

***IMPORTANT:***

**THE PORT SHALL NOT ENFORCE THE FOLLOWING REQUIREMENTS IN THE DRAYAGE TRUCK CONCESSION AGREEMENT:**

- **SECTION III (d) DRIVER HIRING**
- **SECTION III (f) COMPLIANCE WITH TRUCK ROUTES AND PARKING RESTRICTIONS**
- **SECTION III (I) PLACARDS**

**FOR AN EXPLANATION, PLEASE SEE PORT OF LOS ANGELES WEBSITE FOR THESE NOTICES AFFECTING THE CONCESSION AGREEMENT:**

**(I) NOTICE OF JUNE 2013 COURT DECISION**

**(II) NOTICE OF SEPTEMBER 2011 COURT DECISION.**

**THE REMAINING CONCESSION AGREEMENT WILL BE ENFORCED IN ACCORDANCE WITH THE REFERENCED COURT DECISIONS.**

**DRAYAGE SERVICES  
CONCESSION AGREEMENT  
FOR ACCESS TO THE  
PORT OF LOS ANGELES**

**AGREEMENT NO. \_\_\_\_\_**

THIS DRAYAGE SERVICES CONCESSION AGREEMENT ("Concession") is made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners ("Port") and \_\_\_\_\_ ("Concessionaire"). Defined terms used and not otherwise defined herein shall have the meanings set forth in the Clean Air Action Plan Chapter of Port of Los Angeles Tariff No. 4 (Section 20).

For and in consideration of the promises, and of the terms, covenants and conditions hereinafter contained to be kept and performed by said parties, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

**I. DRAYAGE TRUCK CONCESSION RIGHTS GRANTED**

- (a) Subject to the terms of this Concession, including without limitation the terms set forth on the Schedules attached hereto and incorporated herein by reference, the Port hereby grants to the Concessionaire a non-exclusive license to access Port property for the purpose of transporting containers and/or other cargo to and from marine terminals ("Drayage Service"). Concessionaire's right of access to and use of the Port's facilities under this Concession shall be solely for the purpose of conducting Drayage Service unless the Concessionaire obtains the Executive Director's prior written permission to access Port's property for other purposes. Concessionaire's rights under this Concession shall be non-exclusive and the Port intends to grant similar concession rights to other concessionaires who meet and remain in compliance with Concession requirements. This Concession is not transferable without prior written permission from the Port, which shall be conditioned upon (1) satisfaction in full of the transferor Concessionaire's obligations to the Port, and (2) the proposed transferee's compliance with Concession qualifications and requirements. Concessionaire requests to transfer shall be delivered to the Port in writing at least 30 days' advance of any proposed substantial change in the ownership and control of Concessionaire. The Port shall not unreasonably deny transfer of the Concession but may in its sole discretion choose to issue a new Concession in lieu of transfer. The Port shall not withhold consent to transfer the Concession to a wholly owned subsidiary of Concessionaire or to allow wholly owned subsidiaries of Concessionaire to operate under the rights granted by this Concession provided that such subsidiaries independently meet the requirements of a concessionaire. In the event that Concessionaire allows any wholly owned subsidiary to operate under the rights granted by this Concession, Concessionaire shall be legally liable to Port for all performance, payments, acts and omissions of such subsidiary related to this Concession.
- (b) Drayage Trucks providing Drayage Service to the Port and operating under the authority of and in compliance with the terms and conditions of this Concession shall be referred to herein as "Permitted Trucks." Permitted Trucks may include Drayage Trucks leased or owned and operated by Concessionaire

("Concessionaire's Trucks") or, during the Transition Period (to the extent permitted in Section III (d) below), leased or owned by contractor drivers and performing Drayage Service on behalf of Concessionaire under the authority of this Concession ("Contractors' Trucks"). Regardless of ownership status, Concessionaire shall cause all Permitted Trucks to comply fully with all of the terms and conditions of this Concession.

- (c) Concessionaire understands that, by granting this Concession to the Concessionaire, the Port has not secured drayage service contracts between Concessionaire and any customers, which contracts and obligations therein shall remain the sole responsibility of Concessionaire.

