) Tax Treatment.

Permittee agrees and hereby makes the irrevocable and binding election not to take for federal income tax purposes investment tax credits or depreciation on assets financed with the proceeds of tax exempt Port bonds or notes, or any facility owned by the Port, unless the Port otherwise expressly agrees in advance in writing signed by the Port. Permittee also agrees at the Port's request from time to time to execute such additional documents reasonably requested by the Port or its bond counsel to effectuate and/or evidence said agreement and election. This agreement and election, and the obligation to execute said documents relative thereto is binding on each successor or assignee of Permittee.

II) Port's Marks

Permittee shall not use any of the Port's logos, trademarks or servicemarks ("Port's Marks") without the prior written consent of the Port. The Port's Marks shall remain the property of the Port with the sole right, title and interest thereto.

JJ) Defined Terms.

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

TERM	LOCATION
ADA Requirements	Paragraph A(4) of Attachment "A"
Airport	1 st paragraph of Permit, on page 1
Airport Rules, Policies and Regulations	Paragraph H(1) of Attachment "A"
Alterations	Paragraph A(4) of Attachment "A"
Assigned Space	Section 3

TERM	LOCATION
Board	2 nd paragraph of Permit, on page 1
City	2 nd paragraph of Permit, on page 1
Commencement Date	Section 6.2
Common Use	Section 3
Consumer Price Index or Index	Section 4.5
CWA	Paragraph H(1) of Attachment “A”
Director	2 nd paragraph of Permit, on page 1
Documents	Paragraph H(1) of Attachment “A”
Exclusive	Section 3
Gross Receipts	Paragraph I of Attachment “A”
Laws	Paragraph H(1) of Attachment “A”
Losses	Paragraph A(5) of Attachment “A”
Minimum Monthly Payment	Section 4.1
NPDES	Paragraph H(1) of Attachment “A”
Percentage Fees	Section 4.2
Performance Deposit	Section 5
Permit	1 st paragraph of Permit, on page 1
Permitted Uses	Section 2
Permittee	1 st paragraph of Permit, on page 1, and Section 1
Permittee Wi-Fi Objectives	Paragraph E of Attachment “A”
Port	2 nd paragraph of Permit, on page 1
Port’s Marks	Paragraph II of Attachment “A”
Preferential	Section 3

TERM	LOCATION
Rent Adjustment Date	Section 4.5
RFI	Paragraph E of Attachment “A”
Sales Report	Paragraph I(3) of Attachment “A”
TIA Fee	Section 4.4
Term	Section 6.1
Terminal 2 Extension	Section 17
TI Guide	Paragraph A(4) of Attachment “A”
Wi-Fi System	Paragraph E of Attachment “A”
Work Letter	Paragraph A(1) of Attachment “A”

ATTACHMENT “B”

Discrimination Not Permitted

During the Term of this Permit, the Permittee, for itself, and its authorized assignees and successors in interest agree as follows:

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

Nondiscrimination. The Permittee, with regard to the work performed by it during the Permit, shall not discriminate on the grounds of race, color, sex, creed, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Permittee shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Permit covers a program set forth in Appendix B of the Regulations.

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

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

The Permittee for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Assigned Space described in this Permit for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Permittee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Regulations.

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

The Permittee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, color, religion, sex, national origin, ancestry, age, disability or physical handicap as set forth in the Americans with Disabilities Act of 1990, veteran's status, marital status or actual or perceived sexual orientation, be excluded from participating in any activity conducted with or benefiting from Federal assistance. The Permittee also assures that it will comply with all applicable provisions of the Port's equal opportunity policy. This provision binds the Permittee during the Term of this Permit.

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

That Permittee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age, disability or physical handicap as set forth in the Americana with Disabilities Act of 1990, veteran's status, marital status or actual or perceived sexual orientation. Permittee shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Permittee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Port's Equal Opportunity Employment Officer setting forth the provisions of this paragraph;

That Permittee shall, in all solicitations or advertisements for employees placed by or on behalf of Permittee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, ancestry, age, disability or physical handicap as set forth in the Americans with Disabilities Act of 1990, veteran's status, marital status or actual or perceived sexual orientation;

That Permittee will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Port's Equal Opportunity Employment Officer, advising the labor union or workers' representative of the Permittee's commitments under this paragraph, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

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

That Permittee shall maintain work force records showing male, female and minority employees by job category and similar information with respect to new hires and shall permit the Port's Equal Opportunity Employment Officer to inspect such records at all reasonable times and not less than annually and shall submit a summary of such information annually on a form provided by the Port;

That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person, on the grounds of race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical handicap or disability as set forth in the Americans with Disabilities Act of

1990, or veterans status, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

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

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

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

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

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

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

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

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

ATTACHMENT “C”

ENVIRONMENTAL RESPONSIBILITIES

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

Permittee (or “Tenant”) shall comply, at its sole cost and expense, 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. Notwithstanding anything contained herein to the contrary, if an existing Environmental Law (including specific the MAQIP) or an Environmental Law adopted after the effective date of this Agreement (including specifically the Seaport Air Quality 2020 and Beyond Plan once adopted by the Board) contain more stringent air quality or other requirements than are set forth in this Exhibit, Tenant shall comply with the more stringent requirements in said existing or future Environmental Laws.

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>.

