

REQUEST FOR PROPOSAL

for

Seaport Drayage Truck Parking/Container Depot Management Services

19-20/16



PORT OF OAKLAND

PURCHASING DEPARTMENT
530 WATER STREET
OAKLAND, CA 94607



PORT OF OAKLAND

REQUEST FOR PROPOSAL

RFP No.: 19-20/16 Seaport Drayage Truck Parking/Container Depot Management Services

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

Proposal Information

Proposal Title	Seaport Drayage Truck Parking/Container Depot Management Services
Proposal Type	Professional Parking Management Services
Proposal Number	19-20/16
Proposal Issued	February 28, 2020
Department Requesting Services	Maritime Division
Non Mandatory Pre-proposal Meeting	March 5, 2020 at 11:00 a.m. Port of Oakland, 530 Water Street, Oakland, CA 94607 (2nd Floor Board Room) To join via conference call, dial: 1-657-220-3242. Enter conference room #: 869-206-569
Scheduled Publication Date	February 28, 2020
Proposal Due Date	April 1, 2020 until 11:00 a.m.

Instructions for Submitting Proposals

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

How to Obtain Proposal Documents

Copies of the Proposal documents may be obtained at:

Location	Address
Physical	Port of Oakland--Purchasing Department 530 Water Street, Oakland, CA 94607 Monday through Friday 9:00 AM to 4:00 PM (510) 627-1104
Website	http://www.portofoakland.com/business/bids-rfps/ Or navigate to the Port of Oakland's main website at: http://www.portofoakland.com/ , then click on "Bids/RFPs" from the banner on the top of the page, and then scroll down to download the RFP.

Questions about the Proposal

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

Primary Contact	Rebecca Gibson Fax: (510) 893-2812 Email: rgibson@portoakland.com
Question/RFI Due Date	March 11, 2020 until 4:00 p.m. Please submit questions as soon as possible. No questions regarding the specifications will be responded to after the above date. All pertinent questions will be responded to and answered in writing no later than the Response Date listed below.
Response Date	March 16, 2020 All pertinent questions will be responded to via addendum faxed (or emailed) to all prospective proposers and placed on the Port's website. Proposers who did not receive a copy of the addendum should download it from the Port's website. See the "How to Obtain Proposal Documents" section for our web address. All addenda must be acknowledged on the RFP Acknowledgement and Signature form.

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

Full Opportunity

The Port's policy prohibits discrimination or preferential treatment because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a

known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation. It is the policy of the Port of Oakland to encourage and facilitate full and equitable opportunities for small local businesses to participate in its contracts for the provision of goods and services. It is further the Port's policy that no discrimination shall be permitted in small local business participation in Port contracts or in the subcontracting of Port contracts. The successful Respondent shall comply with the Port's non-discrimination policy.

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

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

John Banisadr,
Port Purchasing Manager

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Attachments:

Title		Must Be Returned with Proposal
1	Non-Collusion Declaration	Yes
2	Statement of Equal Employment Opportunity	Yes
3	RFP Acknowledgement and Signature Form	Yes
4	Proposal Worksheet	Yes
5	Port of Oakland Non-Discrimination and Small Local Business Utilization Policy A. Chart for Submitting Data for Calculation of Preference Points B. Local Participation Questionnaire C. Monthly Utilization of Local and Small Business Enterprises D. Final Utilization of Local and Small Business Enterprises	Yes Attachment 5-A and 5-B are required with the Proposal. (Note: If you are submitting a new Certification Application for preference points, then your completed application is due 7 business days prior to the proposal due date.) Attachments 5-C and –D are required after contract award/final completion of the project.
6	Non-Discrimination and Small Local Business Utilization Policy Program Affidavit	Yes
7	Statement of Adherence to Labor Peace Rule	Yes
8	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 (Attachment 8-A and 8-B are required after contract award.)

Title		Must Be Returned with Proposal
9	Statement of Living Wage Requirements	Yes
10	Insurance Acknowledgement Statement	Yes
11	Seaport Drayage Truck Parking/Container Depot Management Agreement	<p>No</p> <p>(Note: If awarded the contract, the successful Respondent will execute a revised version of the Port's standard Professional Services Agreement, which will be consistent with the provisions of this RFP.)</p>

I. Project Overview

The Port is soliciting competitive proposals from qualified firms to provide the Port's Maritime Division, or Seaport, with Seaport Drayage Truck Parking/Container Depot Management Services. The Port is seeking a professional services provider to manage and administer truck parking and container depot (container/chassis staging) operations serving primarily drayage truck parking needs associated with operations of the Seaport. The truck parking/container depot facilities are initially anticipated to comprise two lots on a combined acreage of approximately 40 acres within, the Seaport; however, the truck parking/container depot facilities may expand, contract, and/or be relocated to an alternate location(s) during the term of the agreement with advance written notice from the Port. Collectively, approximately 2,100 parking stalls are anticipated across the two locations, with up to approximately 100 gate interchange transactions per hour (during peak periods) anticipated to be processed at each location, and approximately 1,000 gate interchange transactions per day, in aggregate between the two locations.

The Port seeks proposals to manage and administer the truck parking and container depot (container/chassis staging) operations that will demonstrate the ability to:

- (a) Maximize Port revenue through competent, accurate, and efficient management of the facilities; and
- (b) Manage the operation to provide an excellent level of service consistent with the Seaport operations, as specified by the Port; and
- (c) Be responsive to the needs of all patrons and to the directions of the Port; and
- (d) Achieve and maintain the highest levels of operational efficiencies.

Please review the Minimum Qualifications cited in RFP Part II-Section 5, starting on page 3. Interested respondents that do not meet those qualifications should not submit a proposal.

About the Port of Oakland

The Port of Oakland was established in 1927 and oversees the Seaport, Oakland International Airport, Commercial Real Estate, and 20 miles of waterfront. The Seaport is one of the top ten busiest container ports in the U.S.; Oakland International Airport is the second largest San Francisco Bay Area airport offering over 300 daily passenger and cargo flights; and the Port's real estate includes commercial developments such as Jack London Square and hundreds of acres of public parks and conservation areas. Together, through Port operations and those of its tenants and users, the Port supports nearly 73,000 jobs in the region and over 827,000 jobs across the United States. The Port is an independent department of the City of Oakland.

II. Scope of Services

1. Scope of Services Summary

The successful Proposer ("Contractor") will perform the truck parking/container depot responsibilities ("Services") in accordance with the requirements of the Seaport Drayage Truck Parking/Container Depot Management Services Agreement("Agreement"), **Attachment 11**. Key Contractor responsibilities and obligations during the term of the contract shall include:

- A. Providing overall management and administration of monthly and daily truck parking and container storage/staging operations on Port owned property to owners and operators of commercial trucks (with a preference to truckers engaged in drayage truck parking needs associated with operations of the Seaport) twenty four (24) hours per day, seven (7) days a week in an efficient, competent, expeditious and courteous manner aimed at minimizing

expenses, while maximizing revenues and occupancy of the truck parking/container depot area consistent with the standards and specifications set forth in **Attachment 11**, as well as the rates, charges, rules and regulations and operating procedures as established by the Port. General management and administrative tasks include, but are not limited to the following:

- Providing inventory control
 - Collecting fees/accounting for revenues and expenses
 - Managing and administering sub-contractors and services
 - Administering operations
- B. Performing secure truck parking/container storage management services as directed from time to time by the Port's Executive Director ("Director") or Designee, consistent with the standards and specifications set forth in **Attachment 11**, and in accordance with the rules and regulations and operational procedures established by the Port.
- **Gate Interchanges** - Providing secure, staffed, entry and exit gates to monitor all truck/vehicular traffic and all persons entering and exiting the truck parking and container storage/staging area. For all trucks, entry and exit transactions ("Gate Interchanges") shall be logged to ensure the facility is secure, inventory is properly managed, and equipment and/or assets are properly accounted. Gate Interchange information to be logged shall include but not be limited to the following:
 - Time/Date In/Out
 - Driver Information
 - Truck Owner Information
 - Truck License Plate
 - Identify if Drayage Trucker (Maritime Related)
 - Container Information (size, ID number)
 - Chassis Information
 - Owner/Responsible Party of Container
 - Loaded or Empty Container
- C. Preparing and submission of an Annual Operating Budget consistent with the format provided in **Attachment 11- Exhibit G**.
- D. Using commercially available web-based or wireless mobile device application software that has the following components: (i) parking stall inventory management; (ii) customer inventory management; (iii) parking reservation system; (iv) parking attendant application/Gate Interchange management system; (v) financial management; and (vi) reporting. If the proposed software is proprietary, please state as part of your proposal. This software shall log Gate Interchange information associated with each truck, container, and chassis movements in a searchable database and shall include the following:
- Dwell times for each chassis, container, trailer, or bobtail
 - Parking location by space or general area
 - An ability to generate reports that allows Port staff to query database and generate reports)
 - Real Time Inventory

2. Contract Term

The term of the Agreement shall be three years, commencing on or about July 1, 2020 and extending through June 30, 2023. The Port will have the option, exercisable at its sole discretion, by giving sixty (60) day notice to the Contractor, to extend the term of the Agreement for up to two (2) extension periods of one (1) year each. (As used in this RFP, the Operating Terms shall mean the initial three-year term of the Agreement and any extension resulting from the Port's exercise of its right of extension.).

3. Description of Truck Parking/Container Depot Facilities

The truck parking/container depot facilities are an interim use of Seaport property. The location, size and configuration of the facilities may vary during the term of the Agreement based on user demand, availability of land, etc., but will remain within, or in close proximity to the Seaport. Currently, it is anticipated that upon commencement of this Agreement, truck parking/container depot facilities will be located on a portion of the Howard Terminal (approximately 25-acres), and on a property commonly referred to as the "Roundhouse" (approximately 15-acres). The anticipated configuration will initially consist of primarily bobtail parking on the Roundhouse property, and container depot operations (container/chassis staging) on the Howard Terminal.

Figure 1 provides a general location of the parking facilities.

Figure 1
Interim Truck Parking Facilities Location Map



Collectively across the two locations, the Contractor should expect to process up to approximately 100 Gate Interchange transactions per hour (during peak periods) at each location. On average, based on current operations, the contractor should expect to process over 1,000 transactions per day, in aggregate between the two locations.

4. Agreement for Seaport Drayage Truck Parking/Container Depot Management Services

The Seaport Drayage Truck Parking/Container Depot Management Agreement that is attached as **Attachment 11** to this RFP should be carefully reviewed prior to submitting a Proposal. The successful Proposer will be required to execute and adhere to the Agreement in substantially same form and content as **Attachment 11**, as amended by any Addenda to this RFP and as completed by the Port to conform to the selected Proposer's Proposal. Questions or suggested changes concerning the Agreement should be submitted in writing following the procedures set out in Part III Section 6 on page 6.

Under this Agreement the Port pays reimbursable expenses, plus a Management Fee. Reimbursable expenses are described in RFP Agreement (**Attachment 11**).

5. Minimum Qualification Requirements

To be considered for selection as the Contractor, Proposer must provide evidence that it or its principal owner or a joint venture partner with at least a 51% interest in the joint venture has the below minimum qualifications, and Proposer must execute **Attachment 3-RFP Acknowledgement and Signature Form** and all of the other required forms/written documents

included in Part III below. **The Port will neither consider, nor evaluate proposals submitted by proposers who do not meet the minimum qualification criteria described in this section.**

- a. The Proposer must be in good standing with the Port for its proposal to be considered responsive. For purposes of this RFP, good standing refers to: 1) compliance with all provisions of this RFP and if Proposer is a current Port Supplier/tenant/vendor, it must be current on all financial and contractual obligations to the Port including tax payments and permit fees; and
- b. Proposer must be in legal existence at the time its proposal is submitted; and
- c. Proposer must adhere to the Labor Peace Rule requirements listed (below) in Section III (Port Policy and Other Requirements); and
- d. Proposer must currently operate and manage at least one other parking operation in the U.S., that includes without limitation, a minimum of 100 stalls, the operation and use of a database management system operating utilizing software that can produce reports based on queries (operation and management experience associated with drayage truck parking/container storage operations, or experience in operating large scale logistics warehousing/transload facilities, and a basic understanding of the logistics industry is preferred); and
- e. Proposer shall have experience managing a parking facility in excess of 1,000 parking stalls and with gross annual revenue in excess of \$2 million in at least two of the last three (3) years or demonstrate experience operating large scale warehousing/transload facilities; and
- f. Proposer shall employ a General Manager who shall be the on-site individual responsible for the oversight of all operations associated with the Services, and shall possess the following qualifications: Graduation from an accredited four-year college or university, and two years' experience successfully managing or supervising a parking facility with ten (10) or more employees on a multi-shift operation. The college education requirement may be satisfied with a high school diploma as long as the General Manager is qualified and has at least five (5) years of experience successfully managing or supervising a parking facility with ten (10) or more employees on a multi-shift operation basis including experience with data collection and revenue controls of a similar truck parking/container depot operation in terms of revenue and volume. The Director of Maritime shall have the right to review the qualifications of the General Manager prior to his or her appointment and approve or disapprove said appointment.
- g. All of the requirements in Section 5.a., 5.b., and 5.c. above must be met in their entirety by all firms on a Proposer's team. All of the requirements in Section 5.d., and 5.e. above must be met in their entirety by at least one firm on a Proposer's team, i.e. firms on a team or in a joint venture cannot combine their individual parking stall capacities and gross revenues to meet these requirements.
- h. Financial capacity: Proposer shall submit **audited financial statements for the most recent calendar year**. The Proposer must demonstrate to the satisfaction of the Port that the Proposer has the financial resources to provide the Parking Management Responsibilities pursuant to the Agreement (**Attachment 11**). In considering the financial responsibility of a Proposer, the financial condition of a third party will not be considered unless it signs the Proposal as a Guarantor and agrees that if the Proposer is the successful Proposer, it will execute and deliver to the Port the Guaranty included as Exhibit J to the Agreement (**Attachment 11**).

III. Port Policy and Other Requirements

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

1. Labor Peace Rule:

The Contractor must comply with the Labor Peace Rule set forth in Section 3.5 of the Seaport Drayage Truck Parking/Container Depot Management Services Agreement by, among other

things, entering into a Labor Peace Agreement prior to the deadline established by the Port for execution of this parking operations agreement. As described further in the Labor Peace Rule, a Labor Peace Agreement means a written agreement between the Contractor and a Labor Organization that prohibits a Labor Organization, its members and any employees represented by the Labor Organization from engaging in any Labor Disruptions relating to the services provided to the Port under the parking operations agreement: (1) during any organizing, membership drive, or negotiation of a collective bargaining agreement; and (2) during the entire term of the parking operations Agreement in the case where the Labor Organization has entered into a collective bargaining agreement with the Contractor.

The apparent successful Proposer must obtain and provide to the Port the required Labor Peace Agreement **within 30 days after receiving a notice of award**, or else the Port may select another respondent to perform the Services. In addition, with the submission of your proposal, the Proposer must include a statement (**Attachment 7**) with their proposal agreeing to the Port's Labor Peace Rule requirements.

2. Non-Discrimination and Small Local Business Utilization Policy (NDSLBP):

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

- Non-Discrimination policy which all Suppliers (Respondents) must adhere to, by providing the enclosed "Non-Discrimination and Small Local Business Utilization Policy Program Affidavit" (**Attachment 6**) with their proposals
- Preference points are awarded to small local businesses who qualify under the Port's definition of a small local business. In order to qualify for preference points, Suppliers (Respondents) must be either certified by the proposal due date or may apply online at: <http://srd.portofoakland.com/>. The application and any supporting documentation must be submitted to the Port's Social Responsibility Division seven (7) business days prior to the proposal due date. To apply, please click on the above link and then on the link titled "Register New Company?" and follow the instructions.

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

http://www.portofoakland.com/files/PDF/responsibility/NDSLBP_00810.pdf

Suppliers already certified with the Port do not need to submit proof of certification, but still need to check the Port's certification database at: <http://srd.portofoakland.com/> to ensure their certification has not expired and must fill out the Chart for Submitting Data for Calculation of Preference Points (**Attachment 5-A**), and the Local Participation Questionnaire (**Attachment 5-B**), and submit them with your proposal. All Suppliers (Respondents) must still provide proof of adhering to the Port's Non-Discrimination policy by submitting the NDSLBP Program Affidavit.

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

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

3. Insurance Requirements:

All Respondents who plan on submitting a proposal in response to this RFP must meet the Port's Insurance requirements listed in the Seaport Interim Truck Parking Management Services (**Attachment 11 – Exhibit I**), and must provide proof of insurance at the time of project award. Respondents must include a statement (**Attachment 10**) with their proposal agreeing to the Port's insurance requirements and indicate they will be able to obtain the proper insurances at the time of project award.