## II. TERM OF AGREEMENT

This Concession shall be effective for a term of five (5) years commencing at 12:01 a.m. on October 1, 2008 and terminating at 12:00 midnight on September 30, 2013.

## III. CONCESSION REQUIREMENTS

As a condition to the right to provide Drayage Services under this Concession, Concessionaire shall comply with all of the requirements set forth below and on the Schedules attached hereto and incorporated herein by reference (collectively, the "Concession Requirements"):

- (a) Licensed Motor Carrier. Concessionaire must be a licensed motor carrier in good standing and in compliance with the requirements of a valid license/permit under either (1) a California Motor Carrier Permit issued by the California Department of Motor Vehicles under the California Vehicle Code, or (2) a state Motor Carrier Permit issued by another U.S. state, or (3) a Federal Motor Carrier License (USDOT Number) and Operating Authority (MC Number).
- (b) Permitted Trucks. Concessionaire shall utilize Permitted Trucks (as defined in Section 1(b) above) to provide Drayage Service to the Port pursuant to this Concession. To qualify as a Permitted Truck, all Drayage Trucks providing Drayage Service operating under this Concession shall have required information entered into and kept updated in the Drayage Trucks Registry and shall comply at all times with Concession Requirements.
- (c) Driver Compliance. Concessionaire shall be responsible for the compliance and performance of its drivers or other personnel utilized pursuant to this Concession.
- (d) Driver Hiring. Concessionaire shall initially be permitted to utilize employees, independent contractor drivers (including without limitation owner operators), or a combination thereof to achieve its full complement of drivers driving its Permitted Trucks. Concessionaire shall be granted a transition period, as set forth in the schedule below, by which to transition its Concession drivers to 100% Employee Concession drivers by no later than December 31, 2013 ("Transition Period"). During the Transition Period, Concessionaire shall meet the interim annual fourth quarter milestones set forth below for the percentage of its Employee drivers. "Employee" for the purpose of this Concession shall have the same meaning as under Section 3121(d) of Title 26 of the United States Code, and may include

full-time, part-time, temporary or seasonal Employees to permit Concessionaire flexibility in driver staffing. The percentage of Concession drivers that are Employees during Employee Transition Period shall be calculated as a percentage of Employee drivers driving Permitted Trucks in Drayage Truck transactions at the Port's marine terminal gates based upon the proportionate number of such transactions by Employee drivers relative to those of non-Employees during the relevant time periods. Employee status data shall be collected electronically daily with each Permitted Truck transaction at the marine terminal gates. Reporting to both the Port and the Concessionaire will be made quarterly, to enable Concessionaire to monitor level of compliance and make adjustments to maintain the annual fourth quarter average. Compliance measurement and reporting to both the Port and the Concessionaire will be done annually, using the simple arithmetic average of all records for the fourth quarter (October 1 through December 31). After December 31, 2012, all Concession drivers shall be Employees. Subject to drivers meeting Concessionaire's reasonable employment standards and all other qualifications being equal, Concessionaire shall give a hiring preference to drivers with a history of providing drayage services to the Port. The ultimate decision as to hiring shall rest with Concessionaire. When Concessionaire has openings for Drayage Truck drivers or administrative staff, Concessionaire shall post such job openings at the First Source Workforce Development Office, a workforce development program that provides prospective employee applicants through a non-exclusive job referral system. Concessionaire shall also consult the First Source list of prospective employee applicants prior to hiring.

**EMPLOYEE DRIVER SCHEDULE – TRANSITION PERIOD**

<p align="center"><b>IMPLEMENTATION DATE</b> Fourth Quarter (Oct. 1 – Dec. 31) Average Measured on Below Dates</p>	<p align="center"><b>% OF CONCESSION DRIVERS THAT ARE EMPLOYEES</b> Fourth Quarter (Oct. 1 – Dec. 31) Average Percentage</p>
December 31, 2008	0 %
December 31, 2009	20 %
December 31, 2010	66 %
December 31, 2011	85 %
December 31, 2012	95 %
December 31, 2013	100%