Attached as Environmental Responsibilities **Exhibit-1** is a list of certain non-privileged Toxic Material reports concerning the Premises that are in the possession of the Port. Tenant may request any non-privileged Toxic Materials reports concerning the Premises that are in the possession of the Port.

Section 3 Air Quality.

(a) Air Quality Policy, Maritime Air Quality Improvement Plan (“MAQIP”), and Comprehensive Truck Management Plan (“CTMP”).

By its Resolution No. 08057, the Board adopted its Port of Oakland Maritime Air Quality Policy Statement and by Resolution No. 09038, the Board approved the MAQIP that guides the Port’s plans and actions with respect to air quality improvements and reduction of health risks. One of the programs described in the MAQIP is the CTMP, which the Board adopted on June 16, 2009, by Resolution No. 09082. The full text of the Maritime Air Quality Policy Statement, as stated in Resolution No. 08057, is as follows:

The Board of Port Commissioners affirms that it has the social responsibility to minimize exposure of neighboring residents to air pollution from Port sources and to support and^[1] rights of

^[1] The word “and” was erroneously included in the Resolution instead of the word “the”. The sentence should read as follows: “The Board of Port Commissioners affirms that it has the social responsibility to minimize exposure of neighboring residents to air pollution from Port sources and to support the rights of community, local businesses and workers to clean air and fair working conditions.”

community, local businesses and workers to clean air and fair working conditions. Therefore, the Board is committed to improving air quality, safety and quality of life for neighboring residents and workers by reducing environmental impacts of Port operations, while fulfilling the Port's basic obligations to maximize commerce and to provide economic and job opportunities. To these ends, the Board hereby adopts the following policy principles that shall guide the Port's plans and actions, including the adoption of the Port's Maritime Air Quality Improvement Plan ("MAQIP"), Comprehensive Truck Management Plan (CTMP) and Early Actions (as defined below).

1. The Port adopts the goal of reducing the health risks to our neighboring communities (expressed as increase in cancer risk) related to exposure of people to diesel particulate matter emissions from Port sources by 85% by the year 2020 through all practicable and feasible means. Reduction will be calculated based on the Port's 2005 Seaport Emissions Inventory baseline.
2. The Board commits to adopting funding mechanisms, including imposition of fees, to fund air emissions reduction measures. To the maximum extent possible, Port fee revenues shall leverage matching federal, state and private funds. Fees for the purpose of funding the measures shall be evaluated for legality and be enacted to the extent that they do not damage the Port's or its customers' market competitiveness.
3. The Port will implement certain air emissions reduction measures prior to the dates that such measures are required by state or federal regulations, in order to reduce the duration of people's exposure to emissions that may cause health risks ("Early Actions"). The Port shall implement, beginning in 2008, Early Action measures for the purpose of immediately reducing the impacts of Port-serving trucks and other Port operations on West Oakland and surrounding communities. These measures shall include (a) incentives for Early Action replacement or retrofit of older polluting truck engines, (b) mechanisms for enforcing the prohibitive of Port truck parking or operation on neighborhood streets, including truck registration and tracking and (c) feasible and cost-effective means of reducing ship idling emissions. In order to fund these Early Action measures, the Board will adopt truck or containers fees and apply for matching state and federal funds.

(b) Seaport Air Quality 2020 and Beyond Plan.

Tenant acknowledges that the Port is in the process of drafting a new seaport air quality Plan ("Seaport Air Quality 2020 and Beyond Plan"), a draft of which is attached to Port Board Agenda Report dated July 12, 2018.

(c) Compliance with Laws.

Tenant shall comply with, and shall require Tenant Representatives, to comply with, at their sole cost and expense, all applicable Environmental Laws, including, specifically, the MAQIP and the Seaport Air Quality 2020 and Beyond Plan (once adopted by the Board). To the extent that Tenant has a written contract with Tenant Representatives or other Third Parties regarding Tenant Operations, Tenant shall require in such contract that the Representatives or other Third Parties comply with all applicable Environmental Laws regarding air quality and shall notify the Port if Tenant becomes aware of non-

compliance with such contractual air quality requirements by Tenant Representatives or other Third Parties and shall use best efforts to enforce the contractual air quality requirements.

(d) Compliance with Port Air Quality Requirements.

Tenant shall comply with requirements adopted by the Board (including any maritime tariff requirements) related to the operation of locomotives, vehicles, ocean going vessels, harbor craft, off-road diesel-fuel equipment, cargo handling equipment, or drayage trucks (“Emission Sources”), including any requirement under the MAQIP, Seaport Air Quality 2020 and Beyond Plan (once adopted by the Board), and CTMP.

(e) Air Emissions Monitoring and Facilities.

The Port reserves the right to, at any time and at its sole cost and expense: 1) install and operate air emissions monitoring equipment on the Premises; 2) sample and analyze air emissions; and 3) install feasible and practicable air emissions filter facilities or other devices or technologies.

(f) Annual Equipment Inventory and Use.

On December 31 of each calendar year during the Term of the Agreement (except for month to-month agreements) starting with December 31, 2018, to the extent Tenant operates a marine terminal, is a railroad, or leases Premises greater than 100,000 square feet, Tenant shall provide the Port Director of Environmental Programs and Planning with a written inventory of all equipment used on the Premises including, without limitation, cargo-handling equipment, switcher engines, and locomotive engines (“Equipment Inventory”). The Equipment Inventory shall include the estimated hours of use, truck gate counts, lift counts, and fuel usage associated with the equipment.