4. Security Sensitive Information:

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

5. Living Wage Policy:

On March 5, 2002, the voters in the City of Oakland passed Measure I, adding to the City Charter Section 728 ("§728") entitled "Living Wage and Labor Standards at Port-assisted Businesses." §728 requires Port Aviation and Maritime businesses that meet specified minimum threshold requirements to pay all nonexempt employees a Living Wage rate established by City Ordinance and adjusted annually based on the Consumer Price Index for the San Francisco, Oakland, and San Jose area. The current Living Wage rate as of July 1, 2019 is at least \$14.35 with credit given to the employer for the provision to covered employees of health benefits, and \$16.47 without credit for the provision of health benefits. Specifically, §728 applies to Port contractors and financial assistance recipients with the Aviation or Maritime divisions that have contracts worth more than \$50,000 and that employ more than 20 employees who spend more than 25% of their time on Port-related work. §728 also provides covered employers with incentives to provide health benefits to employees, establishes a worker retention policy, requires covered employers to submit quarterly payroll reports and requires covered employers to allow Port representatives access to payroll records in order to monitor compliance and labor organization representatives access to workforces during non-work time and on non-work sites. Covered employers are responsible for complying with the provisions of §728 from the date the covered contract is entered into. When a contract is awarded, the Respondent will be required to fill out the attached Employer Self-Evaluation for Port of Oakland Living Wage Form (**see Attachment 8-A**) and Certificate of Compliance—Living Wage (**see Attachment 8-B**) and return them to the Social Responsibility Division. (i.e., do not include these forms in with your proposal). For more information, please call Connie Ng-Wong in the Port of Oakland's Social Responsibility Division at (510) 627-1390.

Respondent shall acknowledge reviewing the Port's Living Wage program and compliance, by submitting the Statement of Living Wage Requirement (**Attachment 9**) with their proposal.

6. Seaport Drayage Truck Parking/Container Depot Management Services:

Submission of a proposal will confirm that the Respondent fully understands the provisions of the Port's Seaport Drayage Truck Parking/Container Depot Management Services Agreement (**Attachment 11**) which will be revised as necessary to be consistent with the provisions of this RFP, and will execute such revised agreement if awarded the contract. **Any objections to any provisions in the Port's Standard Professional Services Agreement and/or this RFP must clearly be identified in your proposal. Changes are discouraged unless such changes assist in achieving the Port's goals outlined in Section I on page 1.**

IV. Submission Requirements

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

Please respond to the following 8 submission requirements in a straightforward, concise delineation of your capabilities proposed to satisfy the requirements of the RFP. The Port will use your responses to

objectively determine your capabilities and experience. Please label your responses 1 through 8, in the order presented below. Please limit your total response to the number of pages indicated below (excludes the required attachment forms provided with this RFP).

Submittal Format:

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

1. **Company Information:** Provide information that clearly demonstrates how your company meets the **minimum qualifications** listed in the RFP. Also, provide the name of your company (including the name of any parent company), business address, email address, Federal Tax ID number, telephone and fax numbers, and names and titles of key management personnel, and a brief history of your company. Provide a brief statement of who is authorized to submit the proposal on the behalf of your company. Please make sure that person signs and dates the statement. If your company is making any exceptions to the Port's Seaport Drayage Truck Parking/Container Depot Management Services Agreement (**Attachment 11**) and/or this RFP, they must be clearly set forth in your proposal and noted in this section. Exceptions are discouraged and may result in lower evaluation points during the Port's evaluation of your proposal.

Proposer shall submit **audited financial statements for the most recent calendar year** as required by the Minimum Qualifications requirements referenced in Section h of the Scope of Services. If financial statements of any entity other than the Proposer are included in a proposal, they will be disregarded by the Port in its evaluation of the proposal unless each other entity joins in the proposal as a guarantor by signing the Proposer's Statement and Representation included with the proposal forms. Proposer's Statement and Representation obligates each such entity to execute and deliver to the Port the Guaranty included as **Exhibit J** to the Agreement (**Attachment 11**) at the same time that the Proposer executes and delivers the Agreement to the Port. If Proposer is a joint venture newly created for this opportunity, the financial statement requirement shall be satisfied with respect to each partner. The submittal of the audited financial statements for the most recent calendar year will not count against their total page count.

2. **Knowledge and Experience:** Provide relevant information about your company's knowledge and experience, including a list of up to three other projects (in similar size and scope to this RFP), with brief descriptions that demonstrate your experience. Please include any relevant experience associated with drayage trucking parking operations, warehouse/transloading operational experience, the logistics industry, data collection, and software/database management associated with operations. Also, provide the names of key personnel who will be assigned to do the work under this project and provide their relevant experience. This includes key corporate contacts throughout the contract period, onsite transition staff and operations staff, including the General Manager.
3. **Client References:** Provide names, addresses and contact information for three (3) current clients. Provide the size and scope of each project and a brief description of the projects. Please make sure all contact information is current. By providing such information, you authorize us to contact such clients.
4. **Plan and Approach:** Provide an overview describing the general approach, scope of services, and methodology of your company's ability to fulfill the general functions required in this RFP. Please use this section to describe the services you propose to provide to the Port, and more important, how does your experience and capabilities set you apart from the competition. What insight and experience can your company offer that others can't? Your description of the Services can be above and beyond the requirements listed in the "Scope of Service" section and must include your Transition Plan and approach to beginning the Services.

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

- a. Steps to be taken by the Proposer prior to, the day of, and the period following the date the successful Proposer assumes management and operational control of the Interim Truck Parking areas.
- b. Required actions on the part of the Port
- c. Identification of all legal requirements including business licenses and incorporation requirements (if necessary), business permits, etc.
- d. Hiring and staffing plan (including organization structure of on-site personnel)
- e. Timeline for implementing all steps included in the Transition Plan including requirements of the part of the Port; and
- f. Other elements of a successful Transition Plan that the Proposer believes are required and are not listed above

Estimated Annual Operating Budget: Prepare and submit Estimated Annual Operating Budget consistent with the format provided in **Attachment 11** for the first year of operation. Please note any one-time "start-up" costs included in the budget.

Staffing Plan: **The Estimated Annual Operating Budget should include staffing costs consistent with the Staffing Plan prescribed in Attachment 11 – Exhibit C.** However, the Proposer is encouraged to submit an additional alternate Staffing Plan that demonstrates an ability to achieve operational efficiencies and costs savings without compromising service levels.

5. **Proposed Costs:** Enter your proposed project cost on RFP **Attachment 4** – Proposal Worksheet, and attach related fee schedules. You should provide complete information on your fee schedule so that the Port can evaluate your proposal. This information should be consistent with the figure provided in the Estimated Annual Operating Budget submitted.
6. **Debarment Statement:** Provide a written statement that your company has not been debarred from providing services to any State or Federal Agency within the last five (5) years. Sign and date your statement. If your company has been debarred, you will need to provide background information and the reason(s) for the debarment. Provide the name and contact information for the agency that debarred your company. The Port must review the reason(s) and duration for the debarment before it can determine if your company can be considered for this project.
7. **Litigation and Other Information:** Provide information describing any litigation, arbitration, investigations, or any other similar actions that your company, its principals, directors, and/or employees have been involved in during the last five (5) years relating to your company's services. Please list (a) name and court case or other identification number of each matter, (b) jurisdiction in which it was filed, and (c) outcome of matter (e.g. whether the case is pending, a judgment was entered, a settlement was reached or the case was dismissed). The Port will review the reason and timing of the action before it can determine if your company can be considered for this project. Failure to provide the litigation information may disqualify your proposal.
8. **Required Forms and Adherence to Port Policy and Other Requirements:** The Respondent must fill out all of the forms included in this RFP (listed under the "Attachments" section and marked with a "Yes" in the column titled "Must Be Returned with Proposal"), and return them with your proposal. By returning the listed forms, your company is supporting and agreeing to the Port Policy and Other Requirements (listed in Section III, "Port Policy and Other Requirements" of this RFP). Failure of the Respondent to provide any of the required forms may result in your proposal being rejected for non-responsiveness. These required forms will not count against the maximum page count (indicated above) for your response.

V. Evaluation Criteria

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

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

A. Evaluation Weights

Item	Criteria	Weights
	<u>Adherence to Port Policy and Other Requirements and Debarment Statement</u> Proposals from companies who have not or will not adhere to the Port Policy and Other Requirements or who have been debarred and have not provided sufficient reasons/justification for the Port to review the circumstances surrounding the debarment will not be forwarded to the evaluation committee for review. (Items 6 and 8 of the Submission Requirements section.)	Pass/Fail
	<u>Minimum Qualification Requirements</u> Described in Part II- Section 5 Scope of Services. Proposals that do not provide sufficient documentation that clearly demonstrates your company meets the minimum qualifications listed in this RFP will not be forwarded to evaluation committee for review. (Item 1 of the Submission Requirements section).	Pass/Fail
1	<u>Company Information, Client References, Litigation and Other Information, and Required Forms</u> Respondent's capacity to provide professional service as evidenced by past performance, company information, reference checks, litigation and other information, and required forms. (Items 1, 3, 7, and 8 of the Submission Requirements section.)	10%
2	<u>Knowledge and Experience</u> Respondent's knowledge and experience in providing drayage truck parking/container depot services as evidenced from your response to item 2 of Submission Requirements section.	30%
3	<u>Plan and Approach (Including Transition Plan)</u> As evidenced from your response to item 4 of the Submission Requirements section.	25%
4	<u>Proposed Costs</u> As evidenced from your response to item 5 of the Submission Requirements section, and as provided on the Proposal Worksheet, as well as information provided in the Estimated Annual Operating Budget required as part of item 4 of the Submission Requirements section.	20%
5	<u>Non-Discrimination and Small Local Business Utilization Policy</u> Does your company meet the Port's definition of Small Local Business? The Port will evaluate companies that have provided substantiating documentation to prove they meet the Port's definition of Small Local Business, and award qualifying companies up to the maximum 15 points.	15%
	Total	100%

B. Selection Procedure:

All proposals received by the deadline which meet the RFP's requirements will be presented to the evaluation committee comprised of Port of Oakland staff and possibly external members. The evaluation committee will evaluate the proposals and score all submissions according to the evaluation criteria above. The selection process may include interviews (at the discretion of the evaluation committee) for the top-scoring submissions. If interviews are to take place, the Port will notify the top scoring Respondents. Interview details and scoring requirements will be provided to selected Respondents prior to the interviews.

VI. Additional Provisions

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

A. Port's Legal Name and Jurisdiction

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

B. Ownership of Proposal

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

C. Deadline for Receipt of Proposal

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

D. Public Records Act

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 Request for Proposal process. However, such disclosure shall not be made prior to the date on which the Port publishes a final Board agenda report recommending award of the contract.

If Respondent believes portions of its proposal contain trade secrets or proprietary financial information that should be exempt from disclosure under the Public Records Act, **Respondent shall submit a separate copy of its entire proposal with the protected material redacted with black boxes, which each redaction specifically marked as "CONFIDENTIAL"**. Such separate copy shall not constitute the proposal, but shall be used, if needed and appropriate, in response to an applicable Public Records Act request. If Respondent does not submit such a separate redacted proposal, Respondent shall be deemed

as not claiming that any portion of its proposal contains trade secrets or proprietary financial information.

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 or notice to Respondent.

E. Indemnification

If Respondent is selected to receive a contract, it will be required to agree to the indemnification clause contained in the Port's Seaport Drayage Truck Parking/Container Depot Management Agreement. See **Section 16 of Attachment 11**.

F. Reimbursable Expenses

Attachment 11 details reimbursable expenses under this contract. All expenses associated with the Contract Transition and start-up tasks are not separately reimbursable.

G. Port's Right to Modify

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

H. Conflicts of Interest

By submitting a proposal, the Respondent represents that it is familiar with 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. Respondent also represents that its proposal has completely disclosed to the Port all facts bearing upon any possible interests, direct or indirect, which Respondent believes any member of the Port, or other officer, agent or employee of the Port or any department presently has, or will have, in any agreement arising from this RFP, or in the performance thereof, or in any portion of the profits there under. Willful failure to make such disclosure, if any, shall constitute ground for rejection of the proposals or termination of any agreement by the Port for cause. Respondent agrees that if it enters into a contract with the Port, it will comply with all applicable conflict of interest codes adopted by the City of Oakland and Port of Oakland and their reporting requirements.

I. Cost of Preparing a Response

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

J. Compliance with Law

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

K. Respondent's Relationship

The Respondent's (and Respondent's employees' and contractors') relationship to the Port shall be that of independent contractor and not deemed to be an employee or agent of the Port.

L. Proposal Considerations and Legal Proceeding Waiver

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

M. False Statements

False statements in a proposal will disqualify the proposal.

N. Taxes

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

O. Grade of Service

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

P. The Respondent's Liability

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

Q. Amendments

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

R. Withdrawal or Modification of Offers

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

S. Acceptance

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

T. Representations

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

U. Award Consideration and Length of Contract

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

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

V. Contract Termination

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

W. Protest Procedures

Any party that has timely submitted a responsive proposal that contends or claims that the Port's proposed award of the subject contract fails to comply with the Port's rules and regulations or with law must file a protest in accordance with the provisions set forth below:

1. Any protest must be submitted in writing to Daria Edgerly, Secretary of the Board, and received by the Port no later than 5:00 p.m. by the third (3rd) business day following publication of the identity of the apparent successful proposer (or of Notice of Intent to Award, if such notice is issued).
2. The protest must include the name, address and telephone number of the person representing the protesting party.
3. The initial protest document must contain a complete statement of the basis for the protest, including in detail, all grounds for protest including referencing the specific portion of the solicitation document that forms the basis for the protest, and including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the protest. Any matters not set forth in the written protest shall be deemed waived. All factual contentions must be supported by competent, admissible and credible evidence.

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



Non-Collusion Declaration

RFP No.: 19-20/16, Seaport Drayage Truck Parking/Container Depot Management Services

(To Be Executed By Proposer and Submitted With Proposal)

I, _____, declare as follows:

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

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

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

Executed this _____ day of _____, 202__, at

_____, _____

Signature

Authority: Public Contract Code 7106
CCP 2015.5



PORT OF OAKLAND

Statement of Equal Employment Opportunity

RFP No.: 19-20/16, Seaport Drayage Truck Parking/Container Depot Management Services

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

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

Signature

Print Name

Title

Date



PORT OF OAKLAND

RFP Acknowledgement and Signature Form

**RFP No.: 19-20/16, Seaport Drayage Truck Parking/Container Depot
Management Services**

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

Addendum Acknowledgement:

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

Acknowledgement and Signature:

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

Respondent's Name and Title: _____

Company Name: _____

Address: _____

Telephone: _____ Fax: _____

Email: _____ Cell Number: _____

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

Federal Tax Identification Number: _____

Authorized Signature: _____ Date: _____



PORT OF OAKLAND

Proposal Worksheet

RFP No.: 19-20/16, Seaport Drayage Truck Parking/Container Depot Management Services

Proposers must complete and submit this Proposal Worksheet and other requested content on this Attachment 4.

	<u>Amount</u>	<u>Approx. # of Stalls</u>	<u>Annual Total</u>
<i>Annual Management Fee:</i>	\$_____ per Stall (Monthly)	2,100	\$_____
	<u>Rate</u>	<u>Approx. # of Stalls</u>	<u>Annual Total</u>
<i>Insurance Premiums:</i>	_____ per Stall (Monthly)	2,100	\$_____
<i>Proposed Annual Salaries for On-Site Parking Staff:</i>		<u>Annual Salary or Rate/Hour</u>	<u># of Employees (FTE)</u>
	General Manager:	\$_____	_____
	Administrative Clerk:	\$_____	_____
	Parking Attendant (Supervisor):	\$_____	_____
	Parking Attendant:		
	Security Officer (Supervisor):	\$_____	_____
	Security Officer:	\$_____	_____
		<u>Not to Exceed Rate/Amount</u>	
<i>Workers Compensation Rate (per \$100 Payroll):</i>		_____ %	
<i>Proposed Annual Healthcare Costs Per FTE Employee:</i>		\$_____	
<i>FTE = Full Time Equivalent</i>			

Respondent Name: _____ Title: _____

Company Name: _____

Authorized Signature: _____ Date: _____

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

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

Consultant Preference Points: The Port allots preference points for the percentage of work being performed by consultants/sub-consultants located in either the LBA or the LIA and for community involvement (i.e. mentoring, intern programs, job fairs, community rehabilitation groups and re-entry programs) for a maximum total of up to 15 points. These points are added to a maximum of 85 technical points for a composite maximum of 100 points in evaluating consultant proposals as follows:

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

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

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

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

Any proposal that fails to complete and submit the above two items (Prime *and* sub-consultants) will not be considered. For firms headquartered outside the LIA/LBA wishing to obtain credit for their local office, for the purpose of this project shall utilize personnel from this local office. Additionally, mail, correspondence and telephone calls will be made to this local office.