- (e) Clean Truck Tariff. Concessionaire shall cause all Concessionaires' Permitted Trucks to be modernized by either retrofit or replacement to comply with the Clean Truck Program requirements in accordance with Section 20 of Port of Los Angeles Tariff No. 4. During the Transition Period (as defined in Section III(d)), Concessionaire shall confirm that all Contractors' Permitted Trucks that operate under its Concession also comply with the Clean Truck Program requirements in accordance with Section 20 of Port of Los Angeles Tariff No. 4.
- (f) Compliance with Truck Routes and Parking Restrictions. Concessionaire shall submit for approval by the Concession Administrator, an off-street parking plan that includes off-street parking location(s) for all Permitted Trucks. Concessionaire shall ensure that all Permitted Trucks are in compliance with on-street parking restrictions by local municipalities. Permitted Trucks not in service shall be staged off public streets and away from residential districts. Except when diverted by posted detours or at the direction of police, Port, or other traffic authorities, Concessionaire shall ensure that Permitted Trucks adhere to any truck routes specified by local and state authorities or the Port, including routes and permit requirements for hazardous materials, extra-wide, over-height and overweight loads.
- (g) Truck Maintenance. Concessionaire shall prepare an appropriate maintenance plan for all Permitted Trucks. Concessionaire shall be responsible for vehicle condition and safety and shall ensure that the maintenance of all Permitted Trucks, including retrofit equipment, is conducted in accordance with manufacturer's instructions. Maintenance records for all Permitted Trucks shall be available for inspection by the Concession Administrator during normal business hours or as previously arranged with Concessionaire.
- (h) Compliance with Truck Safety and Operations Regulations. Concessionaire shall ensure that all Permitted Trucks are in compliance with all applicable existing regulatory safety standards. Concessionaire shall maintain and make available for inspection by the Concession Administrator, all records required for compliance with the Port's Clean Trucks Program and all existing regulatory programs including U.S. Department of Transportation motor carrier safety regulations, and State of California Biennial Inspection of Terminals program. This includes driver qualifications, driver training, vehicle maintenance, safety inspection, controlled substances and alcohol testing and hours-of-service for all employee drivers and contractor drivers to the extent permitted during the Transition Period under Section III (d).
- (i) Driver Credential. Concessionaire shall ensure and keep records of enrollment in the Transportation Worker Identification Credential (TWIC) program, possession of a valid, current TWIC card and ongoing compliance with the requirements of the TWIC program by all Concession drivers, including employees and contractor drivers to the extent permitted during the Transition Period under Section III (d).
- (j) Compliance Tags. When entering and leaving Port Property and while on Port Property, Concessionaire shall ensure that each Permitted Truck is equipped with such means of Clean Trucks Program compliance verification as may be specified by the Marine Terminal Operators of the Port's Terminals.

- (k) Security. To support the Port's safety and security measures, Concessionaire shall ensure that all Permitted Trucks comply with applicable Federal, State, Municipal and Port security laws and regulations, including without limitation, the USA Patriot Act of 2001, Maritime Transportation Security Act of 2002 and Department of Homeland Security regulations, including terminal and facility security plans. When entering and leaving Port Property and while on Port Property, Permitted Trucks shall be subject to safety and security searches in accordance with applicable law.
- (l) Placards. When entering and leaving Port Property and while on Port Property, Concessionaire shall post placards on all Permitted Trucks referring members of the public to a phone number to report concerns regarding truck emissions, safety and compliance to the Concession Administrator and/or authorities.
- (m) Technology. When entering and leaving Port Property and while on Port Property, Concessionaire shall implement technology required for the Concession and /or the Clean Trucks Program. Port will consult with Concessionaires prior to requiring new technology.
- (n) Financial Capability. Prior to approval of Concession application, Concessionaire has demonstrated to the satisfaction of the Executive Director that it possesses the financial capability to perform its obligations under this Concession over the term of the Agreement.

#### IV. ADDITIONAL CONCESSION REQUIREMENTS – SCHEDULES AND CONCESSION BULLETINS

The parties agree that this Concession is granted subject to all of the terms and conditions set forth in the Schedules which are attached to this Concession and incorporated herein by reference. In addition, the Port and/or the Concession Administrator(s) shall publish from time to time, Concession Bulletins providing further detailed Concession procedures and information to Concessionaires.