(g) Annual Meeting Regarding Equipment Inventory and Lower-Emissions Equipment.

Within thirty (30) days of receipt of each of the annual Equipment Inventories (if one is provided pursuant to Section 3(f) above) by the Port, the Port and the Tenant shall meet in good faith to discuss the Equipment Inventory, and evaluate the feasibility of Tenant using zero-emissions equipment on the Premises.

(h) Least Polluting Emission Sources.

Tenant shall use best efforts to use the least polluting Emission Sources on the Premises. Upon the Port’s request, Tenant shall negotiate in good faith with the Port during the Term to implement new air quality control measures when new technologies or other opportunities arise.

(i) Application for Air Quality-Related Grants.

Tenant shall use best efforts to apply for and obtain air quality-related grants or other incentive funding to: 1) obtain zero emission Emission Sources for use on the Premises; and 2) construct infrastructure on the Premises to support zero emission Emission Sources. Port staff shall assist the Tenant with air quality-related grant applications concerning the Premises, as reasonably requested by the Tenant.

(j) Shore Power.

To the extent Tenant allows vessels to operate at or adjacent to the Premises, Tenant shall plug in 100% of the shore-power ready vessels and shall use best efforts to otherwise capture/control emissions from all other vessels at-berth.

(b) Pilot Projects.

Tenant shall use best efforts to participate in pilot projects of new zero-emission equipment (if applicable) technologies upon the request of the Port, subject to feasibility.

Section 4. Storage Tanks.

Existing Storage Tanks: ☐ Yes ☐ No

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

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 5. Covenant to Restrict Use of Property (“CRUP”).

Existing CRUP: ☐ Yes ☐ No

If the Yes box is checked, the CRUP is attached as Environmental Responsibilities **Exhibit-2**, is incorporated herein, and Tenant shall comply with the CRUP. Required Disclosure:

Section 6. 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 6, it being the Parties' intention that this Section 6 shall be controlling.

Section 7. 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 8. 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: _____

Section 9. Tenant Environmental Contact Information.

Name: _____

Title: _____

Work Address: _____

Phone Number: _____

Email Address: _____

Section 10. Sustainability.

(a) The Port's Sustainability Policy (i.e., Port Resolutions 20467 and 01346), the City of Oakland's ("City") Construction and Demolition Debris Waste Reduction and Recycling Program (City Ordinance No. 13315), City Ordinance No. 13040 C.M.S., and California Code of Regulations Title 24, Part 11) are included within the definition of Environmental Laws as said term is defined in the Environmental Ordinance.

(b) Tenant shall complete the Sustainability Opportunities Assessment Form ("SOA Form") attached hereto as Exhibit-2 to document features and measures that Tenant shall incorporate into any Tenant development on the Premises and submit the SOA Form to the Port when Tenant submits an application to the Port for a permit pursuant to Section 708 of the Charter of the City of Oakland unless the completed SOA Form is attached hereto. Tenant is prohibited from undertaking any development on the Premises requiring such a permit from the Port until the SOA Form is approved by the Port. Tenant shall implement the proposed sustainability measures identified in the SOA Form.

EXHIBIT-1
TOXIC MATERIAL REPORTS

(See Attached)

EXHIBIT-2
SUSTAINABILITY OPPORTUNITIES ASSESSMENT FORM (“SOA FORM”)

(See Attached)

Sustainability Opportunities Assessment

As a component of the Port of Oakland's ("Port") Sustainability Policy (i.e., Port Resolutions 20467 and 01346), this form is required to be completed by Port staff (for Port Projects) or developers (tenant and private property projects) for all development within the Port Area. Please document features and measures incorporated into the project to comply with regulatory/code requirements, AND opportunities to implement features and measures that may exceed regulatory requirements. Discuss any features and measures considered but are not included in the project design. Use the categories below to identify features and measures to promote sustainability during both project construction and long-term operation. Where applicable, describe how project design features and measures address multiple categories.

Project Information	Project Name:	Project/File #:	Prepared/Updated By:	Date:
Energy Sources Discuss potential alternative energy sources that could provide energy for the project (i.e., solar, wind, etc.), including both the potential for on-site energy generation and contracting for energy produced off-site via renewable means.				
Energy Efficiency Detail project design features to maximize energy efficiency. Examples include building designs that minimize heating and cooling needs, and traffic layouts that minimize idle time.				
Materials Describe how materials used to complete the project (and materials from demolition) promote sustainability, noting locally-sourced materials, recycled materials, and materials whose production is otherwise more sustainable than conventional options.				

<p>Water Conservation and Water Quality</p> <p>Describe opportunities to conserve water (i.e., use of recycled water, rainwater harvest/use, water-efficient landscaping, waterless urinals, low-flush toilets, etc.) and improve water quality (such as green roofs).</p>	
<p>Alternative Fuel Equipment and Vehicles</p> <p>Note whether the project can include electric vehicle charging stations and/or bicycle parking, whether it will make use of electric equipment or equipment that utilizes compressed natural gas, etc..</p>	
<p>Air Quality</p> <p>Discuss project features that will improve or reduce impacts to air quality. Examples include HVAC chemicals that reduce greenhouse gas emissions, emissions control equipment, and measures to minimize dust.</p>	
<p>Other Sustainability Opportunities</p> <p>Use this section to describe sustainability opportunities that do not fit into categories above, such as design elements that minimize the need for maintenance, and habitat protection and restoration.</p>	

ATTACHMENT “D”

Prevailing Wage Requirements

Permittee agrees that in the performance of work under this Permit, if applicable, Permittee 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. 1606, as amended, and which generally apply to construction, costing more than \$1,000.00, which is made on or to Port property and the cost of which is paid for in whole or in part by Port’s advance or reimbursement to Permittee or by credit against rent or other sums due Port.