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

- Consultants or any team members wishing to be certified by the Port must submit a Certification Application, with all supporting documentation seven (7) business days prior to the proposal due date. The questionnaire and checklist of necessary supporting documents for certification may be obtained at: <http://www.portoakland.com/srd/>. For questions regarding certification, you may contact Social Responsibility Division (SRD) at (510) 627-1627 or email SRDAdmin@portoakland.com. Firms certified by the Port of Oakland do not need to submit proof of certification.

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

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



PORT OF OAKLAND

Chart for Submitting Data for Calculation of Preference Points

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

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

Notes:

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



(Use additional paper if necessary)

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

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

2. (A) Do any team members regularly use local students as interns in their work? Yes___ No___
(B) Do any team members currently use local students as interns in their work? Yes___ No___
(C) Have any team members used local students as interns in past work? Yes___ No___
(D) If planning to use interns on this project, how will you utilize them?

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

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



PORT OF OAKLAND

Monthly Utilization of Local and Small Business Enterprises

PRIME CONTRACTOR		BUSINESS ADDRESS				CONTRACT BID AMOUNT		DATE OF THIS REPORT	
PORT PROJECT NAME				PORT PROJECT NUMBER	WORK AUTHORIZATION #	TOTAL CONTRACT AMOUNT INCLUDING CHANGE ORDERS		PROJECT COMPLETION DATE	
(1) Name and Address of Small/Local Firm [Prime, Subcontractor, Supplier or Trucking Broker]	(2) Description of Work Performed and or Materials Supplied	(3) Prime and Sub(s) Original Bid Amount	(4) Port Certification Number	CONTRACT PAYMENTS					
				(5a) * LIABE Dollars	(5b) * LBABE Dollars	(5c) * SBE Dollars	(5d) * VSBE Dollars	(6) Date Work Completed	(7) Date of Final Payment
TOTAL				\$	\$	\$	\$		

List all certified local/small prime and subs regardless of tiers through out the life of the project, whether or not firms were listed on the original bid. Xerox this page if additional sheets are needed.

If actual sub dollars were different than the approval amount at time of award, provide comments on back of form. List actual amount paid to each sub at the above chart.

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

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

Distribution:

Original – SRD

Copy To – Engineering Construction / Resident Engineer

Instructions--Monthly Utilization of Local and Small Business Enterprises

- (I) Enter the project information requested on the first two rows on page 00816-1 (Prime Contractor, Business Address, Contract Bid Amount, etc.)
- (II) Provide the following information **for each portion of the contract work performed by (and for each amount of materials supplied by) a Port-certified small and/or local business**, including the prime contractor if the prime is a Port-certified small/local business:

- Column 1: Name and address of the firm performing work and/or supplying materials.
- Column 2: Description of the work performed and/or materials supplied by said firm.
- Column 3: For subcontractor, supplier or trucker: dollar amount of the bid submitted by the firm to prime bidder, as listed in the Subcontractor and Supplier List Form submitted by prime bidder with its bid. If the subcontractor, supplier or trucker was not listed in the Subcontractor and Supplier List Form, enter "0". For small/local prime bidder: dollar amount of the prime bidder's bid excluding all subcontractor/supplier/trucking broker bid amounts, as listed in the Subcontractor and Supplier List Form.
- Column 4: Port Certification Number of firm. (Port-certified small/local subcontractors, suppliers and truckers should provide their certification number to the Prime Bidder and notify Prime Bidder in writing with the date of the decertification if their status changes during the course of the project.)
- Columns 5a-5d Enter the dollar amount of the work performed and/or materials supplied by the firm in either Column 5a, 5b, 5c or 5d, depending on the firm's certification status. Firm certification status must be certified and determined at the time of bid by Port of Oakland. The certified firm is issued a letter by the Port of Oakland that states their certification status as well as the expiration date of the certification. Firms' certification status may be obtained by accessing the Port of Oakland website (<http://srd.portofoakland.com/>) or by calling (510) 627-1627. Refer to the following table for a description of the certification status:

Certification Status	Description
LIABE (Local Impact Area Business Enterprise)	firm located in Oakland, Alameda, Emeryville, or San Leandro
LBABE (Local Business Area Business Enterprise)	firm located in Alameda County or Contra Costa County
SBE (Small Business Enterprise)	business with 3 year average annual gross revenue not to exceed \$36,000,000
VSBE (Very Small Business Enterprise)	business with 3 year average annual gross revenue not to exceed \$5,000,000

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

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

- (III) In the 'TOTAL' row, enter the column sums of the dollar amounts listed in Columns 5a through 5d.
- (IV) The authorized contractor representative shall certify the information supplied by signing in the space provided. **Per Port of Oakland provisions, Final Payment WILL NOT be made until this form is properly filled out and submitted to the Port of Oakland.**

COMMENTS:



PORT OF OAKLAND

Final Utilization of Local and Small Business Enterprises

PRIME CONTRACTOR		BUSINESS ADDRESS				CONTRACT BID AMOUNT		DATE OF THIS REPORT	
PORT PROJECT NAME				PORT PROJECT NUMBER	WORK AUTHORIZATION #	TOTAL CONTRACT AMOUNT INCLUDING CHANGE ORDERS		PROJECT COMPLETION DATE	
(1) Name and Address of Small/Local Firm [Prime, Subcontractor, Supplier or Trucking Broker]	(2) Description of Work Performed and or Materials Supplied	(3) Prime and Sub(s) Original Bid Amount	(4) Port Certification Number	CONTRACT PAYMENTS					
				(5a) * LIABE Dollars	(5b) * LBABE Dollars	(5c) * SBE Dollars	(5d) * VSBE Dollars	(6) Date Work Completed	(7) Date of Final Payment
TOTAL				\$	\$	\$	\$		

List all certified local/small prime and subs regardless of tiers through out the life of the project, whether or not firms were listed on the original bid. Xerox this page if additional sheets are needed.

If actual sub dollars were different than the approval amount at time of award, provide comments on back of form. List actual amount paid to each sub at the above chart.

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

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

Distribution:

Original – SRD

Copy To – Engineering Construction / Resident Engineer

Instructions--Final Utilization of Local and Small Business Enterprises

- (I) Enter the project information requested on the first two rows on page 00816-1 (Prime Contractor, Business Address, Contract Bid Amount, etc.)
- (II) Provide the following information **for each portion of the contract work performed by (and for each amount of materials supplied by) a Port-certified small and/or local business**, including the prime contractor if the prime is a Port-certified small/local business:

- Column 1: Name and address of the firm performing work and/or supplying materials.
- Column 2: Description of the work performed and/or materials supplied by said firm.
- Column 3: For subcontractor, supplier or trucker: dollar amount of the bid submitted by the firm to prime bidder, as listed in the Subcontractor and Supplier List Form submitted by prime bidder with its bid. If the subcontractor, supplier or trucker was not listed in the Subcontractor and Supplier List Form, enter "0". For small/local prime bidder: dollar amount of the prime bidder's bid excluding all subcontractor/supplier/trucking broker bid amounts, as listed in the Subcontractor and Supplier List Form.
- Column 4: Port Certification Number of firm. (Port-certified small/local subcontractors, suppliers and truckers should provide their certification number to the Prime Bidder and notify Prime Bidder in writing with the date of the decertification if their status changes during the course of the project.)
- Columns 5a-5d Enter the dollar amount of the work performed and/or materials supplied by the firm in either Column 5a, 5b, 5c or 5d, depending on the firm's certification status. Firm certification status must be certified and determined at the time of bid by Port of Oakland. The certified firm is issued a letter by the Port of Oakland that states their certification status as well as the expiration date of the certification. Firms' certification status may be obtained by accessing the Port of Oakland website (<http://srd.portofoakland.com/>) or by calling (510) 627-1627. Refer to the following table for a description of the certification status:

Certification Status	Description
LIABE (Local Impact Area Business Enterprise)	firm located in Oakland, Alameda, Emeryville, or San Leandro
LBABE (Local Business Area Business Enterprise)	firm located in Alameda County or Contra Costa County
SBE (Small Business Enterprise)	business with 3 year average annual gross revenue not to exceed \$36,000,000
VSBE (Very Small Business Enterprise)	business with 3 year average annual gross revenue not to exceed \$5,000,000

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

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

- (III) In the 'TOTAL' row, enter the column sums of the dollar amounts listed in Columns 5a through 5d.
- (IV) The authorized contractor representative shall certify the information supplied by signing in the space provided. **Per Port of Oakland provisions, Final Payment WILL NOT be made until this form is properly filled out and submitted to the Port of Oakland.**

COMMENTS:



PORT OF OAKLAND

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

**RFP No.: 19-20/16, Seaport Drayage Truck Parking/Container Depot
Management Services**

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

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

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

Signature

Print Name

Title

Date



PORT OF OAKLAND

Statement of Adherence to Labor Peace Rule

**RFP No.: 19-20/16, Seaport Drayage Truck Parking/Container Depot
Management Services**

The undersigned acknowledges that it has carefully reviewed, understand, and agree to the terms of the Labor Peace Rule set forth in Section 3.5 of the Seaport Drayage Truck Parking/Container Depot Management Agreement attached to this RFP. The undersigned understands that compliance with the Labor Peace Rule is a material term to performing this opportunity.

If selected as the successful Respondent, the undersigned agrees to obtain and provide to the Port the required Labor Peace Agreement within 30 days after receiving a notice of award, or else the Port may select another respondent to perform the Services. If selected as the successful Respondent, the undersigned also agrees to fully comply with the Labor Peace Rule, which includes obtaining and attaching valid Labor Peace Agreement(s) to the Parking Management Agreement prior to commencing operations.

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

Signature

Print Name

Title

Date



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, 2019, \$16.47 without health benefits or \$14.35 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 \$2.12 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) **Submit name, address, date of hire, occupation classification, rate of pay, benefits paid for each of its employees, and compensated time off in a web accessed monitoring system at <https://www.elationsys.com/app/Registration/> 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.



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

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

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

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

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

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

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

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

Submit Completed Checklist To:

Connie Ng-Wong

Port of Oakland

Social Responsibility Division

530 Water Street

Oakland, CA 94607

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

Email: cng-wong@portoakland.com



PORT OF OAKLAND

Certificate of Compliance – Living Wage

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

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

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

Please check the appropriate box and sign below

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

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

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

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

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



PORT OF OAKLAND

Statement of Living Wage Requirements

**RFP No.: 19-16/16, Seaport Drayage Truck Parking/Container Depot
Management Services**

I hereby certify that I _____ (Legal Name of Respondent/Supplier/Consultant/Contractor), has reviewed the Living Wage Requirements, included herein as Attachment 8 to this Request for Proposal and will comply with said Requirements. Upon execution of an Agreement, the selected consultant will be required to complete the 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

Insurance Acknowledgement Statement

**RFP No.: 19-20/16, Seaport Drayage Truck Parking/Container Depot
Management Services**

I hereby certify that _____ (Legal Name of Respondent) agrees to meet all of the Port's Insurance requirements included in the Seaport Drayage Truck Parking/Container Depot Management Services Agreement attached to this Request for Proposal **(Attachment 11)** and Respondent will be able to evidence such insurance when and if awarded the contract and will provide proof of insurance at the time of project award if awarded the contract.

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

Signature

Print Name

Title

Date



PORT OF OAKLAND

**Seaport Drayage Truck Parking/Container
Depot Management Services Agreement**

**RFP No.: 19-20/16, Seaport Drayage Truck Parking/Container Depot
Management Services**

ATTACHMENT 11

Please see next page

ATTACHMENT 11

DRAFT

**SEAPORT DRAYAGE TRUCK PARKING/CONTAINER DEPOT
PARKING MANAGEMENT SERVICES AGREEMENT**

BETWEEN

PORT OF OAKLAND

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

AND

_____,
A _____

DATED

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EXHIBITS

- A Seaport Drayage Truck Parking/Container Depot Area Description (§ 1)**
- B User Parking Agreement (§ 3)**
- C Truck Parking Staffing Plans (§ 3)**
- D Administrative Fees (§ 8)**
- E Truck Parking Rates (§ 4)**
- F Inventory of Port-Owned Equipment and Furnishings (§ 5)**
- G Estimated Annual Operating Budget (§6)**
- H Environmental Responsibilities (§ 14)**
- I Insurance Requirements (§ 15)**
- J Guaranty (§ 30)**
- K Labor Peace Rule (§ 3.5)**

PARKING MANAGEMENT AGREEMENT

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

WITNESSETH:

WHEREAS, the Port has under its jurisdiction and ownership certain lands (“Port Property”) within the Seaport in the City of Oakland; and

WHEREAS, the Port desires to continue with operations of truck parking and container storage and staging facilities on portions of the Port Property (the “Truck Parking/Container Depot Area”) as depicted on **Exhibit A** attached hereto and incorporated herein; and

WHEREAS, the Port has established a program (“Program”) for controlled truck parking in the Truck Parking/Container Depot Area; and

WHEREAS, the Operator has experience in the management and operation of a similar truck parking Program in the United States; and

WHEREAS, the Port desires to retain the Operator as an independent contractor to manage and operate the Truck Parking/Container Depot Area in accordance with this Agreement.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Management of Described Truck Parking/Container Depot Area.

The Port does hereby retain the Operator, and the Operator agrees with the Port, to implement the Program and thereby manage and operate as an independent contractor the area described in **Exhibit A** (“Truck Parking/Container Depot Area Description”), attached hereto and incorporated herein. Consistent with the provisions of Section 10 below, the Port’s Executive Director or his or her authorized designee (hereinafter “Director”) may from time to time, add to and/or reduce, or relocate permanently or temporarily the areas included within the Truck Parking/Container Depot Area, and upon such additions and/or reductions or relocations the term Truck Parking/Container Depot Area shall be construed to incorporate such additions and/or reductions. “Truck Parking/Container Depot Area” consists of all land, improvements, and equipment located within the boundaries identified in **Exhibit A** used in connection with the truck parking operations pursuant to the terms of the Agreement. As of the date of this agreement, the Truck Parking/Container Depot Area contains approximately 2,100 parking stalls on a total of approximately 40 acres.

2. Term of Agreement; Options to Extend Term.

The initial term of this Agreement shall be three (3) years commencing July 1, 2020 (“Commencement Date”) and terminating June 30, 2023 (collectively referred to as the “Initial Term”), subject to the provisions of Section 27 (Termination).

The Port shall have the unilateral right to extend the Initial Term for two (2) additional periods of one (1) year each (each additional term referred to as an “Extension Term”) upon sixty (60) days’ prior written notice in each instance from the Director to the Operator. The effectiveness of each of said options to extend the Initial Term, if exercised, shall be conditioned upon the Operator’s written

acceptance of any revised Management Fee or other modified operational considerations set forth in said Director's notice. Any reference to the "Term" of this Agreement shall be deemed to include any Extension Terms.

2.1 Transitional Period.

For a period of thirty (30) days after the Commencement Date (the "Transition Period"), the Port shall provide access to Operator to the Truck Parking/Container Depot Area for preparation and transition purposes only. Operator shall not be compensated during the Transition Period, and no expenses shall be reimbursed to Operator during Transition Period. Prior to the commencement of the Transition Period, Operator shall furnish certificates of insurance to the Port of Oakland Risk Management Department evidencing the insurance requirements are met pursuant to the terms of this Agreement. All provisions of the Agreement, with the exception of Sections 4, 5, 6 and 9 shall remain in full force and effect during the Transition Period.

3. Operational Requirements and Program Goals.

The Operator agrees to manage and operate the Truck Parking/Container Depot Area in an efficient, competent, expeditious and courteous manner while maximizing revenues and the capacity of all of the Truck Parking/Container Depot Area and minimizing operational costs, in accordance with the rates, charges, rules and regulations and operational procedures established or approved from time to time by the Port, and in accordance with this Agreement.

The Operator agrees to promote and manage the Truck Parking/Container Depot Area in accordance with the following Program goals:

- (a) Maximize Port revenue through competent, accurate, and efficient management of the facilities;
- (b) Manage the Program to provide an excellent level of service consistent with the image of the Seaport, as specified by the Port;
- (c) Be responsive to the needs of all patrons and to the directions of the Port; and
- (d) Achieve and maintain the highest level of efficiencies and cost savings in the provision of these services.

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

Operator agrees that in operating and managing the Truck Parking/Container Depot Area, it will ensure that none of its employees, agents or contractors do anything that is in violation of, and will comply with Environmental Responsibilities (as defined in Section 14 below).

Operator agrees that it will ensure that all parking in the Truck Parking/Container Depot Area shall be in accordance with an executed user parking agreement that is substantially the same as the user parking agreement attached hereto as **Exhibit B** (the "User Parking Agreement"). Any changes to the user parking agreement shall be reviewed and approved by the Port in writing. Operator shall monitor and enforce the provisions of the User Parking Agreement regarding permitted and prohibited uses.

Port shall have the right to object to the demeanor, conduct, and appearance of any employee of Operator pursuant to Section 3.2, subject to applicable Laws. Operator shall take all steps reasonably necessary to remedy the cause of the objection.