Schedule 1 - Concessionaire Information

Schedule 2 – Concession Fees, Reporting and Audit Requirements

Schedule 3 – Indemnification and Insurance Requirements

Schedule 4 – Default and Termination

#### V. PROGRAM ADMINISTRATORS

The Port may designate one or more administrative agent(s) to administer the Clean Trucks Program and this Concession ("Program Administrators"). The Port shall provide written notice to Concessionaire of the designation of Program Administrator(s) and appropriate instructions regarding administrative policies and procedures to be handled by Program Administrator(s).

VI. COMPLIANCE WITH APPLICABLE LAWS

Concessionaire shall when entering and leaving Port Property and while on Port Property, comply with Port of Los Angeles Tariff No. 4 and all applicable federal, state and municipal laws, statutes, ordinances, rules and regulations that govern Concessionaire's operations, including without limitation, any laws, rules and regulations regulating motor carriers, transportation, hazardous materials, safety, security, employment, traffic, zoning and land use.

VII. INTEGRATION

This document constitutes the entire agreement between the parties to this Concession with respect to the subject matter set forth and supersedes any and all prior agreements or contracts on this subject matter between the parties, either oral or written. This Concession may not be amended, waived, or extended, in whole or in part, except in writing signed by all of the parties.

VIII. SEVERABILITY

Should any part of this Concession be determined by court or agency of competent jurisdiction to be unenforceable, unlawful, invalid, or subject to an order of temporary or permanent injunction from enforcement, such determination shall only apply to the specific provision and the remainder of this Concession shall continue in full force and effect.

IX. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

X. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the Port shall be addressed to: Concession Administrator, P.O. Box 151, San Pedro, California 90733-0151, and notice to Concessionaire shall be addressed to it at the Business Address set forth in Schedule 1. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

XI. AFFIRMATIVE ACTION

Concessionaire, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition.

XII. WAGE AND EARNINGS ASSIGNMENT ORDERS/NOTICES OF ASSIGNMENTS

Concessionaire and/or any subcontractor are obligated to fully comply with all applicable state and federal employment reporting requirements for the Concessionaire and/or subcontractor's employees. Concessionaire and/or subcontractor shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. Concessionaire and/or subcontractor will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. Concessionaire or subcontractor will maintain such compliance throughout the term of this Concession.

XIII. EFFECTIVE DATE

The Effective Date of this Concession shall be the last date of the execution dates of the signatories to this Concession, as indicated opposite their signatures below.

THE CITY OF LOS ANGELES,  
a municipal corporation,  
by and through its Board of Harbor Commissioners

Dated: \_\_\_\_\_

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

Attest \_\_\_\_\_  
Secretary

(CONCESSIONAIRE'S NAME),  
a (form of entity, e.g. corporation, partnership)

Dated: \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
(Print/Type Name and Title of Authorized Signatory)

Attest \_\_\_\_\_

\_\_\_\_\_  
(Print/Type Name and Title of Attesting Corp. Secretary or Officer)

APPROVED AS TO FORM

\_\_\_\_\_, 20\_\_  
ROCKARD DELGADILLO, Los Angeles City Attorney

By \_\_\_\_\_  
(Assistant/Deputy)



**SCHEDULE 1 - CONCESSIONAIRE'S INFORMATION**

Concessionaire confirms to the Port that the following information is true and correct and shall immediately advise the Port in writing if any of such information changes or ceases to be true and correct. Concessionaire may also be required to update such information by data entry in the Drayage Truck Registry, Concession Registry and/or Driver Registry.

1.1 Legal Company Name and DBA: \_\_\_\_\_

1.2 Form of Entity and State of Incorporation/Partnership/Domicile:  
\_\_\_\_\_

1.3 Business Address: \_\_\_\_\_  
\_\_\_\_\_

1.4 Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

1.5 Licensed Motor Carrier Information:  
Motor Carrier No.: \_\_\_\_\_  
Department of Transportation No.: \_\_\_\_\_  
Standard Carrier Alpha Code: \_\_\_\_\_