“Construction” as used herein shall apply to construction, alteration, demolition or repair work, and the laying of carpet and maintenance work. “Construction” includes all construction of building core and shell, building annexes, tenant improvements and public works that are within the customary jurisdiction of the construction trades and crafts, whether performed on- or off-site. Off-site work, performed by Materialmen, as defined under California Law, is not included in the term “Construction”.

The following provisions of this Attachment “D” apply only if, and to the extent that, the prevailing wage requirements are applicable.

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

Permittee shall cause the provisions of this Attachment “D” to be incorporated into each contract and subcontract, and lease agreement which would be subject to this Attachment “D”. In the event the provisions are not so incorporated, Permittee shall be liable to the worker in any action or proceeding for the difference between the prevailing wage rate required to be paid and the amount actually paid to the worker, including costs and attorney fees, as if Permittee were the actual employer.

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

Nothing in this Permit shall prevent the employment of any number of properly registered apprentices, as defined in Chapter 4, Division 3 of the Labor Code. Every such apprentice shall be paid not less than the

standard wage paid to apprentices under the regulations of the crafts or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which the apprentice is in training. Good faith efforts shall be made to maintain a ratio of apprentices to journeymen of not less than 20%, if the employer is signatory to an agreement to train, or otherwise bound to train, apprentices. When submitting the certified payroll records required hereunder Permittee shall submit documentary proof of the valid apprentice status of any worker listed as an apprentice.

Permittee agrees that to the extent that Permittee is required to comply with the prevailing wage requirements, Permittee shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with Section 1773.8 of the California Labor Code), in effect on the date of Port's first approval of a building permit or other approval of the work. Copies of the applicable prevailing rate of per diem wages are on file at Port's principal office and will be made available to any interested party on request. Permittee agrees to post a copy of the prevailing rate of per diem wages at each job site.

Permittee, as a penalty to Port, shall forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof (or such other sum as specified from time to time by Section- 1775 of the California Labor Code), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Permittee.

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

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

Permittee agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on work covered by this Attachment "D" showing all of the information specified in subsection (a) of Section 1776 of the California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-(e) inclusive of Section 1776 of the California Labor Code. In addition, copies of such certified payroll records

shall be filed with Port within a reasonable time not to exceed fifteen (15) days from close of payroll by the respective employer.

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

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

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

Except where the context otherwise requires, the definitions of terms and phrases contained in the State prevailing wage law, Sections 1720, et seq., of the California Labor Code, and in the implementing administrative regulations, shall apply to the same terms and phrases which are used in the prevailing wage requirements of this Attachment "D".

Attachment “E”

Maritime and Aviation Project Labor Agreement

The Port’s Maritime and Aviation Project Labor Agreement (“MAPLA”) may apply to Permittee’s construction work and Permittee should be knowledgeable of and shall comply with all applicable provisions of the MAPLA. Specifically, any construction work undertaken by Permittee pursuant to this Permit that exceeds an estimated cost of \$150,000 for which the Port issues a permit for construction is subject to coverage by the MAPLA. As described further in the MAPLA, “construction work” includes work subject to prevailing wage determinations or work performed within the craft jurisdiction of the unions signatory to the MAPLA at the time the MAPLA was executed on or around February 1, 2016. Permittee’s failure to utilize MAPLA could lead to grievance and arbitration and the potential for damages, attorney’s fees and costs should the Building & Construction Trades Council of Alameda County and/or its affiliated unions (collectively, “Unions”) prevail in arbitration.

With respect to any construction work that is subject to coverage under the MAPLA:

- Permittee shall assure that each construction project contractor with whom Permittee contracts (“Prime Contractor”), before beginning its respective construction work, signs a Letter of Assent to the MAPLA;
- Permittee shall require by contract that each Prime Contractor require that each subcontractor performing said construction work, regardless of tier, signs a Letter of Assent to the MAPLA;
- The Unions are third party beneficiaries of Permittee’s obligations under this Attachment “E” and are entitled to proceed with grievances and arbitration against Permittee under the MAPLA for Permittee’s breach of such obligations; and
- Permittee may not assert that the Unions do not have standing to proceed with any such grievance or arbitration proceeding described above or to recover from Permittee damages, attorneys’ fees, and costs if Permittee breaches any such obligations.

In the event the Port agrees to any revisions to MAPLA or enters into a new MAPLA, Port shall notify Permittee in writing of such revised or new requirements. After such written notice, such revised or new MAPLA requirements shall become part of this Attachment “E” and shall supersede any conflicting requirements of this Attachment “E”, and Permittee shall be obligated to comply with such revised or new MAPLA requirements as fully as if they were set forth herein.