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

3.1 Program Development and Implementation.

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

3.1.1 Truck Parking Service Requirements.

The Operator agrees to provide parking with a preference to truckers engaged in the movement of Port maritime related containers (the "Truck Parking/Container Depot Services"). The Truck Parking/Container Depot Services shall be provided twenty-four (24) hours per day, seven (7) days per week, inclusive of holidays. To the extent that there may be a shortage of available parking spaces in the Truck Parking Service area(s), Operator shall give first preference to monthly parking of commercial trucks/trailers that are used to haul containers to and from Port maritime facilities, and then give preference to requests for monthly parking over daily parking.

3.1.2 Truck Parking/Container Depot Services.

The Operator shall, at a minimum, perform all of the following functions related to the Truck Parking/Container Depot Services, without limitation:

1. Provide Truck Parking/Container Depot Services Truck Parking/Container Depot Services twenty-four (24) hours per day, seven (7) days per week, inclusive of holidays;
2. Provide trained, professional, and courteous staff;
3. Collect truck parking fees and charges as established by the Port without exception, except as directed by the Director;
4. Provide staffed, secure gate interchange (entry/exit access lanes) for vehicle entry/exit, including the monitoring and control of all truck/vehicular traffic and all persons entering and exiting the truck parking and container storage/staging area. For all trucks, entry and exit transactions shall be logged to ensure the facility is secure, inventory is properly

managed, and equipment and/or assets are properly accounted.

5. Ensure customers are current in payment prior to entering and using the Truck Parking/Container Depot Area;
6. Collect data and maintain accurate and complete database of information regarding truck movements and other information;
7. Maintain the Truck Parking/Container Depot Area(s) in a neat and orderly manner;
8. Maintain security/patrol of the Truck Parking/Container Depot Area(s);
9. Ensure gate interchange (entry and exit) transactions are processed in ninety (90) seconds or less, and ensure that no more than five (5) trucks are queued in any single gate interchange line at one-time (additional gate interchanges shall be opened to prevent Gate Interchange lines that exceed five (5) trucks;
10. Ensure Truck Parking/Container Depot Services comply with all applicable laws and regulations, including, without limitation, Port ordinances and resolutions; and
11. Render such other related services as may be requested by the Director.

3.1.3 Truck Parking/Container Depot Services Staffing Plans.

The Operator shall provide Employees in accordance with the “Truck Parking/Container Depot Services Staffing Plan” set forth in **Exhibit C** (Staffing Plans), attached hereto and incorporated herein. The Truck Parking/Container Depot Services Staffing Plans may be modified by written notice or approval from the Director, which notice or approval shall specify the changes and the adjustment of compensation if any.

3.1.3.1 Operator Employees.

The Operator shall appoint and retain at all times during the Term of this Agreement such employees, or cause its Port-approved subcontractor(s) (“Subcontractor”) to appoint and retain such employees, as may be necessary to manage and operate the Truck Parking/Container Depot Area and otherwise develop and implement the Program in an efficient, competent, expeditious and courteous manner consistent with the terms of this Agreement, in accordance with the Truck Parking/Container Depot Services Staffing Plan set forth in **Exhibit C** (Staffing Plans).

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

All employees must obtain and maintain a valid Transportation Worker Identification Credential (TWIC) card within 45 days of the commencement date of this Agreement or prior to being hired. All costs associated with obtaining the TWIC cards shall be the responsibility of the Operator

In addition to the General Manager, there shall be a minimum of one employee designated as the on-site supervisor at each location. The supervisor shall be responsible for the on-site supervision for all

of the Operator's on-site staff and the overall operation of the Program in the absence of the General Manager. The on-site supervisors shall work under the direction of the General Manager. The Operator shall provide employees with titles and job descriptions similar to the following:

3.1.3.2 General Manager.

The General Manager shall be the on-site individual responsible for overall operations of the Program. The General Manager shall report to the Operator's Chief Operating Officer or other authorized corporate officer. Specifically, the General Manager's duties involve fundamental oversight of all operations associated with Truck Parking/Container Depot Areas, and shall include but not be limited to the following, consistent with the requirements and terms of this Agreement:

1. Ensure services outlined in Section 3.1.2 are performed;
2. Monitor the accuracy of the revenue and expense information and compare same to the written Operational and Revenue Control Program;
3. Implement a staff training program and develop a written Training Manual and Operational Manual covering all aspects of the Program;
4. Establish performance criteria and written job descriptions for all of the Operator's staff and Subcontractors involved in the Program and make such available to the Port, as requested;
5. Oversee the Operator's employees and Subcontractors;
6. Require all of the Operator's staff to be properly trained, follow rules of conduct and be properly dressed and otherwise prepared and suitable for their assigned duties;
7. Be responsible for "Initiation" of customers:
 - i. Explain and answer questions regarding "User Parking Agreement;"
 - ii. Verify customer insurance policy and aggregate amounts;
 - iii. Check references of customers;
 - iv. Verify application and customer information;
 - v. Explain "Yard Policies and Rules"
8. Be responsible for all billing and payment collection issues including but not limited to monthly invoices, collections, and customer receipts;
9. Handle all client/customer issues including but not limited to billing, User Parking Agreements, special requests, complaints;
10. Provide the Port with a weekly staff schedule for each Truck Parking/Container Depot Area no later than 5:00 p.m. on Thursday of the preceding week, and a schedule of all other staff assigned;
11. Monitor hours of staff to assure that time cards and schedules are accurate and in accordance with approved schedules;
12. Inspect daily each Truck Parking/Container Depot Area. Report to the Port and correct,

if appropriate, any problems in accordance with the requirements of this Agreement;

13. Discipline and/or dismiss the Operator's employees or Subcontractors, who fail to perform in accordance with highest standards or who fail to comply with any of the terms of this Agreement;
14. Understand the maintenance requirements of the Truck Parking/Container Depot Area and proactively and aggressively manage this responsibility;
15. Develop and update, for Port approval, a comprehensive maintenance check list and schedule to be followed by the Operator within one hundred twenty (120) days following the date of this Agreement;
16. Perform other field supervision activities as required;
17. Provide an approved means of responding to emergencies and customer needs on a twenty-four (24) hour per day basis through the use of supervisors, and/or other designated on-call Operator staff personnel;
18. Work on-site a minimum of five (5) days per week and eight (8) hours per day between 8:30 a.m. and 5:00 a.m. Monday through Friday; and
19. Be on-call to assist in parking emergencies and/or be available at other times to oversee every aspect of the Program.

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

3.1.3.3 Administrative Clerk

The Operator shall staff the position of Administrative Clerk in accordance with the schedule set forth in the Truck Parking/Container Depot Services Staffing Plan. The Administrative Clerk(s) shall assist the General Manager in administering operations of the Truck Parking/Container Depot Area. Consistent with the requirements of this Agreement and the Operations Manual, the Administrative Clerks' duties shall generally include but not be limited to the following, : (i) serving as back-up Parking Attendant when necessary; (ii) ensure website/software used for interchange gate management and inventory is populated with most up to date and accurate information available; (iii) keeping correct, well maintained electronic and paper files; and (iv) maintaining current and accurate data readily and immediately available for Port, upon request, in addition to Operator's staff. In addition, the Administrative clerk may assist the General Manager with other tasks and responsibilities associated with the operations of the Truck Parking/Container Depot Areas as necessary.

3.1.3.4 Security Officers

The Operator shall provide Security Officers in accordance with the schedule set forth in the Truck Parking/Container Depot Services Staffing Plan. Failure to provide appropriate personnel in accordance with the staffing schedule will result in the assessment of an Administrative Fee, as set forth in **Exhibit D**. Operator shall, with the prior written consent of the Port, adjust staffing schedules to meet operational needs.

Security Officers also patrol the Truck Parking/Container Depot Area on an hourly basis, enforce parking rules, monitor access, monitor the perimeter of the Truck Parking/Container Depot Area, check and maintain safety standards, watch for suspicious activity and maintain open, obvious, and notable visual and physical presence. The Truck Parking/Container Depot Area shall be adequately staffed, without exception, by Security Officers seven (7) days a week, twenty-four (24) hours per day. Specifically, the Security Officers' duties shall include but not be limited to the following, consistent with the requirements of the Agreement:

1. Provide highly visible foot patrol coverage to ensure the safety and security of employees, facilities, and grounds;
2. Interface with equipment and alarm systems and make appropriate notifications;
3. Monitor equipment;
4. Perform perimeter checks to including electrical rooms, recycle and trash bins, dumpster areas, and any other areas to ensure the safety and security of the Truck Parking/Container Depot Area;
5. Report any suspicious circumstances or unsecured conditions observed;
6. Identify and report potential problems (i.e. safety, health, environmental, fire hazards, etc.);
7. Observe and report employees acting contrary to company policy or engaging in any illegal activity;
8. Respond to managers, supervisors, and employees as needed;
9. Secure the perimeter of the Truck Parking/Container Depot Area to ensure that only authorized people and vehicles enter and leave the facility; and
10. Respond when necessary to protect the interests and assets of truck parkers.
11. Security Officers shall be capable of performing Parking Attendant duties noted in Section 3.1.3.5.

3.1.3.5 Parking Attendants

The Operator shall provide Parking Attendant staffing in accordance with the schedule set forth in the Truck Parking/Container Depot Services Staffing Plan. Parking Attendants shall staff Gate Interchange lanes at all times; the in/out gates shall not be left unattended, and shall be adequately staffed, without exception, by Parking Attendants seven (7) days a week, twenty-four (24) hours per day. The Parking Attendants shall be responsible for administering entry and exit of vehicular traffic to the Truck Parking/Container Depot Area. Consistent with the requirements of this Agreement and the Operations

Manual. the Administrative Clerks' duties shall generally include but not be limited to the following:

1. Responsible for interchanging all incoming and outgoing customers using the designated gate management/operations software required pursuant to Section 3.1.4;
2. Provide access control and enforce procedures in the Truck Parking/Container Depot Area by monitoring and logging traffic through the designated entrance;
3. Ensure transaction times at Gate Interchanges are processed in less than ninety (90) seconds, and that no more than five (trucks) are queued in any single Gate Interchange line at one time;
4. Parking Attendants may assist the General Manager with other tasks and responsibilities associated with the operations of the Truck Parking/Container Depot Areas as necessary.

3.1.4 Gate Management/Operations Software

The Operator shall, in compliance with all applicable laws, provide and utilize commercially available web-based or wireless mobile device application software that has the following components: (i) parking stall inventory management; (ii) customer inventory management; (iii) parking reservation system; (iv) Parking Attendant application; (v) financial management; and (vi) reporting. This software shall log information associated with each truck, container, and chassis movements in a searchable database that shall include the following:

1. Time/Date In/Out
2. Driver Information
3. Truck Owner Information
4. Identify if Drayage Trucker (Maritime Related)
5. Container Information
6. Chassis Information
7. Owner/Responsible Party of Container
8. Dwell times for each chassis, container, trailer, or bobtail
9. Trucker that Delivered Container
10. Loaded or Empty
11. Container Size
12. Identify parking location by space or general area
13. An ability to generate reports that allows Port staff to query database and generate

reports) Truck and container/chassis movements; and

14. Any other information requested by Director.

Software shall be approved in writing by the Director, and designated Port employees shall have access to software database reporting functions at all times.

Within thirty (30) days of the expiration or termination of the Agreement for any reason, Consultant shall, at no charge to the Port and without the Port's request, export and deliver to the Port the following data input into the software; all data logged into the software system as described in this Section, in a csv file, or in any other format requested by the Port.

3.1.5 Additional Requirements.

The Operator may be required to perform a variety of additional duties including but not limited to the following, as may be directed in writing from time to time by the Port, and at costs approved in advance in writing by the Port (subject to the reimbursement terms set forth in Section 6 (Port Reimbursement of Operator's Budgeted Expenses), including but not limited to:

1. Purchase, installation and maintenance of necessary signage, striping, perimeter fencing, and other similar items as required by the Director;
2. Purchase and/or rental and maintenance of telephones and/or radios for appropriate employees in addition to the equipment provided by the Port; and
3. Purchase and/or rent additional equipment or materials necessary for the Operator's staff to supervise the Truck Parking/Container Depot Services;
4. Loan or use of supervisory personnel from the Operator's corporate headquarters for Truck Parking/Container Depot Services related projects over and above those described herein; and
5. The loan or use of clerical or secretarial personnel from the Operator's corporate headquarters for Truck Parking/Container Depot Services related projects over and above those described herein.

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

3.1.6 Activity Reports.

The Operator shall submit to the Port monthly reports for the Truck Parking/Container Depot Services on report forms, which shall be provided by the Operator or Port, at Port's election. The Port may modify the report forms upon thirty (30) days written notice to Operator, including change the frequency of the reporting requirements. Such Truck Parking/Container Depot Services reports shall include, at a minimum:

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

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

3.1.7 On-Site Office and Office Hours.

The Operator shall be required to maintain an on-site office at one location, as directed by the Director, and shall remain open and shall be staffed by a supervisor, the General Manager, or other qualified employee of the Operator between 8:30 a.m. to 5:00 p.m. Monday through Friday or on a similar schedule approved in writing by the Director. During office hours, in addition to their prescribed duties pursuant to the Operations Manual, a designated employee shall answer the telephone, and shall handle customer complaints and receive, in person, customers visiting the Truck Parking/Container Depot Area office to handle any other business required of the Operator.

For the purpose of performing all duties and obligations required by the Agreement and for no other purpose, the Port shall allow Operator, as a licensee, and at no charge to Operator, use all office trailers, guard booths, kiosks or other improvements located within the Truck Parking/Container Depot Area (the "Premises") that are necessary for the Operator to perform services consistent with the terms of the Agreement. The Port reserves the right to terminate the license at any time and to relocate, from time to time and at the Port's expense, the Operator to such other space or location as determined by the Director. The license to use the Premises provided herein shall cease upon the expiration or earlier termination of this Agreement.

3.1.8 Uniforms and Identification Badges.

All of the Operator's employees while working under this Agreement at the Truck Parking/Container Depot Area shall be dressed in neat, clean uniforms clearly identifying the Operator's company. Uniforms, and requested exemptions from the uniform requirement, shall be subject to the prior written approval of the Port.

The Operator shall provide, maintain and clean, at its sole cost and expense, uniforms and

employee nametags to the Operator's employees. The Operator's uniform policy shall be covered in the Operations Manual. All of the Operator's employees while working under this Agreement at the Truck Parking/Container Depot Area shall wear nametags identifying the employees' name and the Operator's company, if not otherwise identified on the employees' uniform. Uniforms shall be kept in good repair and clean and shall be of the highest quality. Uniforms shall at a minimum consist of shirt, pants or skirt. If uniforms do not satisfactorily meet the requirements set forth in this Section, the Port, at its option, may elect to purchase uniforms for the Operator's employees and deduct said cost of uniforms from the Operator's Management Fee. Security Officer uniforms shall be professional in nature, yet visible for traffic safety operations. All uniforms must be approved by the Port. Pants shall be black, blue, khaki, tan, brown and/or green in color. Shirts and jackets shall be an American National Standards Institute (ANSI), traffic safety approved color. The General Manager is exempt from the uniform requirement.

3.2 Supervision of Personnel.

The Operator shall at all times exercise control over the conduct, demeanor and appearance of all of the Operator's personnel employed in the operation of the Truck Parking/Container Depot Area. Such personnel shall be trained by the Operator to render a high degree of courteous and efficient service to customers and it shall be the responsibility of the Operator to maintain close supervision over said employees to assure continuation of the highest standard of service. Upon objection of the Director concerning the conduct, demeanor or appearance of the Operator's General Manager, supervisors or any other of the Operator's employees, the Operator shall immediately take all steps reasonably necessary to correct the cause of the objection including, without limitation, dismissal or replacement of the involved individual consistent with applicable labor laws and bona fide labor contract requirements. After written notice from Port, Operator shall ensure the immediate removal from the Truck Parking/Container Depot Area or the discipline in accordance with Operator's employee discipline policy of any employee or other representative of Operator who participates in improper or illegal acts in the Truck Parking/Container Depot Area, who violates any applicable laws, ordinances, rules and regulations, or whose continued presence in the Truck Parking/Container Depot Areas is, in the opinion of Port, deemed not to be in the best interests of Port. . The foregoing shall not in any way limit Director's right to impose Administrative Fees in accordance with the provisions of Section 8 (Administrative Fees and Review). Operator shall not allow any of its agents, servants, or employees to conduct business in a loud, noisy, boisterous, offensive, or objectionable manner, and shall confine their business at the Truck Parking/Container Depot Area to that of operating the Program unless otherwise approved in writing by Port.

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

3.2.3 Employee Training.

The Operator shall provide regularly scheduled formal training to the Operator's staff and/or subcontractors to ensure consistency with the policies, practices, rules, documents, procedures, and standards of the Operations Manual.