1.6 Tax ID No.: \_\_\_\_\_

## **SCHEDULE 2 – CONCESSION FEES, REPORTING AND AUDITS**

### **2.1 Concession Fees**

- 2.1.1 A one time Concession fee of \$2500 will be assessed to the Concessionaire. The Concession fee shall be collected at the time of submission of the Concession Application.
- 2.1.2 For each Permitted Truck, an annual fee of \$100 will be assessed to the Concessionaire (Annual Truck Fees). The Annual Truck Fees will be collected (i) within 30 days of the Effective Date of this Concession for Permitted Trucks registered as of the Effective Date, (ii) within 30 days of registration of additional Permitted Trucks into the Drayage Truck Registry, and (iii) on the annual anniversary date that each Permitted Truck was registered in the Drayage Truck Registry (unless the Permitted Truck was registered prior to October 1, 2008 in which case its anniversary date shall be October 1). Trucks for which an annual fee has been paid for a particular year may be registered under multiple Port of Los Angeles Concessions without the payment of any additional annual fee of that year.
- A Substitute Truck (a truck that specifically is substituted for a particular Permitted Truck that is removed from the Drayage Truck Registry by Concessionaire) shall not be subject to an additional annual fee for the year in which the substitution occurs. A Substitute Truck inherits the anniversary date of the truck it replaces.
- 2.1.3. These fees will be used to cover administrative costs of the Concession. Payments shall be made by Concessionaire in the form of a check or such other form of payment as directed in writing by the Port or Concession Administrator.
- 2.1.4 The failure of Concessionaire to pay the fees specified herein on time is a breach of contract for which the Port may terminate (according to the procedures set forth Schedule 4 of this Concession, DEFAULT, TERMINATION AND WAIVER, or take such legal action hereunder as it deems necessary. The Port expects all fees to be paid on time and Concessionaire has agreed to pay on time.
- 2.1.5 No new or renewed Concession will be approved for a Concessionaire that has remaining unpaid balances under present or past Concessions, or has failed to submit required reports under the present Concessions, or is in Default which is continuing and has not been cured to the satisfaction of the Port.

### **2.2 Reporting Requirements**

The Concessionaire shall be responsible to enter, update and maintain accurate data in the Drayage Truck Registry, Concession Registry and Driver Registry, and notify the Port or its designated agents within ten (10) business days of a change to any of the following information:

- (a) Drayage Truck Registry information, including for each Drayage Truck in service under the Concession, the year, make and model, status of compliance with EPA

- standards and retrofit, and annual miles driven, and any other information required by the Concession Administrator
- (b) Concessionaire Information (Schedule 1)
  - (c) Driver list and status of commercial driver's license, TWIC compliance and employee status
  - (d) Such other information related to the performance of this Concession as may reasonably be required by the Executive Directors and Concession Administrator

### 2.3 Periodic Reviews/Audits

Concessionaire agrees that while this Concession is in effect and for one year thereafter the Port, the Concession Administrator (or any other agent designated by the Port) may inspect any property, offices or equipment utilized by the Concessionaire to perform Drayage Service, and any files or records which the Port believes may demonstrate the extent to which the Concessionaire has complied or has failed to comply with requirements set forth in this Concession.

## **SCHEDULE 3 - INDEMNIFICATION AND INSURANCE**

### **3.1 Indemnity**

Except to the extent of any negligence or willful misconduct of Port, Concessionaire shall at all times indemnify, protect, defend, and hold harmless the Port and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including reasonable counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the Port, its boards, officers, agents, or employees by reason of any damage to property, injury to persons, or any action that may arise out of the performance of this Concession that is caused by any act, omission, or negligence of Concessionaire, its boards, officers, agents, employees, contractors, subcontractors or Permitted Trucks.

### **3.2 General Liability Insurance**

Concessionaire shall procure and maintain in effect throughout the term of this Concession, without requiring additional compensation from the Port, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverages within Concessionaire's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Concessionaire. The insurance provided shall contain a severability of interest clause and shall provide that any other insurance maintained by Port shall be excess of Concessionaire's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision. Each policy shall contain an additional insured endorsement naming the City of Los Angeles Harbor Department, its boards, officers, agents, and employees and a 30-day notice of cancellation by receipted mail as shown in Exhibit "3-A".