Attachment “F”

LEED REQUIREMENTS

1. Permittee shall comply with the following additional requirements in the construction of any improvements in the Assigned Space if it is located within the Buildings at the Airport known as Buildings 367 or 368:

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

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

EQUIPMENT SELECTION

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

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

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

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

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

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

MATERIAL SELECTION

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

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

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

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

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

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

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

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

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

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

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

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

2. Permittee shall comply with the following additional requirements in the operation of the Assigned Space if it is located within the Terminal 2 Extension:

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

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

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

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

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

Attachment “G”

DESCRIPTION OF PERMITTED USE REQUIREMENTS

Permittee has been awarded this exclusive Permit based, in part, on its covenants and representations and warranties included in the Proposal for Wireless Fidelity Communication and Internet (Wi-Fi) Services at Oakland International Airport dated _____ and attached hereto as **EXHIBIT 5** (Permittee Proposal) (the “Proposal”), and Port has relied thereon. All representations, warranties, and covenants in such Proposal are incorporated herein by reference as though fully set forth herein. In the event of any actual conflict between any provision in the Permit, this Attachment “G”, and/or the Proposal, any such conflict shall be resolved in the following order of precedence: (1) the Permit, (2) Attachment “G”, and (3) the Proposal.

Without limiting the generality of the foregoing, Permittee shall satisfy the requirements in this Attachment “G”.

Permittee shall provide Wi-Fi coverage capable of supporting public and private applications in all passenger terminals of the Airport. Coverage shall not only include the interior of the Airport, but extend approximately 300ft on the exterior “air-side” of the Airport (gate areas/aircraft/ramps). Permittee shall not be required but may, at its sole discretion, provide Coverage on the exterior “land-side” of the Airport (parking structures). Such coverage shall include purchasing, installing, and implementing the necessary access points throughout the Terminals, integrating all access points into the Wi-Fi system, and performing the necessary wire-pulls to link the access points to the Port's network infrastructure and the Wi-Fi system. Permittee shall also provide, at its discretion, value-added digital content delivered service and shall be allowed to enter into roaming agreements with customers.

(A) Desired Capability

Permittee will be responsible for the design, installation, maintenance, repair, upgrade, management, and operation of an Airport-wide open access Wi-Fi system (802.11g) for the sole purpose of providing such services to the employees, passengers, tenants and visitors at the Airport. Passenger Internet services will consist of a hosted system with wireless access points (“AP(s)”) allowing Airport passengers to connect to the Internet from hold rooms and other terminal venues.

The Port, prior to installation or deployment, and in accordance with this Permit, must specifically approve all installations, equipment placements, improvements, and upgrades. Permittee shall deploy and operate the Wi-Fi system in accordance with the design and project plan(s) approved by the Port. Permittee shall obtain Federal Aviation Administration approval to operate in those areas where such approval is required.

(B) Exclusive Rights

Port grants to Permittee under this Permit, subject to the limitations set forth in Section DD of Attachment A (Right to Modify) hereof, the exclusive right to offer Wi-Fi services to the traveling public (Public Use Revenue and Third Party / Roaming Access revenue services) within the terminal buildings and throughout the Airport property. Further, subject to the limitations set forth in Section DD of Attachment

A (Right to Modify) hereof, Port shall use commercially reasonable efforts to have Permittee manage all private Wi-Fi connections at the Airport, including those of other Port tenants at the Airport. The management of such private Wi-Fi connections shall include that spectrum of wireless bandwidth that excludes public access and is dedicated for use by the Airport and its designees, including all tenants at the Airport that are within the operational footprint established by the site survey conducted by the Permittee, and as reasonably approved by the Port. Any private spectrum channels are to be assigned by the Permittee, as needed or requested, with the approval of the Airport IT Manager. This does not include the tenants that will be out of this operational footprint. In the event that a tenant is operating a wireless architecture that is interfering with the Permittee's system, the Port will take steps to cause the interfering tenant to cease interference promptly. The parties acknowledge that FedEx has a private Wi-Fi system with an established footprint as of the date of this Permit ("Pre-Existing System"). Permittee will design its system so that there is not interference between Permittee's system and the Pre-Existing System.

The parties agree that if the Federal Communications Commission ("FCC") issues an order, rule or regulation ("Order") that has the effect of prohibiting the Port from maintaining an exclusive relationship with Permittee for the Wi-Fi services, and the FCC applies the rule to encompass this Permit, then this Permit will no longer provide an exclusive grant to Permittee. If such an Order is issued and the exclusivity of this Permit is terminated, Permittee may elect to either continue this Permit or terminate this Permit; provided, however, Permittee may terminate this Permit only if the Port awards a like type Permit to another Wi-Fi service provider ("other provider") and only upon 60 days prior written notice to the Port to be effective not earlier than the effective date of the other provider's Permit. If this Permit continues, the terms and conditions of the Permit other than exclusivity will remain in full force and effect.

(C) The WI-FI System

Except as otherwise required by applicable law, the Port will not allow deployment of interfering wireless technologies such as Frequency Hopping Spread Spectrum (FHSS) or Bluetooth. Furthermore the Permittee shall use its commercially reasonable efforts to minimize the effects of laptops or other devices containing Bluetooth connectivity so that such will not adversely affect the Wi-Fi system.

In the event of any RFI problems arising after commencement of service, Permittee shall work with the Port in good faith to investigate the interference. If it is determined that the interference is caused by another public Wi-Fi system or a private Wi-Fi system other than the Pre-Existing System, the Port will use commercially reasonable efforts to work with the interfering party, at no cost to Permittee, to take commercially reasonable steps necessary to eliminate the interference.