3.2.4 Reimbursable Employee Pay.

The wages and salaries for all personnel employed by the Operator shall be determined prior to the Term of this Agreement and such wages and salaries shall be consistent with the requirements outlined in the Seaport Drayage Truck Parking/Container Depot Management Services Request for Proposal dated February 2020. The Operator shall provide such wage and salary information to the Port

in adequate detail (as determined by the Port) prior to the Term of this Agreement. The Operator shall keep an accurate payroll record showing the name, social security number, work classification, straight time and overtime hours worked each day and week and the actual per hour/diem wages paid by the Operator to each employee in the Truck Parking/Container Depot Area. Said payroll record shall accompany each the Operator's request for payroll reimbursement.

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

The Operator shall schedule the Operator's employees so that the Port does not incur undue overtime expenses. Accordingly, the Operator shall employ a sufficient number of employees to cover all regularly scheduled Truck Parking/Container Depot Area operations. All anticipated overtime expenses must receive prior written approval from the Director. Overtime that is not properly charged or approved by the Director in writing shall not be reimbursed by the Port.

3.2.5 Staffing Schedules.

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

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

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

The Director has the right to require the Operator to make such changes in the Operator's staffing schedule, as the Director shall deem necessary to implement the Program. Director shall give the Operator at least thirty (30) days written notice of any required changes in staffing schedule. Such notice shall allow the Operator sufficient time to implement the required staffing plan changes.

3.3 Truck Parking/Container Depot Area Operation:

Operator's control and operation of the Truck Parking/Container Depot Area shall include the following functions, which shall be undertaken in accordance with the other provisions of this Agreement:

3.3.1 Monthly Parking.

Operator shall provide monthly parking to owners and operators of commercial trucks. To the extent that there may be a shortage of available parking spaces in the Truck Parking/Container Depot Area, Operator shall give first preference to monthly parking of commercial trucks that are used to haul containers to and from the Port of Oakland maritime facilities, and then give preference requests for

monthly parking over daily parking.

3.3.2 Daily Parking.

Subject to Section 3.3.1 above, Operator also shall provide daily parking to owners of commercial trucks.

3.3.3 No Parking After Termination of this Agreement.

Operator shall make no agreement with any user or prospective user of the Truck Parking Area, or collect any charge, for any parking in the Truck Parking/Container Depot Area that cannot be terminated on or before the termination of this Agreement. Operator shall be responsible for good faith and commercially reasonable efforts to assure that all trucks, trailers, chassis, and other matters brought upon the Truck Parking/Container Depot Area by any one other than the Port, and other than a third Party with the Port's consent, are removed from the Truck Parking/Container Depot Areas before any termination of this Agreement (provided the Port has given Operator required notice of termination pursuant to the terms of this Agreement).

3.4 Conferences.

The Operator agrees to meet through its General Manager from time to time with representatives of the Port at the reasonable request of the Port, in order to undertake a complete or partial inspection of all or portions of the Truck Parking/Container Depot Area, to review the operation and management of the Truck Parking/Container Depot Areas, and review the development and implementation of the Program.

3.5 Labor Peace Rule.

Operator shall comply with **Exhibit K** (Labor Peace Rule), attached hereto and incorporated herein.

4. Revenue Collection, Budget and Reporting.

4.1 Collection of Truck Parking/Container Depot Area Receipts.

Operator shall collect or cause to be collected all Port established parking charges and fees. Operator shall be absolutely responsible and liable for payment to the Port of all funds collected or required to be collected by the Operator, without excuse for nonpayment. The Operator shall carry out procedures and programs to safeguard all receipts, including use of an office safe to store payments collected by the Operator's employees from the Truck Parking/Container Depot Services as set forth herein. The Port may hold the Operator responsible for discrepancies between monies charged an individual customer and the amount due as determined by the daily or monthly parking rate as set forth in the Truck Parking Rates exhibit referenced in Section 4.2, and the Port may deduct the difference from the Management Fee.

The Operator shall be responsible for the accounting of receipts on a daily basis. Further, the Operator shall deposit with the Port on a daily basis (except as otherwise provided in Section 4.3 (Parking Revenues; Deposits) all Parking Revenues. The Operator agrees that all receipts are, and shall remain monies of the Port. The Operator shall be trustee for the benefit of the Port of all receipts the Operator collects from users of the Truck Parking/Container Depot Services, and as such, trustee the Operator agrees to use utmost diligence and care in safeguarding and delivering to the Port all such receipts. The

Operator shall be responsible for such receipts, fees, and funds and shall take every precaution to protect same and to insure that all sums due and owed to the Port from the Truck Parking/Container Depot Services operated by the Operator are properly assessed, collected, accounted for and deposited according to the policies and procedures set forth in this Agreement. The Operator shall employ only bondable persons in connection with the work hereunder.

4.2 Parking Rates.

The Operator shall charge rates as established by the Port pursuant to its Tariff 2-A as amended from time to time. Operator shall implement any adjustment to rates, charges, and fees as approved by the Port and memorialized in a supplement to the Agreement. Operator shall make all reasonable efforts to collect such Port established rates, charges, and fees.

4.3 Payment of Receipts to Port.

Operator shall establish and carry out procedures and programs to safeguard all receipts collected by the Operator from the operation of the Truck Parking/Container Depot Area. Operator agrees that all receipts are and shall remain monies of the Port. Operator shall be trustee for the benefit of the Port of all receipts Operator collects from the users of the Truck Parking/Container Depot Area, and as such trustee, Operator shall use the utmost diligence and care in safeguarding and delivering to Port all such receipts.

The Operator agrees that, unless and until otherwise directed in writing by the Director, the Operator shall assemble all receipts collected during the preceding twenty-four (24) hour period, and Operator thereafter during such day shall deposit all such receipts with a cashier at Port of Oakland located at 530 Water Street, Oakland, CA 94607 not later than 1:30PM each business day. If receipts are collected over a weekend, holiday, or after normal business hours, such receipts shall be deposited with the Port following business day. The Port shall be deemed to have received the deposit upon providing written receipt to Operator. Failure of the Operator to make such deposits in the manner required shall result in the assessment of an Administrative Fee described in **Exhibit D** (Administrative Fees), attached hereto and incorporated herein. In addition, any error in the amount of the Parking Revenues deposited, including credit card deposits that are not resolved within thirty (30) calendar days, shall result in the assessment of an Administrative Fee.

4.4 Revenue Report for Truck Parking Revenues; Scope and Schedule.

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

The monthly Parking Reports to be submitted by the Operator to the Port shall contain a complete reporting of operations data for Truck Parking/Container Depot Services. The Parking Revenue Report shall include but not be limited to the following:

- Parking stall inventory and occupancy/usage of monthly and daily customers by stall type;
- Monthly activities for Truck Parking/Container Depot Services and gross revenue summaries for Parking Revenues;

- Reimbursable budgeted expenditures made during such calendar month;
- Other reports concerning management and operation of Truck Parking/Container Depot Services as the Port may reasonably require from time to time.

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

- Daily reports of gross receipts and fees and physical inventory;
- Daily recap and reconciliation reports for Truck Parking/Container Depot Services; and
- Weekly activity and gross receipts summaries for Truck Parking/Container Depot Services.

4.5 Deposits.

The Operator shall deposit all monies collected in the operation of the Truck Parking/Container Depot Service Revenues, including monthly and daily receipts, and all other fees and funds collected from the management of the Truck Parking/Container Depot Services, according to the following procedures:

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

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

- Only upon actual deposit into the Port's account within the bank designated by the Port or other Port designated depository; or
- Upon the Operator's full compliance with Director's prescribed deposit instructions for deposits during weekends, holidays or business hours into the bank designated by the Port or other Port designated depository.
- The Operator will deliver to the Port's designated Finance Office a duplicate deposit slip on the day of the deposits for the Parking Revenues. The deposit slip will specify which Parking Facility the deposit relates to, and will contain the date, time, place of deposit, and total amount of deposit.

4.6 Credit Cards.

The Operator may accept credit cards as payment for parking fees according with the following procedures:

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

4.7 Personal Check

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

- (a) The Operator shall follow instructions provided by an approved check guarantee service (the cost of which is reimbursable to the Operator) to insure the collection of personal checks. No check shall be accepted by the Operator unless it has been guaranteed by an approved check guarantee service;
- (b) Personal checks must be made payable only to the "Port of Oakland"; and
- (c) The Operator will be responsible to pay to the Port any amounts for checks not paid if it is determined that the check guarantee service's instructions were not followed.

4.8 Insufficient Funds (NSF) Checks and IOUs.

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

4.9 Losses: Credit Cards and Checks.

The Operator will be fully and strictly liable to Port for any loss of revenue to Port as a result of the Operator's acceptance of credit card(s) or check(s), unless acceptance of such credit card(s) or check(s) was approved in writing by one of the Operator's supervisors, with the date and time of such approval noted thereon, and such approval was given at a time when a Force Majeure event prevented the Operator from contacting the credit card company of check guarantee service, as applicable. Except as otherwise provided in the preceding sentence, Port may deduct the full amount of any such loss of revenue from any amounts owed to the Operator, including the Management Fee.

4.10 Lien Sales of Abandoned Vehicles.

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

4.11 Collection of Truck Parking Receipts.

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

4.12 Theft.

The Operator shall establish and maintain a program for selection of employees assigned to the Truck Parking/Container Depot Area and for monitoring their conduct in a manner that is reasonably calculated to preclude theft of Truck Parking/Container Depot Area receipts by the Operator's employees and other persons. All employees must obtain and maintain a valid Transportation Worker Identification Credential (TWIC) card within 45 days of the commencement date of this Agreement or prior to being hired. All costs associated with obtaining the TWIC cards shall be the responsibility of the Operator

4.13 Books and Records; Activity Reports.

4.13.1 Maintenance and Production of Books and Records.

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

4.13.2 Inspection of Books and Records.

All such books and records shall, upon reasonable notice from Port, be made available either at the offices of the Port or at the offices of the Operator, for inspection and copying by the Port through its duly authorized representative. If such books and records are not kept and maintained by the Operator within a radius of fifteen (15) miles from the offices of the Port at 530 Water Street, Oakland, California, the Operator shall, upon request of the Port, make such books and records available to the Port for inspection at a location within said ten (10) mile radius or the Operator shall pay to the Port the reasonable and necessary costs incurred by the Port in inspecting the Operator's books and records, including, but not limited to, travel, lodging and subsistence costs. The Operator shall provide such assistance as may be reasonably required in the course of such inspection. The Port further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the Port. The Operator shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the Port makes the final or last payment under this Agreement; provided, however, that if prior to the expiration of such three (3) year period, any audit, review or investigation is commenced by the Port, or any claim is made or litigation is commenced relating to this Agreement by the Port, such books and records shall continue to be maintained by the Operator, and Port shall continue to have the right to inspect and copy such books and records in the manner stated above, until the audit, claim or litigation is finally resolved (including the determination of any and all appeals or the expiration of time for an appeal).

4.13.3 Port Audit.

During the Term of this Agreement, in addition to its rights under Section 4.10.2 (Inspection of Books and Records), the Port may audit any or all payments made by the Port as reimbursement for expenses pursuant to this Agreement and all Parking Revenues collected and remitted to the Port. In case of such audit, the Operator shall make available to the Port any and all ledgers, books of accounts, canceled checks, and other records or documents evidencing or relating to revenue collections, expenses, payroll records and staffing schedules of personnel assigned to the Truck Parking/Container Depot Area and such other evidence or information as the Port may require with regard to any revenues, payroll or other expenditure charged by the Operator. The Port shall notify the Operator of such audit and the Operator shall provide such records in the manner, time and place as provided for in Section 4.10.2 (Inspection of Books and Records).

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

4.13.4 Deductions from Payments to Operator.

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

5. General Duties:

5.1 Cleaning; Maintenance.

The Operator shall clean and maintain the Truck Parking/Container Depot Area (and all improvements thereon used in the performance of this Agreement) as necessary to ensure a neat and professional appearance and a safe work environment. Operator shall remove as necessary debris and other objects in the Truck Parking/Container Depot Area, which may be hazardous or obnoxious or which may interfere with traffic flow or parking, and to dispose of said debris and other objects at places designated by the Director and in accordance with all applicable law including without limitation, the Environmental Responsibilities (Section 14).

The Operator shall also maintain, fences, striping of parking spaces, markers and guide lanes, and Parking Facility lighting fixtures and lamps. The Operator shall also be responsible for garbage disposal and shall provide for all necessary janitorial services for Truck Parking/Container Depot Area, the office, and all parking booths, and shall power wash the Truck Parking/Container Depot Area at least once each year and all other maintenance that the Director shall request in writing.

All cleaning and maintenance costs may be a reimbursable expense

5.2 Equipment Provided and Maintained by Operator.

All furnishings and equipment located within the Truck Parking/Container Depot Area, or to be used in connection with the Truck Parking/Container Depot Area are set forth in **Exhibit F** (Inventory of Port-Owned Equipment and Furnishings), attached hereto and incorporated herein, which Operator acknowledges were in good working order on the date of this Agreement and that said furnishings and equipment shall remain the property of the Port.

The Operator shall provide and maintain in good order and, as necessary repair and replace, furniture and equipment as may be required for the proper operation of the Truck Parking/Container Depot Area, the cost of said equipment shall be a reimbursable expense. The Operator shall provide an office safe of adequate design for safeguarding parking receipts awaiting deposit. Said safe shall be approved by the Director and purchased by the Operator and shall become a capital asset of the Port. The Port shall reimburse the Operator for said purchase. The Operator shall maintain in good order and repair all locks, windows, and electric bulbs in or attached to office space, or other structures such as booths and kiosks located within the Truck Parking/Container Depot Area. The Port shall reimburse the Operator for such expenses.

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

5.3 Reporting Injuries, Damages, and Need for Maintenance and Repair. The Operator immediately shall report to the Director, using such forms and/or following such procedures that the Director may from time to time provide in writing, all personal injuries and property loss or damage, or threats or potential threats thereof, that arise out of or in connection with use of the Truck Parking/Container Depot Area and of which the Operator is aware or reasonably should be aware, and all Truck Parking/Container Depot Area improvements and

equipment that the Operator knows, or reasonably should know, are in need of repair, replacement, or maintenance.

6. Port Reimbursement of Operating Expenses.

The Operator shall be reimbursed for operating expenses as follows:

6.1 General. The Operator shall, in the first instance, pay all proper costs and expenses incurred in managing and operating the Truck Parking/Container Depot Area, in accordance with good business practice no later than twenty (20) days following the Port's receipt deposits and reports, required by Section 4.4 (Revenue Report for Truck Parking Revenues; Scope and Schedule), the Port shall reimburse to the Operator any actual costs and expenses, as hereinafter described and limited that are applicable to the month covered by such report. All such reimbursable expenses shall be evidenced by invoices/vouchers submitted to the Director within 60 days of date or timeframe during which the work was performed, in such form and with such supporting detail as reasonably shall be required by the Director including copies of warrants. Until receipt of all such certifications and reports, the Port shall have no obligation to pay to the Operator any of the previously mentioned amounts.

6.2 Estimated Annual Operating Budget and Reimbursable Costs and Expenses.

The Estimated Annual Operating Budget sets forth in reasonably accurate detail for said period, on a line item basis, Operator's anticipated reimbursable expenditures and is attached hereto as **Exhibit G**, and incorporated herein by reference. Each such estimated Annual Operating Budget shall be revised by the Operator on an annual basis, submitted to the directed by March 1 of every year, and shall be revised to conform with the written recommendations of the Director, if any. The Annual Operating Budget shall also be revised as a result of expanding, contracting, or relocating the Truck Parking/Container Depot Area.

No expense or cost of the Operator shall be reimbursed by the Port unless it shall have been incorporated in the Port approved Estimated Annual Operating Budget or unless the Director shall have approved such expense or cost. Further, no expense or cost of the Operator shall be reimbursed by the Port unless they are itemized and specifically conform to the following line items:

1. Direct operating salaries, wages and fringe benefits of approved on-site employees and all required and Port-approved operational supervision.
2. Payroll taxes, including but not limited to Medicare, OASDI, CA SDI, Federal income tax, and state income tax;
3. Workers' Compensation Insurance required by this Agreement shall be a limited reimbursable expense as follows: limited to those employees that are authorized by the Port or the Director as a reimbursable expense under this Agreement; limited to _____% of payroll; and, limited to three percent (3%) annual increases over the Term of this Agreement;
4. City of Oakland-imposed taxes; including the City of Oakland parking stall tax;
5. Parking tickets, validation stamps, monthly cards, identification cards, or other

Port forms required for the efficient operation of the Truck Parking/Container Depot Area;

6. Software applications required pursuant to Section 3.1.4 of this Agreement;
7. Credit card verification service and other fees associated with use of credit cards for customer payment;
8. Insurance premiums that provide necessary coverage pursuant to **Exhibit I** at the rate of \$_____ per useable parking stall, per month, within the Truck Parking/Container Depot Area. Port will not reimburse for deductibles under this Agreement, nor will the Port reimburse or indemnify the Operator for the costs of judgments or expenses not covered by insurance except to the extent the same are caused by the sole negligence or willful misconduct of the Port or its agents or employees. In no event shall insurance reimbursement exceed this rate. This rate should exclude Worker's Compensation Insurance.
9. Internet and data communication costs, monthly cell phone charges;
10. Costs associated with cleaning, maintenance and repair of facilities and equipment within the Truck Parking/Container Depot Area;
11. Such other allowable costs and expenses itemized and approved in advance by the Director prior to expenditure by the Operator;
12. Special parking projects and/or deferred maintenance expenditures approved by the Port.