### **3.3 Automobile Liability Insurance**

Concessionaire shall ensure that the following insurance is in force at all times during the term of this Concession for all Permitted Trucks: automobile insurance within Concessionaire's normal limits of liability but not less than \$1,000,000 combined single limit per occurrence for transportation of all non-hazardous commodities, including oil and hazardous material in bulk and not less than \$5,000,000 combined single limit for transporting hazardous substances in cargo tanks, portable tanks or hopper-type vehicles with capabilities in excess of 3,500 water gallons, or hazardous materials meeting specified hazard classes or divisions within the Hazardous Material Table (49 CFR 172.101). Each policy shall contain an additional insured endorsement naming the City of Los Angeles Harbor Department, and its boards, officers, agents, and employees and an endorsement requiring 30 days' notice of cancellation by receipted mail as shown in Exhibit "3-B".

### 3.4 Workers' Compensation

Concessionaire shall certify that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that the Concessionaire shall comply with such provisions before commencing the performance of the tasks under this Concession. Concessionaire shall submit Workers' Compensation policies that meet current California statutory requirements, and \$1,000,000 in employer's liability coverage, whether underwritten or by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the Port in any circumstance in which it is alleged that actions or omissions of the Port contributed to the accident. See Exhibit "3-C".

### 3.5 Carrier Requirements

Except to the extent of any approved self-insurance, all insurance required by this Concession shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in the Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to the Port.

### 3.6 Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Risk Manager of the Port has been given 30 days' prior written notice by registered mail.

### 3.7 Evidence of Insurance

Concessionaire shall ensure that Special Endorsement forms, attached hereto as Exhibits 3-A., 3-B and 3-C, are submitted to the Program Administrator as evidence of all required insurance. Alternatively, a certified copy of each policy containing the additional insured and 30-day cancellation notice language shall be furnished to Concession Administrator. The form of such policy or endorsement shall be subject to the approval of the Risk Manager of the Port.

### 3.8 Renewal of Policies

Except to the extent of any approved self-insurance,, at least 30 days prior to the expiration of each policy, Concessionaire shall furnish to Program Administrator a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above.

### 3.9. Right to Self-Insure

Upon written approval by the Executive Director, Concessionaire may self-insure if the following conditions are met:

1. Concessionaire has a formal self-insurance program in place prior to execution of this Concession. If a corporation, Concessionaire must have a formal resolution of its board of directors authorizing self-insurance.
2. Concessionaire agrees to protect the Port and the City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Concession.
3. Concessionaire agrees to defend the Port and the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. Concessionaire agrees that any insurance carried by Port or the City is excess of Concessionaire's self-insurance and will not contribute to it.
5. Concessionaire provides the name and address of its claims administrator.
6. Concessionaire submits a Financial Statement or Balance Sheet prior to Executive Director's consideration of approval of self-insurance and annually thereafter evidence of financial capacity to cover the self-insurance.
7. Concessionaire agrees to inform Port in writing immediately of any change in its status or policy which would materially affect the protection afforded Port by this self-insurance.
8. Concessionaire has complied with all laws pertaining to self-insurance.

### 3.10 Accident Reports

Concessionaire shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death or bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident, or damage in excess of Two Thousand Five Hundred Dollars (\$2500.00) to property, occurring upon Port property, or elsewhere within the Harbor District of the City of Los Angeles if Concessionaire's officers, agents, employees, contractors, subcontractors or Permitted Trucks are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and

address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Concessionaire, its officers or managing agents.

**EXHIBIT 3-A TO SCHEDULE 3  
GENERAL LIABILITY INSURANCE FORM**



**EXHIBIT 3-B TO SCHEDULE 3  
AUTO LIABILITY INSURANCE FORM**

**EXHIBIT 3-C TO SCHEDULE 3  
WORKER'S COMPENSATION INSURANCE FORM**

## **SCHEDULE 4 – DEFAULT AND TERMINATION**

### 4.1 Default

In the event Concessionaire commits an event of Default (as defined in Section 4.2, below), such event shall be deemed a Default and the Port shall give Concessionaire written notice of such Default and the opportunity for the Concessionaire to cure or contest the Default as set forth in the notice in accordance with Sections 4.3 through 4.4 herein. If the Concession is terminated pursuant to Section 4.4 herein, the Port may deny any and all access to Port property by the Concessionaire except to permit Concessionaire to remove its property. In the event that the nature of the Default is such that it cannot be cured within the applicable cure period, Concessionaire must take substantial steps toward corrections within the cure period, and diligently continue efforts to complete the cure of the Default as soon as is reasonably practicable during which time the applicable remedy will not be imposed. In the event that a Notice of Default is issued by Port to Concessionaire, the provisions of Sections 4.3 and 4.4 below shall apply.