Should Permittee's equipment cause any RFI problems with other Airport systems, the Port may direct Permittee to shutdown the offending equipment until it can be repaired.

At no time during the Term, shall Permittee market, and/or seek to sell the 802.11 architecture as the transport layer for cellular services, 3G, GSM or any other wireless services that are currently serviced by cellular distributed antenna systems (DAS) or that would be categorically (as defined by the cellular carrier industry) carried by said DAS, unless otherwise agreed by the parties. Permittee is not allowed to sublet any bandwidth without the explicit approval of the Port. Said approval is required to be written documentation formally executed by the designated representatives of the Port. Furthermore, as the private spectrum of this Wi-Fi system deployment is described herein as all services that are not offered to the traveling public and those spectrum that are specifically designated for the use of Airport, airline,

and other tenant operations, that spectrum band, is the sole ownership of the Port and shall be utilized as said entity shall instruct Permittee to utilize.

The Wi-Fi system shall support roaming across the entire Airport terminal campus. When a wireless client user roams from an AP to another AP, the Wi-Fi system shall allow communications for the client device without re-authentication or further log-on.

Upon completion of transition and upgrade of the Wi-Fi system at the Airport, Permittee will provide full documentation of all components and materials installed as part of the Wi-Fi system. As changes and updates of Permittee's Wi-Fi system occurs, Permittee shall provide full documentation of such changes and upgrades within a reasonable amount of time after such changes and upgrades take place. This documentation shall include, but not be limited to, as built drawings, manuals, and codes required to operate the Wi-Fi system at the Airport.

(D) Marketing Capability

Permittee will be responsible for both local and national marketing of the Wi-Fi system. Consequently, the growth of the service is the sole responsibility of the Permittee.

(E) Management & Customer Service

Because users of the system have strict time constraints, resolving their usage problems is the highest priority. Customer Service is the sole responsibility of Permittee. Permittee must provide its help desk function and hours of availability on the free portal. These commitments are part of this Permit, and failure to meet them will be cause for termination. The Permittee will have access to the Airport common use support staff, available 6:00 AM to Midnight, pacific time, for assistance in resolution of on-site problems.

Permittee shall provide services and facilities in the Assigned Space resulting in not less than 60% of all available bandwidth to support free and/or hybrid-based public access to Wi-Fi services, with a minimum of 400K per user. In accordance with this standard of care set forth above, Permittee shall use commercially reasonable efforts to ensure that the Wi-Fi system concession will remain continuously and uninterruptedly in operation twenty-four (24) hours per day, seven (7) days per week, 365 days per year, except for Airport approved scheduled maintenance or as otherwise authorized in writing by the Airport.

The Permittee shall maintain logs of hardware problems, system configuration issues, and other maintenance actions performed from initial system testing throughout the Term. The log should provide the Port with a complete maintenance history of the Wi-Fi system, identifying any hardware and software failures which occur, spare parts usage, periodic maintenance performed, level of consumable supplies used, and any other maintenance efforts expended.

(F) Deployment Schedule

Permittee shall complete the permitting, installation, implementation, testing, and acceptance of the Wi-Fi system at the Airport within not more than ninety (90) calendar days from the Effective Date; as such time frame(s) may be extended on a day for day basis for each day that Port fails to provide its approvals required by this Permit, provided that Permittee has provided Port with prompt written notice of such approval failure, and Port has timely received all documentation, information, and/or support reasonably

necessary for Port to grant such approval. Permittee covenants to schedule the above deployment activities concurrently in order to reduce the overall deployment time.

The above schedule is based upon the following assumptions:

- Port approval timelines are met as set forth in a detailed project plan to be agreed upon by the parties.
- There are no delays caused by third parties other than Permittee and its contractors in the permitting process. This will take an estimated 30 business days.
- Badging and access timelines are not delayed.
- Port assigns a Port employee to assist in access issues in both Port and tenant spaces.
- Port performs the inspections and acceptance tests as set forth in a detailed project plan to be agreed upon by the parties.

(G) Open Access Network

The Wi-Fi system concession shall support an open access model such that wireless users may logon to their own provider by utilizing the Wi-Fi system, subject to commercially reasonable roaming or wholesale agreements. This is accomplished by allowing the wireless users to connect through APs and route to the equipment of their specific wireless service provider (“WSP”). Permittee will not be required to enter into any roaming agreement with a third party except on commercially reasonable terms.

As part of the open access Wi-Fi system, Permittee shall:

- manage the wireless LAN system to provide sufficient capacity to support all authorized users.
- subject to entering into commercially reasonable roaming agreements, provide other WSPs access to the Wi-Fi system provided Permittee shall have the ability to adjust pricing and access depending upon the particulars of the WSP (e.g., the number of subscribers the WSP will bring onto the service) and deal structure.
- establish reasonable minimum qualifications, standards, and requirements for WSPs, to be applied and administered uniformly to similarly situated WSPs.
- subject to entering into commercially reasonable roaming agreements and subject to reasonable acceptable use policies, allow the collection of roaming partners’ customers that may require customized front end “client” applications, special applets unique to the roaming partners’ native environments, and/or any other type of connection including a browser-based log-on, provided that Permittee is not required to assume responsibility for any third-party, front-end applications nor are they to deploy such types of “client” applications that would differentiate public access into the Airport Internet environment from any other public wireless Internet venue allowing similar roaming access.