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

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

administrative manuals, training manuals and/or staff training;

- (j) any furnishings or equipment not specifically allowed under this Agreement such as desks, stools, chairs, wastebaskets and all other furniture and fixtures except;
- (k) office equipment including typewriters, adding machines, calculators, personal computers, copiers, and all other office equipment not included in that equipment being provided by the Port as listed in **Exhibit F** (Inventory of Port-Owned Equipment and Furnishings) or as set forth in Section 5.2 (Equipment Provided and Maintained by Operator);
- (l) motor vehicles, properly marked and identifiable as the Operator's required for operation of the Truck Parking/Container Depot Area and the transport of employees;
- (m) licenses and fees;
- (n) telephone service including off-site offices except for the intercom and telephone services associated with Parking Facility booths required specifically by the Director;
- (o) Port approved employee uniforms and required name tags and operator identification information;
- (p) heaters;
- (q) gate booth clocks, calculation clocks, employee time clocks and cash boxes, when not supplied by the Port;
- (r) off-site personnel costs associated with accounting and/or reporting of Port revenues;
- (s) any additional bank fees not included or approved in the approved Estimated Annual Operating Budget or subsequently approved by Director in writing;
- (t) The Operator's employees' parking charges;
- (u) office telephone installation costs and printer paper and any cost for legal services; and

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

The Operator shall not be reimbursed for any expenses unless and until the Operator provides to the Director receipts or bills and copies of the Operator's warrants in payment thereof and all other related

documentation indicating that the Operator has paid for expenses prior to requesting reimbursement, including payroll warrants.

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

In the event the Director adds to or reduces Operator's obligations within the Truck Parking/Container Depot Area, or adds to or reduces the Operator's obligations under this agreement, the Director and Operator shall revise the Estimated Annual Operating budget and Management Fee as may be reasonable appropriate. The Estimated Annual Operating Budget shall be revised to reflect additional or reduced personnel costs.

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

7. Performance Bond.

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

8. Administrative Fees and Review.

8.1 Administrative Fees.

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

8.2 Collection Costs and Attorneys' Fees.

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

8.3 Administrative Review.

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

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

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

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

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

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

Failure to file a timely written request for review shall be an absolute bar to further administrative and judicial review of the alleged violation. Where, as here, administrative machinery exists for the

resolution of complaints, the courts should not act until such administrative procedures are fully utilized and exhausted.

9. Management Fee and Reimbursement Adjustment.

As consideration for the Operator's performance of its obligations under this Agreement including the management and operation of the Truck Parking/Container Depot Area and the development and implementation of the Program, the Port agrees to pay to the Operator a Management Fee of \$_____ per month during the Initial Term.

If the Port exercises the Port's termination for cause right as set forth in Section 27 (Termination), the Operator shall not be entitled to any Management Fee that would have come due after the effective date of termination. Except for the expense reimbursements provided for in Section 6 (Port Reimbursement of Operator's Budgeted Expenses) and the Management Fee described in this Section, the Operator shall be entitled to no payment or compensation whatsoever from the Port. In the event a change to the size of the land area of the Truck Parking/Container Depot Area results in an increase or decrease of more than twenty percent (20%) of the land area, the Management Fee shall be subject to negotiation.

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

- (a) The Budget for each Extension Term will be determined by mutual agreement of the parties.
- (b) The annual Management Fee during each Extension Term will be increased by three percent (3%).

10. Change in Service Level and Scope of Services.

The Port, through the Director may from time to time by prior written notice to the Operator, and subject to other provisions of this Agreement change the location, or increase or decrease the size or layout of locations at which some or all of the Truck Parking/Container Depot Services shall be provided, or increase or decrease the required staffing or the hours during which Truck Parking/Container Depot Services shall be provided. Such written notification shall be provided at least 30 days prior to the change if such changes result in an increase or decrease of more than twenty percent (20%) of the land area utilized at the time of such written notification. All alterations to the Truck Parking/Container Depot Area shall include an updated **Exhibit A**, and shall be acknowledged by Operator. Upon any such additions and/or reductions in area of the Truck Parking/Container Depot Services or the Truck Parking/Container Depot Area, required staffing for the Truck Parking/Container Depot Services or times of the Truck Parking/Container Depot Services, the terms "Truck Parking/Container Depot Area" and "Truck Parking/Container Depot Services" shall be construed to incorporate such respective additions and/or reductions. In the event the Port proposes to add and/or reduce the Operator's scope of service, or staffing from those established pursuant to **Exhibit C** (Staffing Plans), the Port shall calculate such Truck Parking/Container Depot Services and shall review the Budgets and Reimbursable Expenses with the Operator and make respective adjustments.

11. Report of Injuries or Loss.

The Operator, using a form provided by the Port, shall immediately report any personal injuries,

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

12. Compliance with Law.

The Operator agrees to comply, at no cost to the Port, with all present and future laws, ordinances, and general rules and regulations at any time applicable to the Operator's operation and management of the Truck Parking/Container Depot Area including, without limitation, licensing and permit requirements unless such expenses is otherwise included as a reimbursable cost under this Agreement, and rules and codes of conduct applicable to all tenants of Jack London Square. The Operator shall comply with all laws and regulations regarding disabled or handicapped persons, including, without limitation, the Americans With Disabilities Act of 1990 ("ADA"), as amended; however, the Operator shall not be obligated under this Agreement to make any structural changes to the Truck Parking/Container Depot Area or to apply striping or graphics therein.

13. Fees and Taxes.

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

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

14. Environmental Responsibilities.

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

15. Insurance.

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

16. Indemnification.

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

17. Relationship of Port and Operator.

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

18. Improvements and Alterations.

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

19. Assignments and Transfers.

The Operator shall not, either directly or indirectly, voluntarily or involuntarily, assign, hypothecate, encumber or transfer this Agreement or any interest therein or right granted thereby, or

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

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

- (a) If the Operator is other than a corporation, the transfer of the Agreement or any of the Operator's interests therein to a corporation that is not wholly owned by the Operator;
- (b) If the Operator consists of more than one person or entity, or a combination of a person or persons and an entity or entities, a purported assignment, voluntary, involuntary, or by operation of law of any interest in the Agreement from one or more such persons or entities, to any other person or persons or entity or entities whether or not such other person or persons or entity or entities are the Operators;
- (c) If the Operator is a partnership, a withdrawal or change, voluntary, involuntary, or by operation of law, of any general partner, or the dissolution of the partnership;
- (d) If the Operator is a corporation, any dissolution, merger, consolidation, or other reorganization of the Operator, or the sale or other transfer of a controlling percentage of the capital stock of the Operator, or the sale of more than thirty percent (30%) of the value of the assets of the Operator whether in one conveyance or cumulatively in the aggregate in more than one conveyance. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least thirty percent (30%) of the total combined voting power of all classes of the Operator's capital stock issued, outstanding, and entitled to vote for the election of directors. This subsection (d) shall not apply to a corporation the stock of which is traded through an exchange or over the counter or to any transfer, distribution or contribution of a controlling percentage of the capital stock of the Operator (i) by any corporate shareholder of the Operator to one or more of its own shareholders, or (ii) by any shareholder of the Operator to another corporation the capital stock of which such shareholder owns a controlling percentage. The Operator shall give the Port written notice of such transfers, distribution and contribution.

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

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

20. Duty to Guard Goods.

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

21. Waiver of Claims.

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

22. Extensions of Time.

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

23. Successors.

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

24. Time of Essence.

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

25. Notices.

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

**Port's Address
for Notices:**

Director, Maritime
Port of Oakland
530 Water Street
Oakland, CA 94607

With a copy to:

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

**Operator's Address
for Notices:**

With a copy to:

26. Equal Opportunity and Nondiscrimination.

26.1 Equal Opportunity; Nondiscrimination.

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

- (a) That the Operator shall not discriminate against any employee or applicant for employment because of race, color, religion, sex (including gender identity), actual or perceived sexual orientation, national origin, ancestry, age (over 40), cancer-related medical condition, a known genetic predisposition to a disease or disorder, marital status, physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, veteran's status. The Operator shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. To the fullest extent required by law, the Operator agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment Opportunity Commission (EEOC) or Department of Fair Employment and Housing (DFEH) regarding non-discrimination.
- (b) That the Operator shall, in all solicitations or advertisements for employees placed by or on behalf of the Operator, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex (including gender identity), actual or perceived sexual orientation, national origin, ancestry, age (over 40), cancer-related medical condition, a known genetic predisposition to a disease or disorder, marital status, physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status.
- (c) That the Operator will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, advising the labor union or workers' representative of the Operator's commitments under this paragraph, and shall post copies of the notice in conspicuous places available to employees and applicants for

employment.

- (d) That the Operator shall not discriminate by segregation or otherwise against any person or persons because of race, color, religion, sex (including gender identity), actual or perceived sexual orientation, national origin, ancestry, age (over 40), cancer-related medical condition, a known genetic predisposition to a disease or disorder, marital status, physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, or veterans' status in furnishing, or by refusing to furnish, to such person or persons the use of any public facility upon the Truck Parking/Container Depot Area, including any and all services, privileges, accommodations, and activities provided thereby.
- (e) That the Operator shall maintain work force records showing male, female and minority employees by job category and similar information with respect to new hires and shall submit a summary of such information to the Port's Office of Equal Opportunity upon request.
- (f) That in the construction of any improvements on, over or under the Truck Parking/Container Depot Area and the furnishing of services thereon, no person, on the grounds of race, color, religion, sex (including gender identity), actual or perceived sexual orientation, national origin, ancestry, age (over 40), cancer-related medical condition, a known genetic predisposition to a disease or disorder, marital status, physical or mental disability as set forth in the Americans with Disabilities Act of 1990, or veteran's status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;
- (g) That the Operator's noncompliance with the provision of this clause shall constitute a material breach of this Agreement. In the event of a breach of any of the above-stated nondiscrimination and affirmative action covenants, the Port shall have the right to consider but not be limited to the following:
 - 1. Terminate this Agreement; or
 - 2. Seek judicial enforcement of said covenants.

26.2 Participation In Contracting With Vendors and for Professional Services.

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

26.3 Enforcement.

The Operator agrees that the Operator's noncompliance with this Section shall constitute a material breach of this Agreement. In the event of breach of any of this Section, the Port shall have the

right to terminate this Agreement without liability therefor, or at the election of the Port or the United States, either or both of said governments shall have the right to seek judicial enforcement of this Section.

27. Termination.

27.1 Termination for Cause.

It is mutually covenanted and agreed and this Agreement is made upon the condition that if the Operator fails timely to observe, keep or perform any of the terms, agreements, conditions or covenants contained herein on the part of the Operator to be observed or performed, or should the Operator abandon and cease to operate and manage the Truck Parking/Container Depot Area at any time (except when prevented by fire, earthquake, wars, or other cause beyond its control, then and in the event of such a default, at the option of the Port as evidenced by written notice to the Operator from the Director and reasonable opportunity to cure, this Agreement shall be terminated effective upon the effective date of said notice. It is understood and agreed that the Director shall have the right in his or her sole discretion to determine that such default exists as the basis for such notice.

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

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

27.2 Termination for Convenience.

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

28. Force Majeure.

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

29. Attorneys' Fees and Costs.

If the Operator or the Port commences any action or proceeding against the other arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit, including in-house attorney fees and amounts attributable to Port Attorney time.

30. Incorporation of Exhibits to Agreement, Execution of Guaranty

All of the Exhibits attached to this Agreement are incorporated into and made a part of this Agreement by this reference, and Operator shall perform all of its obligations thereunder; provided however, that unless the Guaranty attached as **Exhibit J** to this Agreement is required to be executed pursuant to the last sentence of this Section 30, said **Exhibit J** shall not be incorporated into and made a part of this Agreement. If a third party or third parties joined in the Proposal submitted by Operator as a guarantor, then such third party or third parties, as applicable, shall execute and deliver to the Port the Guaranty in the form attached hereto as **Exhibit J** at the same time that this Agreement is executed and delivered by Operator to the Port.

31. Agreement the Entire Agreement; Other Agreements.

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

32. Agreement in Multiple Copies.

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

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

SIGNATURES ON FOLLOWING PAGE

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

PORT:

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

Dated: _____, 2018

By: _____
Danny Wan
Executive Director

OPERATOR:

_____,
a _____

Dated: _____, 2018

By: _____

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

Dated: _____, 2018

By: _____

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

Approved as to form and legality this ____
day of _____, 2020.

Michele Heffes, Port Attorney
Port Resolution No. _____

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

EXHIBIT A
TRUCK PARKING/CONTAINER DEPOT AREA DESCRIPTION

The location, size and configuration of the facilities may vary during the term of the agreement. At the execution of this Agreement, the parking facilities are located on a portion of the Howard Terminal (approximately 25-acres), and the “Roundhouse” property (approximately 15-acres).

The location map below provides an aerial overview of the current configuration of parking facilities (which contain approximately 2,100 parking stalls at the execution of this agreement).

Truck Parking Facilities Location Map



EXHIBIT B
USER PARKING AGREEMENT

User Parking Agreement

_____, a (Insert LLC, California Corp, etc) (hereinafter referred to as “Manager”) and _____, [See Addendum A] its agents, employees, related companies, and anyone acting on its behalf (hereinafter referred to collectively as “User”), agree to the following:

Whereas, User owns, leases, or otherwise operates transportation equipment, including, but not limited to tractors, trailers, chassis, containers, and associated gear (hereinafter collectively referred to as “Equipment”) and requires a location at which to temporarily store this Equipment in a defined area or by assignment.

Whereas Manager operates the parking facility defined as “_____ **TRUCK PARKING LOT**”, located at _____, in Oakland, California 94607* for storage of equipment such as described and referred to above.

In consideration of the foregoing, the parties agree to the following:

1. Use

User is authorized to store its equipment at the Facility for limited periods and under the express terms and conditions of this Agreement. User understands and agrees that this Agreement is strictly for storage of the Equipment only. User agrees to follow yard procedure and rules [See Addendum C]. Violators shall be issued citations, which shall be kept on file.

2. Storage charges and Rates:

User shall pay storage fees as prescribed on page 6, marked “Addendum C”, monthly rates for equipment storage of equipment for International Trade and Owners of Tractors only. No hazardous containers are allowed in the yard.

3. Ancillary charges

In addition to storage charges, User agrees to pay any ancillary charges incurred by Manager on behalf of the User in connection with Equipment stored at the Facility. Such ancillary charges may include towing of equipment, tractors, forklifts, or crane equipment if

required.

4. Hazardous or noxious material

User hereby warrants, and agrees that Equipment shall not contain hazardous waste, explosive 1.1, 1.2, 1.3, radioactive 1, Poison Gas, odiferous, or leaking substance or any material that is capable of contaminating or damaging the Facility or harmful to people and the environment. The User shall be fully responsible for complying with all applicable laws and regulations pertaining to the Equipment and/or its contents, including, but not limited to, the Intermodal Safe Container Transportation Act of 1996.

5. Documentation and payment of charges

Manager shall issue an invoice to User according to the number of parking spaces requested for the monthly storage charges [See Addendum B] for the Equipment. User agrees to comply with the terms and conditions of Manager Invoices. Invoices are issued on the first business day of every month. If storage begins any other day then the beginning day of the month, then the remaining days of the month are pro-rated. Storage charges begin to accrue on the day the Equipment is interchanged into the facility and will cease on the day the Equipment is interchanges out of the Facility.

User shall pay Manager invoices within five (5) days from the date the invoice was issued. Late fees will be assessed as follows: Rental fees are due on the first of the month with a five-day grace period. From the sixth day forward, a one-time charge of \$25.00, plus a charge of 1% of the unpaid balance applies for each day of late payment.

All payments must be made payable to Port of Oakland. Funds shall be accepted only in the form of money order, cashier's check, personal check, or business check. Any other form of payment shall not be accepted.

_____ Equipment Interchange and Facility Access Receipt will constitute prima facie evidence of the interchange into and out of the facility and the date thereof. Manager shall keep a copy of gate in/out interchanges on file and may provide copies per request from the User.

User hereby authorizes a driver delivering Equipment to the Facility to execute, on User's behalf, a Manager Interchange receipt and User further acknowledges that such act shall be binding upon User.

Please note: Daily inventory is not Manager's responsibility.

6. Access

User is hereby granted access to the Facility for the sole purpose of placing and/or removing Equipment. User will ensure that its Equipment is properly marked and identified as belonging to User and that its employees, drivers, or anyone operating the Equipment on its behalf, has proper training and proper identification, including, but not limited to a current driver's license, to present to Manager or security representatives at the time access is requested

by User.

7. Liability

User agrees and warrants that Manager assumes no liability for the safekeeping of Equipment and/or the contents therein. User is aware that parties other than Manager also have access to the Facility and User assumes any and all risk resulting from loss or damage to the Equipment and/or its contents caused by such other parties or any other person(s) or corporate entity.

8. Terms

This agreement shall continue upon the terms and conditions herein unless terminated by either party providing written notice of termination or by default as described in item 9, "Default". The terminating party shall give written notice of termination no less than thirty (30) days prior to the date of intended termination.

Notwithstanding the foregoing, termination of this Agreement shall be effective and parking fees shall cease to accrue only when User has removed all Vehicles from the Facility and paid all outstanding charges. During the period between the date of termination as set forth in a notice of termination and the date on which the Equipment is removed, the Equipment shall be deemed to be stored on a daily basis at a rate of one and a half times of the prescribed rate per day.

9. Default

User shall be in default of this Agreement if (a) User fails to pay any invoice or other amount due from User when due and payable; (b) User breaches any other terms of this Agreement; (c) User fails to remove Equipment from the Facility upon verbal or written request of _____, if _____ determines Equipment is injurious to the Facility, its operators or its users; or, (d) if User repetitively or seriously violates yard procedure and rules.

Note: The remedies of _____ in the event of User's default provided in this Agreement are not intended to be exclusive of any other legal remedies available to _____.

10. Indemnification

User agrees to indemnify, defend (with counsel reasonably acceptable to _____) and hold _____, the Port of Oakland and its affiliates, related companies, agents, etc., harmless from and against any claims, judgments, damages, penalties, fines, costs, or any liabilities whatsoever which result or arise from the storage or movement of the Equipment and/or the access provided to User to the Facility. This provision shall continue in force after termination of this Agreement.

11. Insurance

Prior to the commencement of this Agreement, User shall provide evidence of insurance covering loss or damage to the Facility caused by the storage of User's Equipment. Such insurance coverage shall be subject to Manager's approval and shall name Manager as additional insured. The insurance policy procured by User shall contain an express waiver of any subrogation rights that the insurer may have against Manager.

In addition to the foregoing insurance, User shall maintain at all times during the Agreement an insurance policy which provides the following coverage for the Equipment: automobile liability (personal injury and property damage) in the aggregate amount of not less than \$750,000 combined, single limit per occurrence.

Prior to commencement of this Agreement, User shall provide copies of the foregoing insurance certificate. Thereafter, User shall notify Manager of any changes to its insurance coverage.

12. Liens

User understands and agrees that Manager may exercise any lien rights that it may have to the Equipment under California and/or federal law as a result of default of this Agreement. In the event that Manager takes possession of the Equipment as a result of default of this Agreement, such lien shall also extend to any cargo located in the Equipment.

13. Attorneys' fees

User will pay all cost and expenses, including, but not limited to, attorney fees, incurred by Manager in enforcing any of the provisions in this Agreement.

14. Entire agreement

This instrument including Addendum A, B, and C contains the entire agreement between the parties pertaining to the subject matter herein. No agreements, representations, or understandings, not specifically contained herein shall be binding upon any of the parties hereto unless in writing and signed by the other party.

I certify that I have read, understood and agree to this agreement,

Dated: ____/____/____

USER:

Print Name: _____

Signature: _____

*Mailing Address:

Addendum A

Application

Legal Company Name: _____

Trade Name (DBA): _____

Entity: Sole Proprietorship – Ltd. Partnership - LLC – Corporation - Partnership

FIN (Federal Identification Number): _____

Email Address: _____

Primary Contact

Full Name: _____

Title: _____

Phone Number (1): (____) - _____

Phone Number (2): (____) - _____

Fax Number: (____) - _____

Physical Address (PO Box not allowed):

Address Line 1: _____

Address Line 2: _____

City, State, Zip: _____

Mailing Address:

Address Line 1: _____

Address Line 2: _____

City, State, Zip: _____

Billing Address:

Address Line 1: _____

Address Line 2: _____

City, State, Zip: _____

How many owner operator trucks: _____

How many company trucks: _____

Insurance Provider Name: _____

Policy Number: _____

Phone Number: (____) - _____

Agent / Broker Name: _____

Operating Authority: _____

DOT (Department Of Transportation) ICC Number: _____

Trade Reference:

Effective 7/1/2017

Addendum B

Company Name: _____

Company Address: _____

Contact: _____

Rates and Application

Rates are established by the Port pursuant to its Tariff 2-A as amended from time to time.

Stall Size	Total Including Tax
Chassis or Chassis with Container	\$375
Tractor	\$25
Daily Parking	
Regular	\$30
Reefer	\$75

Addendum C

Yard Policy and Rules

1. You must check in with security and be cleared before entering or leaving the yard.
2. Yard speed limit is 10 mph. Violators will be disciplined.
3. Drivers must stop at ALL intersections.
4. Yard hostlers, loaders and other yard equipment have the “Right of Way” at all times.
5. No parking in the employee parking lot. Park in rented stalls only. Violators will be cited.
6. Trucks must not be left attached to containers.
7. “Challenging” Security, any employee or driver is ground for immediate removal from property and possible banning.
8. There is only ONE lane for the “IN” gate and ONE lane for the “OUT” gate.
9. No parking in employee stalls in front of office.
10. No loitering, wandering, or driving in personal vehicles.
11. No stacking of containers or container repair.
12. All Trailers/Chassis must have their sliding tandem axles slide all the way back to the rear of the trailer to prevent damage to fence or other property
13. No repairs or maintenance of any kind allowed, except as approved by ATL management in advance.
14. Yard visits other than by stall holders must be authorized prior to entry.
15. Unaccounted for vehicles (including personal vehicles) will be towed away at owner’s expense.
16. No loading or unloading cargo or dumping of any kind allowed inside the ATL. Use trash bins for garbage only. Do not bring in or dump any hazardous materials, such as tires, batteries or corrosives.
17. No overnight sleeping, residential uses, cooking, or sale/dispensing of alcohol.
18. No disturbance of the yard’s surface or soil.
19. No disposal of tires batteries, or other matters containing hazardous materials.
20. Failure to adhere to yard rules will result in disciplinary action, including termination of permission to enter the area.

Please initial here if you have read and understand the yard policy and rules: _____

EXHIBIT C
TRUCK PARKING STAFFING PLANS

TRUCK PARKING STAFFING PLAN

TRUCK PARKING		Typical Weekday																							Hours by Shift	
		12:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	
1	General Manager										0.5	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.5							8.00
2	Admin Clerk								0.5	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.5								8.00
3	Security Officer (Supervisor)									1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0									8.00
4	Security Officer (Supervisor)	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0																	8.00
5	Security Officer (Supervisor)																	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	8.00
6	Security Officer (Patrol Howard/Roundhouse)	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0										1.0	1.0	1.0	1.0	1.0	1.0	1.0	8.00
7	Security Officer (Patrol Howard)								1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0									8.00
8	Security Officer (Patrol Howard)									1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0								8.00
9	Security Officer (Patrol Howard/Roundhouse)																		1.0	1.0	1.0	1.0	1.0	1.0	1.0	8.00
10	Security Officer (Patrol Roundhouse)								1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0									8.00
11	Security Officer (Patrol Roundhouse)									1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0								8.00
12	Parking Attendant (Roundhouse)										1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0								8.00
13	Parking Attendant (Roundhouse)	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0																	8.00
14	Parking Attendant (Roundhouse)								1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0									8.00
15	Parking Attendant (Roundhouse)																	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	8.00
16	Parking Attendant (Howard)	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0																	8.00
17	Parking Attendant (Howard)									1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0									8.00
18	Parking Attendant (Howard)																	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	8.00
19	Parking Attendant (Howard)								1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0									8.00
20	Parking Attendant (Howard)									1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0								8.00
21	Parking Attendant (Supervisor)									1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0								8.00
TRUCK PARKING		Typical Weekend/Holiday																							Hours by Shift	
		12:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	
22	General Manager																								0.00	
23	Admin Clerk																								0.00	
24	Security Officer (Supervisor)	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0		1.0	1.0	1.0	1.0	1.0	1.0	1.0									8.00
25	Security Officer (Supervisor)										1.0	1.0	1.0	1.0	1.0	1.0	1.0									8.00
26	Security Officer (Supervisor)																	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	8.00
27	Security Officer (Patrol Howard/Roundhouse)	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0																	8.00
28	Security Officer (Patrol Howard/Roundhouse)									1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0									8.00
29	Security Officer (Patrol Howard/Roundhouse)																	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	8.00
30	Parking Attendant (Roundhouse)	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0																	8.00
31	Parking Attendant (Roundhouse)									1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0									8.00
32	Parking Attendant (Roundhouse)																	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	8.00
33	Parking Attendant (Howard)	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0																	8.00
34	Parking Attendant (Howard)										1.0	1.0	1.0	1.0	1.0	1.0	1.0									8.00
35	Parking Attendant (Howard)																	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	8.00

EXHIBIT D
ADMINISTRATIVE FEES

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

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

No Administrative Fees shall be assessed if the Operator's failure is due to factors beyond the reasonable control of the Operator, including any event of Force Majeure as defined in Section 28 of the Agreement.

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

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

CLASS I - \$500 PER OCCURRENCE

1. Each customer complaint that is not addressed or resolved in a manner reasonably acceptable to the Port within five (5) business days of receipt by Operator of the notice of such complaint.
2. Violation of any applicable laws and regulations, Port ordinances and resolutions, licensing and permit requirements, and rules and codes of conduct applicable to all customers of the Truck Parking/Container Depot Area.
3. Use of profane or vulgar language directed to or at the public, Port personnel, or those designated by the Port to supervise operations.
4. Solicitation of customers for sale of goods or services, or for tips or other unauthorized exchange of money.
5. Providing false information to customers.
6. The use, possession or being under the influence of any alcoholic beverage or prohibited substance while operating a vehicle on Port property.

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

CLASS II - \$250 PER OCCURRENCE

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

5. Managers or supervisors not available at the Port's request within a reasonable period of time.
6. For each employee that does not complete the required training program.
7. Per day that the Operator fails to maintain minimum staffing schedule.
8. Failure to conduct the daily inventory or collect daily data completely and accurately.
9. For each day that the Operator fails to provide the Port with an Audit Manual after sixty (60) days of the commencement date of this Agreement.
10. For each day the Operator fails to provide the Port with an Operations Manual after sixty (60) days of the commencement date of this Agreement.
11. For each day the Operator fails to provide the Port with a Training Manual after sixty (60) days of the commencement date of this Agreement.
12. Failure by Operator to return to the Port all identification badges for each terminated employee within one business day of such termination.
13. Suspension of any service or the non-receipt or repossession of any product due to Operator's failure to pay invoices or bills subsequent to any reimbursement by the Port for such services or products for which Operator is responsible for under the Agreement.

CLASS III - \$50 PER OCCURRENCE

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

Required reports include, but are not limited to:
 - a. Monthly Revenue Report
 - b. Daily, Monthly, or Annual Activity Reports
 - c. Monthly Management Reports
 - d. Budget Reports, including Variance Analysis Statements, Payroll, And Payroll Expenses Notifications
 - e. Monthly Report of Reimbursable Expenses
 - f. Employee Training Program Reports
 - g. Incident Reports
2. Each day that Operator fails to maintain the Truck Parking/Container Depot Area neat and clean and in good condition and repair and to maintain in good condition and repair all equipment used for the performance of the Truck Parking/Container Depot Services.
3. Each day that payment of a Class I or Class II Administrative Fee assessed against the Operator hereunder is late, up to a maximum of \$500.

EXHIBIT E
PARKING RATES

The Operator shall charge rates as established by the Port pursuant to its Tariff 2-A as amended from time to time.

Stall Size	Total Including Tax
Chassis or Chassis with Container	\$375
Tractor	\$25
Daily Parking	
Regular	\$30
Reefer	\$75

EXHIBIT F
INVENTORY OF PORT-OWNED EQUIPMENT AND FURNISHINGS

SEAPORT TRUCK PARKING ASSET INVENTORY 2/7/2020					
Page 1					
	OUTER HARBOR TERMINAL (OHT) YARD				
QTY	ITEM DESCRIPTION	CATEGORY	LOCATION	Owner	Notes
2	MODULAR OFFICE TRAILERS	STRUCTURE	OHT	PORT	
4	SECURITY BOOTHS	STRUCTURE	OHT	PORT	
	ABM PARKING GM OFFICE				
QTY	ITEM DESCRIPTION	CATEGORY	LOCATION	Owner	Notes
2	GRAY/ BLACK CHAIR	FURNITURE	OHT/ADMIN	PORT	
1	OFFICE CHAIR	FURNITURE	OHT/ADMIN	PORT	
2	DESK	FURNITURE	OHT/ADMIN	PORT	
3	2 DRAWER FILE CABINET	FURNITURE	OHT/ADMIN	PORT	
2	3 DRAWER FILE CABINET	FURNITURE	OHT/ADMIN	PORT	
1	Cisco DVR	ELECTRONICS	OHT/ADMIN	PORT	
1	ACER MONITOR	ELECTRONICS	OHT/ADMIN	PORT	
1	RCA PHONE	ELECTRONICS	OHT/ADMIN	PORT	
1	IPAD	ELECTRONICS	OHT/ADMIN	PORT	
1	CRADLEPOINT WIFI ROUTER	ELECTRONICS	OHT/ADMIN	PORT	
	ABM ADMIN OFFICE				
QTY	ITEM DESCRIPTION	CATEGORY	LOCATION	Owner	Notes
1	2 DRAWER FILING CABINET	FURNITURE	OHT/ADMIN	PORT	
1	4 DRAWER FILE CABINET	FURNITURE	OHT/ADMIN	PORT	
3	BLUE CHAIR	FURNITURE	OHT/ADMIN	PORT	
2	BOOK SHELF	FURNITURE	OHT/ADMIN	PORT	
1	CREDENZA	FURNITURE	OHT/ADMIN	PORT	
2	DESK	FURNITURE	OHT/ADMIN	PORT	
1	FOLDING TABLE	FURNITURE	OHT/ADMIN	PORT	
3	OFFICE CHAIR	FURNITURE	OHT/ADMIN	PORT	
1	REFRIGERATOR	FURNITURE	OHT/ADMIN	PORT	
1	ROUND TABLE	FURNITURE	OHT/ADMIN	PORT	
1	AOC MONITOR	ELECTRONICS	OHT/ADMIN	PORT	
1	COLOR LASER JET PRO MFP M177FW	ELECTRONICS	OHT/ADMIN	PORT	
2	DELL MONITOR	ELECTRONICS	OHT/ADMIN	PORT	
2	HP COMPUTER	ELECTRONICS	OHT/ADMIN	PORT	
1	LENOVO COMPUTER	ELECTRONICS	OHT/ADMIN	PORT	
1	PAPER SHREDDER	ELECTRONICS	OHT/ADMIN	PORT	
3	RCA PHONE	ELECTRONICS	OHT/ADMIN	PORT	
3	VIDEO CAMERAS	ELECTRONICS	OHT/ADMIN		