Permittee shall establish a consistent pricing structure for WSPs which may include one-time fees for costs such as system integration and splash-page development and, access, use, and per connect fees or other fees based on services requested by the WSPs.

Permittee shall establish pricing for private side usage based upon a reasonable measure of cost recovery, usage and profit.

(H) Planning Meetings

Permittee shall meet with the Port's designated staff no less than once every three (3) months for the purpose of planning and sharing information. This may include system performance, emerging technologies, prospective upgrades and other relevant matters. Permittee shall provide under NDA, detailed product marketing plans for service enhancements and their anticipated schedule for implementation.

(I) Reporting Requirements

Permittee shall provide the Port, not less frequently than monthly an issues log or technical status report.

EXHIBIT 1
ASSIGNED SPACE

EXHIBIT 1

EXHIBIT 2

IRREVOCABLE LETTER OF CREDIT

Irrevocable and Transferable

Letter of Credit # _____

Amount: U.S. \$ _____

To: City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners
("Port of Oakland")
530 Water Street
Oakland, California 94607 _____, 20__

Ladies and Gentlemen:

For the account of **[Insert applicant]**, a **[Insert type of entity]** ("Applicant"), we hereby issue in your favor our Irrevocable Letter of Credit for U.S. \$ _____.

The amount of this credit is available to you by your drafts on us at sight accompanied by the following statement signed by your Executive Director or Chief Financial Officer.

"I certify that the amount of our drawing is due the Port of Oakland (1) pursuant to the terms of the **[Insert name of agreement]** dated **[date of agreement]** between the Port of Oakland and **[Name of applicant]**, a **[Insert type of entity]** ("Applicant") or any other agreement between the Port of Oakland and Applicant, (2) pursuant to the terms of this credit, or (3) because a payment previously made to the Port of Oakland by or on behalf of Applicant has been recovered by settlement or otherwise from the Port of Oakland by a trustee, receiver, creditor or other party."

Drafts must clearly specify the number of this credit and (except as set forth below) be presented at our counters at **[Insert location of counters of bank in San Francisco or Oakland]** not later than the close of business on _____, 20__, or such later date as this credit shall have been extended to (the "Expiration Date"). If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the purported demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor, and that we are returning any documents to you. Upon being notified that the purported demand for payment was not effected in accordance with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment on or prior to the Expiration Date.

Drawings may also be presented to us by facsimile transmission to facsimile number _____ (each such drawing, a "Fax Drawing"). If you present a Fax Drawing under this Letter of Credit you do not need to present the original of any drawing documents, and if we receive any such original drawing documents they will not be examined by us. In the event of a full or final drawing the original standby Letter of Credit must be returned to us by overnight courier.

This credit shall be deemed automatically extended without amendment for additional periods of one year from the present or any future expiration date unless at least ninety (90) days prior to any such date we notify you (Attention: Chief Financial Officer) and Applicant by a nationally recognized overnight

EXHIBIT 2

courier service that we elect not to consider the letter of credit renewed for any such additional period. You may then draw on us at sight with the above specified signed statement.

This Letter of Credit is subject to the “International Standby Practices (“ISP98”)”, International Chamber of Commerce Publication No. 590 and as to matters not governed by ISP98, shall be governed by and construed in accordance with the Laws of California, without regard to principles of conflicts of Law.

We engage with you that drafts for full or partial payment drawn under and in compliance with the terms of this credit will be duly honored by us on delivery of documents as specified.

All bank charges and commissions are for the account of Applicant.

Very truly yours,

Authorized Signature and Title

SIGHT DRAFT

City

Date

Pay to the order of the Port of Oakland, at sight, _____ (\$_____) U.S. Dollars,
drawn under Letter of Credit #_____, issued by _____
to the Port of Oakland for the account of **[Insert name of applicant]**.

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

By:

Name:

Title:

EXHIBIT 3
WORK LETTER

EXHIBIT 4

OAKLAND INTERNATIONAL AIRPORT **NOTICE TO ALL AIRPORT LESSEES**

The Port of Oakland, the City of Alameda, the Citizens League for Airport Safety and Serenity (CLASS) and the Berkeley Keep Jets over the Bay Committee (KJOB) reached an agreement on November 14, 2001, which partially resolves the controversial issues surrounding expansion of the Oakland International Airport. Under that agreement, the Port shall provide a copy of existing voluntary noise abatement procedures to all parties who have lease agreements with the Port at Oakland International Airport.

The Port urges all Permittees to use their good faith, best efforts to comply with these important voluntary noise abatement procedures whenever practicable and to encourage any itinerate users of their facility also to comply with the procedures. To acknowledge receipt of this notification, the Port requests that you sign and return the attached Acknowledgment to the Noise/Environmental Compliance Office. Port of Oakland has a high priority to take all reasonable and practicable steps, within the confines of safety, applicable laws and regulations, to minimize airport noise impacts that may affect our neighbors.

Listed below are the noise abatement procedures which the Port encourages you to follow, safety permitting, to the fullest extent possible.