SEAPORT TRUCK PARKING ASSET INVENTORY 2/7/20					
Page 2					
	SECURITY ADMIN TRAILER				
QTY	ITEM DESCRIPTION	CATEGORY	LOCATION	Owner	Notes
3	GUARD SHACK Chairs	FURNITURE	OHT/BOOTH	PORT	
1	L SHAPE DESK	FURNITURE	OHT/SECURITY	PORT	
1	LARGE WORK STATION	FURNITURE	OHT/SECURITY	PORT	
2	OFFICE CHAIR	FURNITURE	OHT/SECURITY	PORT	
1	OFFICE DESK	FURNITURE	OHT/SECURITY	PORT	
1	RED CABINET	FURNITURE	OHT/SECURITY	PORT	
1	REFRIGERATOR	FURNITURE	OHT/SECURITY	PORT	
2	ACER MONITOR	ELECTRONICS	OHT/SECURITY	PORT	
2	Android	ELECTRONICS	OHT/BOOTH/OFFICE	PORT	
1	BROTHER PRINTER MFC-2750DW	ELECTRONICS	OHT/SECURITY	PORT	
1	BROTHER PRINTER MFC-8910DW	ELECTRONICS	OHT/ADMIN	PORT	IN STORAGE
2	DELL COMPUTER	ELECTRONICS	OHT/SECURITY	PORT	
1	HP COMPUTER	ELECTRONICS	OHT/ADMIN	PORT	IN STORAGE
1	HP OFFICE JET PRO 8600	ELECTRONICS	OHT/SECURITY	PORT	
7	IPAD	ELECTRONICS	OHT/BOOTH/OFFICE	PORT	
2	LENOVO COMPUTER	ELECTRONICS	OHT/SECURITY	PORT	
9	OTTERBOX-IPAD CASES	ELECTRONICS	OHT/BOOTH	PORT	
1	SAMSUNG MONITOR	ELECTRONICS	OHT/SECURITY	PORT	
4	VIDEO CAMERAS	ELECTRONICS	OHT/SECURITY	PORT	
1	W BOX TECH DVR	ELECTRONICS	OHT/SECURITY	PORT	
1	ZENIUS BADGE MAKER	ELECTRONICS	OHT/SECURITY	PORT	
	HOWARD TERMINAL YARD				
QTY	ITEM DESCRIPTION	CATEGORY	LOCATION	Owner	Notes
1	MODULAR OFFICE TRAILERS	STRUCTURE	HOWARD	PORT	
3	SECURITY BOOTHS	STRUCTURE	HOWARD	PORT	
1	20 Ft STORAGE CONTAINER	FURNITURE	SECURITY	PORT	
2	GUARD SHACK Chairs	FURNITURE	BOOTH	PORT	
2	OFFICE CHAIR	FURNITURE	SECURITY	PORT	
2	OFFICE DESK	FURNITURE	SECURITY	PORT	
10	PAINTING STENCILS	FURNITURE	STORAGE CONTAINER	PORT	
1	Android	ELECTRONICS	BOOTH	PORT	
1	HP COMPUTER	ELECTRONICS	SECURITY	PORT	
3	IPAD	ELECTRONICS	BOOTH	PORT	
3	OTTERBOX-IPAD CASES	ELECTRONICS	BOOTH	PORT	
2	SAMSUNG MONITOR	ELECTRONICS	SECURITY	PORT	
4	SECURITY CAMERA	ELECTRONICS	SECURITY	PORT	
1	W BOX TECH DVR	ELECTRONICS	SECURITY	PORT	

EXHIBIT G
ESTIMATED ANNUAL OPERATING BUDGET

Truck Parking Estimated Annual Operating Budget (Form Only)														
FY 2020 - 2021														
	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Total	
Revenues:														
Monthly	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Transient	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Other Income - Taxable	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Miscellaneous Income	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Gross Revenue	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Direct Expense:														
Wages	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Total Direct Labor	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Payroll Tax	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Worker's Comp	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
401K	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Health Benefits	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Total Labor	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Insurance	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Insurance Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Supplies & Materials	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Signs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Taxes - Gross Receipts	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Parking Tax	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
License & Permit	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Repairs & Maintenance	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Utilities	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Telephone	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Janitorial Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Portable Sanitary Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Postage & Courier	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Office Supplies	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Forms & Printing	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Software Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Security Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Management Fee	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Other-Equipment Purchase	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Total Other Direct	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Total Direct Expense	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Income Before Fees or Rent	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Net Receipts	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	

EXHIBIT H
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 and the 2020 and Beyond Plan as defined below) or an Environmental Law adopted after the effective date of this Agreement 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 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,

^[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.”

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.

By its Resolution No. 19-21, the Board approved the Port of Oakland Seaport Air Quality 2020 and Beyond Plan-The Pathway to Zero Emissions dated June 13, 2019, that was approved by the Board on June 13, 2019, and which can be found at the following links:

<https://www.portofoakland.com/files/PDF/2020%20and%20Beyond%20Plan%20Vol%20I.pdf>;
<https://www.portofoakland.com/files/PDF/2020%20and%20Beyond%20Plan%20Vol%20II.pdf> ("2020 and Beyond Plan").

(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 2020 and Beyond Plan. 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, the 2020 and Beyond Plan, and the 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, 2019, 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.

(k) 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.

Any deposit specified in the Agreement (the “Performance Deposit”) 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.

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 that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

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) In any application to the Port for a permit pursuant to Section 708 of the Charter of the City, 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. 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.

Section 11. California Environmental Quality Act

The Port, as the Lead Agency (as defined in Pub. Res. Code § 21067) or Responsible Agency (as defined in Pub. Res. Code § 21069) under CEQA, has reviewed the proposed uses under this Agreement and determined that this Agreement is exempt from CEQA pursuant to Port CEQA Guidelines (Port Ordinance No. 2581, as amended):

- ☐ Section 15301 (Existing Facilities)
- ☐ Section 15302 (Replacement or Reconstruction)
- ☐ Section 15306 (Information Collection)
- ☐ Section _____:

Any development on the Premises will be subject to a separate environmental review and documentation.

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 operations and development programs) or third parties (e.g., Port tenants or developers of private property within the Port Area) for all Port operations and development programs within the Port Area or on Port property. Please document features and measures incorporated into the operation or development program 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 not included in the operations or development program. Use the categories below to identify features and measures to promote sustainability during both construction and long-term operations. Where applicable, describe how features and measures address multiple sustainability opportunity categories.

Category	Project Name:	Project/File #:	Prepared/Updated By:	Date:
Energy Sources Discuss potential alternative energy sources that could provide energy for the operation or development program (e.g., solar, wind, etc.), including the potential for on-site energy generation. Where applicable, discuss systems or features to promote enhanced energy reliability and resiliency including back-up systems, micro-grids, distributed energy systems, etc.				
Energy Efficiency Detail development program design features to maximize energy efficiency. Examples include building designs that minimize heating and cooling needs, and traffic layouts that minimize idle time. Port utilities has an incentive program for surpassing the local building codes, lighting, variable speed motors, and other energy efficiency design features.				
Materials Describe how materials used to complete the development program (and materials generated during any demolition) will be managed to promote sustainability, noting locally-sourced materials, recycled materials, and materials whose production is otherwise more sustainable than conventional options.				

Water Conservation and Water Quality Describe opportunities to conserve water (e.g., use of recycled water, rainwater harvest/use, water-efficient landscaping, waterless urinals, low-flush toilets, etc.) and improve water quality (such as green roofs).	
Alternative Fuel Equipment and Vehicles Note whether the operation or development program 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.	
Air Quality Discuss operations or development program features that will improve or reduce impacts to air quality. Examples include emissions control equipment and measures to minimize dust.	
Climate Change Describe opportunities or features in the operation or development program design to adapt to climate change such as extreme heat, sea level rise, and 100-year storm event (e.g., constructing higher foundations for new construction, installing green roofs to manage buildings from extreme weather, etc.). Review the Port's AB 691 Sea Level Rise Assessment: https://www.portofoakland.com/community/environmental-stewardship/publications/ . Also visit other resources for potential adaption strategies including, without limitation: EPA - https://www.epa.gov/arc-x/strategies-climate-change-adaptation ; State Lands Commission - https://www.slc.ca.gov/ab691/ ; ART - http://www.adaptingtorisingtides.org/project/regional-sea-level-rise-mapping-and-shoreline-analysis/	

Other Sustainability Opportunities

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.

EXHIBIT I
INSURANCE REQUIREMENTS

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

A. MINIMUM SCOPE AND LIMITS OF INSURANCE

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

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

B. OTHER INSURANCE PROVISIONS

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

1. Commercial General Liability, Business Automobile Liability Coverage Garagekeepers Legal Liability coverages described above shall include provisions that:
 - a. the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland", its agents, employees, commissioners and officers are included as additional insureds, by endorsement, with respect to any liability arising out of activities performed by or on behalf of Operator, products and completed operations of Operator; premises owned, leased or used by Operator, the Truck Parking/Container

Depot Area or other locations from which the services are provided, or automobiles owned, leased, hired or borrowed or used by Operator; all without special limitations on the scope of protection afforded to Port, its agents, contractors, employees, commissioners and officers and that coverage includes a cross liability/separation of insureds provision.

2. All insurance policies required herein shall include provisions or endorsements enacting the following requirements:
 - a. the insurance is the primary insurance, without any obligation of any other insurance provided to the Port, its agents, employees, commissioners and officers or any insurance or self-insurance maintained by Port, its agents, employees, commissioners, and officers (including any self-insured retention or deductible) to contribute, share, or split pro rata any liability covered by the Operator's insurance, which other insurance or self-insurance shall be excess insurance only; and
 - b. the insurance waives all rights of subrogation against the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland", its agents, employees, commissioners, and officers.
3. Excess/Umbrella Coverage. The limits of insurance required by Exhibit I can be met either by primary policies or by a combination of primary and excess/umbrella policies. If excess/umbrella policies are utilized to satisfy the required limits of insurance, these excess/umbrella policies shall comply with the requirements of this Exhibit I and must fully comply with items 1(a), 2(a) and 2(b) in particular.

C. ACCEPTABILITY OF INSURERS

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

D. DEDUCTIBLES OR SELF-INSURED RETENTIONS

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

E. RELEASE AND WAIVER

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

the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland", its agents, employees, commissioners and officers. Operator shall require all of its Contractors, Subcontractors and Consultants to maintain similar waivers in favor of such parties.

F. CANCELLATION OR REDUCTION OF COVERAGE

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

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

G. PROOF OF COVERAGE

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

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

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

H. REVIEW OF COVERAGE

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

I. SUBCONTRACTORS

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

EXHIBIT J
GUARANTY

WHEREAS, the City of Oakland, a municipal corporation doing business by and through its Board of Port Commissioners, hereafter referred to as "Port", and _____, hereafter referred to as "Operator", are about to execute a document entitled Seaport Truck Parking Management Services Agreement (the "Agreement") dated _____, 2018, under which Operator will manage, operate and maintain truck parking facilities at the Seaport; and

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

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

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

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

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

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

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

default by Operator or for the enforcement of any rights which Port may have as against Operator pursuant to or under the terms of the Agreement or at law or in equity.

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

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

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

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

The Guarantors agree to provide financial and other information about the Guarantors to the Port to the same extent that the Operator is obligated to provide such information under Section 22(f) of the Agreement.

This Guaranty and the liability of Guarantors hereunder shall not be subject to or contingent upon (a) the genuineness, validity, regularity or enforceability of the Agreement, or (b) any law, ordinance, rule, regulation, writ, order or decree now or hereafter in effect which might in any manner affect the Operator's obligations under the Agreement or any rights, powers or remedies of Port in respect thereof, or cause or permit to be invoked any alteration of time, amount or manner of payment or performance of any obligation of the Operator under the Agreement. Further, this

Guaranty shall not be deemed discharged, impaired or affected by (x) the power or authority of Operator to enter into or to obtain the Agreement; (y) any subcontracting or assignment by Operator of its interest in the Agreement; or (z) the existence or non-existence of Operator as a legal entity.

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

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

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

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

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

IN WITNESS WHEREOF, each Guarantor hereby executes this Guaranty this ____ day of _____, 2018.

By:

Attest:

PRINT NAME & TITLE

PRINT NAME & TITLE

DATE:

DATE:

EXHIBIT K
LABOR PEACE RULE

I. PURPOSE

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

II. DEFINITIONS

Whenever used in this Rule, the following terms shall have the meanings set forth below.

- (A) **"Department Director"** means the Port's Maritime Director.
- (B) **"Executive Director"** means the Executive Director of the Port.
- (C) **"Labor Disruption"** means any economic action or concerted activity, including, without limitation, strikes, picketing, handbilling, boycotts of, or other interference with: any activities on Port property, the Port, or an Operator or its activities under this Agreement.
- (D) **"Labor Organization"** means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with Operators concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
- (E) **"Labor Peace Agreement"** means a written agreement between an Operator and a Labor Organization that prohibits a Labor Organization, its members and any employees represented by the Labor Organization from engaging in any Labor Disruptions relating to the services provided to the Port under this Agreement: (1) during any organizing, membership drive, or negotiation of a collective bargaining agreement; and (2) during the entire term of this Agreement in the case where the Labor Organization has entered into a collective bargaining agreement with Operator.
- (F) **"Rule"** means this Labor Peace Rule.

III. REQUIREMENT TO KEEP LABOR PEACE AND PREVENT LABOR INTERRUPTIONS

(A) Operator Duties

- (1) Prior to the Term of this Agreement, Operator shall enter into, and provide to the Port a copy of, a Labor Peace Agreement with any Labor Organization that has requested in writing such a Labor Peace Agreement. Operator shall enter into the Labor Peace Agreement within thirty (30) days from the request.
- (2) Operator shall require its subcontractors (if any), successors, and assigns to include in the subcontracting or similar agreement a provision to comply with the requirements of this Rule.
- (3) In the event that Operator is unable to negotiate a Labor Peace Agreement with any Labor Organization within the thirty (30) day period set forth in Section III(A)(1) above, it may request to be excused from such obligations with respect

to that Labor Organization by delivering a written request to the Executive Director. Upon the receipt of the written request from Operator, the Executive Director may appoint a hearing officer (who shall not be an employee working under the applicable Department Director) who shall hold an informal hearing after notice to Operator and the subject Labor Organization. Operator may be relieved of, and excused from, its obligations under Section III(A)(1) with respect to the subject Labor Organization if the hearing officer finds, after holding the noticed hearing, that:

- a. Operator has attempted to reach a Labor Peace Agreement with the subject Labor Organization; and
- b. The Labor Organization has (i) refused to negotiate to reach a Labor Peace Agreement, or (ii) placed condition(s) on the Labor Peace Agreement that are arbitrary and capricious.

The findings of the hearing officer shall be final and may be based on any evidence or fact he or she deems relevant or credible whether or not Operator or subject Labor Organization presented evidence or appeared at the hearing. The provision of a hearing is at the discretion of the Executive Director to facilitate the Port's proprietary interest in the timely compliance with this Rule. This Section III(A)(3) neither implies any legal duty of the Port nor confers any constitutional, legal, or contractual right of Operator to enter into this Agreement or of any party to contest the findings of the hearing officer in court or otherwise.

(B) Port Duties

- (1) The Port shall not enter into this Agreement without finding that: (a) Operator has entered into a Labor Peace Agreement with all Labor Organizations that, to the actual knowledge of the Executive Director, has requested in writing a Labor Peace Agreement with Operator; (b) Operator is excused from compliance pursuant to Section III(A)(3) above; or (c) that any exemption from this Rule as set forth in Section III(D), below, applies.
- (2) The Department Director shall grant exemptions from this Rule as set forth in Section III(D), below.

(C) Labor Organization Duties

- (1) Any Labor Organization seeking enforcement of this Rule must request a Labor Peace Agreement with Operator under provisions of this Rule and must submit to the Department Director a copy of the written request it has sent to Operator.
- (2) Any Labor Organization seeking enforcement of this Rule shall not engage in Labor Disruptions at the Port in violation of any applicable Labor Peace Agreement.

(D) Exemptions

The provisions of this Rule shall not apply to any of the following:

- (1) Any bargaining unit of Operator which has already recognized a Labor Organization for that bargaining unit; and

- (2) A Labor Organization that has not submitted a written request to enter into a Labor Peace Agreement to Operator or that has not submitted evidence of such written request to the Department Director as set forth in Section III(C)(1) of this Rule.

IV. ENFORCEMENT

- (A) The Department Director or his/her designee shall investigate complaints alleging that this Rule has been violated, and shall take any action necessary to enforce compliance, including referring such violation to the Port Attorney for civil or other action.
- (B) In addition to any other remedies available to the Port, the Port may terminate this Agreement upon thirty (30) days' notice to Operator to cure its breach where Operator has failed to: (1) enter into a Labor Peace Agreement as required by this Rule; or (2) include in a subcontracting or similar agreement the provision requiring compliance with this Rule as required by Section III(A)(2) of this Rule.
- (C) Where Operator has failed to prevent a Labor Disruption that is directly or indirectly caused by Operator's violation of this Rule or breach of its obligations under this Agreement, or by its violation of laws or of rules and regulations of the Port, the Port may consider Operator in breach of this Agreement and terminate this Agreement after thirty (30) days of any notice to Operator to cure its breach and such breach has not been cured.
- (D) Any challenge to the applicability of this Rule to Operator or Labor Organization shall be brought to the Board only after first seeking an exemption from the Department Director as provided for in this Rule. Any such challenge must be commenced with the Board in writing within 15 days after notification that such exemption has been denied by the Department Director.

V. CONSTRUCTION

Nothing in this Rule shall be construed as requiring Operator to change the terms and conditions of employment for its employees, recognize a Labor Organization as the bargaining representative for its employees, adopt any particular recognition process, or enter into a collective bargaining agreement with a Labor Organization. Nothing in this Rule permits or requires the Port or Operator to enter into any agreement in violation of the National Labor Relations Act of 1935. Provisions of this Rule shall be interpreted to achieve the Port's proprietary interest in preventing Labor Disruptions.

VI. SEVERABILITY

If any part or provision of this Rule, or the application thereof to any person, business entity, or circumstance, is held invalid by any court of competent jurisdiction, the remainder of this Rule including the application of such part or provisions to other persons, business entities, or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Rule are severable.