1. North Field Preferential Runway Use Program

The following aircraft should not depart Runways 28R/L, nor land on Runways 10R/L, except during emergencies or whenever Runway 12/30 is closed for construction, maintenance or repairs. Pilots are requested to use Runway 12/30 for all:

- Turbo-jet and turbo-fan powered aircraft
- Turbo-props over 17,000 pounds
- Four-engine reciprocating powered aircraft
- Surplus military aircraft over 12,500 pounds

2. North Field Quiet Hours Program (10 p.m. to 6 a.m.)

Departures

Pilots may choose between the following procedures, wind and weather permitting:

1. VFR and Salad IFR departures from Runway 28R
The VFR departure includes a right crosswind or additional downwind segment avoiding Bay Farm Island and the main island of Alameda.
The Salad Instrument Departure Procedure was published in August 2000. Please consult ATC instructions. (Note: Do not use the OAK 310° radial departure.)
2. VFR and IFR departures from Runways 10R/L
For Runway 9R departures, use 180° departure headings when able to E/SE-bound departures. Continue to use right turns over the airport for N/NE-bound departures when able from Runways 10R or 10L.

Additional Notes:

- Use Runway 10R instead of 10L for departures.

- Use Runway 28R instead of 28L for departures.
- Do not make left turns from Runways 10L or 10R.
- Do not depart straight out from Runway 9L.
- Use Runways 12/30 for departures of all aircraft over 75,000 pounds.
- Use only full-length departures from the chosen North Field Runway.

Arrivals

Runway 28L is the preferred aircraft landing runway.

3. Engine Run-up Policy

All engine testing above idle power run-ups should be performed in the Ground Runup Enclosure (GRE) safety permitting and whenever available. Airport Operations Directive 616.5 provides the following criteria for engine run-ups:

1. No aircraft engine shall be started, warmed-up, or run-up except in areas designated by the Airport Manager.
2. No aircraft engines shall be run-up between the hours of 2300 and 0600 (local time) without special permission from the Airport Manager.
3. Night-time engine run-ups must not exceed the following noise levels at the closest residential property on Bay Farm Island: 75 decibels between the hours of 1900 and 2200, and 70 decibels between the hours of 2200 and 0700 the following day.

4. North Field VFR Flights

All aircraft departing or landing at the North Field, operating under visual flight rules (VFR), should fly over the estuary and non-residential areas whenever safely possible.

5. Silent 7 SID

"Silent 7" departure procedure from Runway 30 (10:00 p.m. to 7:00 a.m.) directs turbojet aircraft to turn left on a heading of 270 degrees to intercept and proceed via the SFO R-342 (the San Francisco International Airport radial heading of 342 degrees). Pilots should follow FAA instructions.

6. Aircraft departing from Runway 30

Aircraft departing from Runway 30 should not make right turn climb-outs over Bay Farm Island.

Acknowledgment

We have received the Notice to Airport Lessees describing important noise abatement procedures for operating aircraft at Oakland International Airport.

Print Name: _____

Signature: _____

Company: _____

Date: _____

The Port of Oakland requests that you sign and return this Acknowledgment in the enclosed stamped and self-addressed envelope to: Noise/Environmental Compliance Office, Oakland International Airport, One Airport Drive – Box 45, Oakland, CA 94621.

Your immediate attention to this would be greatly appreciated. Please contact the Noise/Environmental Compliance Office at 510-563-2881 if you have any questions.

EXHIBIT 5

PERMITTEE PROPOSAL

See attached

EXHIBIT 6

Form of Annual Report Certificate

(Below is a sample Quarterly Report Certificate Letter that must be filed with the quarterly Airport Concession Disadvantaged Business Enterprise Report)

(Print on Company Letterhead)

(Date)

Mr. Bryant L. Francis
Director of Aviation
Port of Oakland
530 Water Street
Oakland, CA 94607

Dear Mr. Francis:

I, _____, do hereby certify as follows:

1. I am the [insert a title - **Chief Financial Officer**] of _____, the Permittee/Lessee under a Permit/Lease with the Port of Oakland for (fill in type of service) with dated _____, 20xx (the "Permit/Lease").

2. The attached Quarterly Report of the Permittee/Lessee for the quarter ending _____, 20__, was prepared in accordance with all of the applicable requirements of the Permit/Lease, and all of the information contained in this Quarterly Report is true and correct.

Sincerely,

Signature

Name

Title

EXHIBIT 7

ACDBE Quarterly Form

**PORT OF OAKLAND**
**Attachment 5-A: Quarterly Reporting for Participation of Airport Concession
Disadvantaged Business Enterprises (ACDBE)**
Prime Concessionaire Submitting Report: _____ **For Quarter Ending:** _____

Name and Address of Prime Concessionaire and Airport Concession Disadvantaged Business Enterprise (ACDBE)	Telephone and Fax Numbers Email Address	ACDBE * Certification Number	Description of Prime and ACDBE Services	Dollar Amount of Sales, Purchase or Lease of Goods and Services	Lease Amount Or Minimum Annual Guarantee	Total Lease Amount

*The certified firm is issued a certificate by the California Unified Certification Program (CUCP). ACDBE status may be obtained by accessing the CUCP website: www.dot.ca.gov/hq/bep/index.htm or by calling (916) 324-1700 or (866) 810-6346. If the firm was certified as an ACDBE at the time it started work on this lease, but was decertified before completing its portion of the work, enter the dollar amount of ALL services performed by the firm, INCLUDING SERVICES PERFORMED AFTER THE CERTIFICATION DATE. This report must be submitted with the Form of Quarterly Report Certificate. For questions regarding this form, contact Lila Zinn at (510) 627-1485.