### 4.2 Events of Default

Circumstances that constitute a default under this Concession by Concessionaire (“Default”) shall include, without limitation, the following:

- (a) Any act or failure to act which operates to deprive Concessionaire any of the rights, powers, licenses, permits or authorities necessary for the proper conduct and operation of Drayage Service in accordance with applicable laws;
- (b) Any failure to comply with the terms and conditions of this Concession;
- (c) Abandonment or discontinuance of Drayage Service for sixty (60) consecutive days;
- (d) Repeated violations of traffic rules and regulations in and around the Harbor District or disregard of public safety;
- (e) Any violation of the Patriot Act of 2001 or Department of Homeland Security regulations, including any facility security plan;
- (f) Any fraud or misrepresentation in the Concession application, information or data submitted to the Port required under the Concession;
- (g) Any effort to misrepresent that a Drayage Truck complies with Section 20 of Port Tariff No. 4, to disable or fail to maintain in proper operation emission-control equipment that has been installed in Drayage Trucks in Drayage Service, or any use of a Drayage Truck in Drayage Service that does not comply with Section 20 of Port Tariff No. 4;
- (h) Any assignment or transfer of this Concession or substantial change in the ownership and control of Concessionaire that is not in accordance with Section 1(a) of this Concession;
- (i) The bankruptcy of Concessionaire; or the appointment of a receiver for Concessionaire; or assignment of this Concession for the benefit of creditors; or
- (j) The failure to pay or repeated late payment of fees due under Schedule 2, Concession Fees; or
- (k) Violation of a Port Tariff, a City Ordinance, a State law, or a Federal law.

Any action by a Concessionaire’s boards, officers, agents, employees, contractors, subcontractors or Permitted Trucks shall be deemed to be an action by Concessionaire for purposes of this Concession. If Concessionaire has undertaken obligations contained in truck-

grant or other agreements, with the Port or with others, this Concession shall not affect such obligations contained in such other agreements.

#### 4.3. Concession Enforcement Procedures

The following procedures shall apply in the event the Port issues a Notice of Default to Concessionaire.

- 4.3.1. The Executive Director, or any employee of the Port designated by the Executive Director, may issue a Notice of Default to a Concessionaire whenever there is reason to believe that the Concessionaire has breached this Concession or committed an event of Default
- 4.3.2. A Notice of Default shall be in writing, signed by the Executive Director or his/her designee, state in detail the nature of the Default, state the cure period and terms of cure, the Remedy that may be imposed if the Default is not cured within the time permitted and not properly contested as permitted herein, and shall be delivered by first class mail, overnight courier delivery or personal delivery to the business address provided by the Concessionaire in its Application, or to any officer of the Concessionaire.
- 4.3.3. A Notice of Default is an exercise of the Port's proprietorship of the Harbor District and of Port land and facilities and is not an action of the City of Los Angeles in its sovereign capacity. A Notice of Default and any Remedy imposed by a Notice of Default is independent of, and without prejudice to, any civil or criminal proceeding, claim, penalty, fine, sanction, or remedy that may be instituted or imposed by any governmental entity, including the City, by reason of the same Default giving rise to the Notice of Default.
- 4.3.4. A Notice of Default shall also state whether the Default is being designated by the Port as a Minor Default or a Major Default.
- 4.3.5. Minor Defaults.
  - 4.3.5.1 The Remedy stated in a Notice of Default which is designated by the Port as a Minor Default shall be effective and final thirty (30) calendar days after the Notice of Default is mailed or personally delivered, unless the Concessionaire has delivered a completed Notice of Contest to the Port, on a form for such a purpose, that it contests the Notice of Default within fourteen (14) calendar days.
  - 4.3.5.2. If the Concessionaire has delivered a completed Notice of Contest under Section 4.3.5.1, the Executive Director will designate a person (the "Hearing Officer"), who did not sign the Notice of Default, to hold an Informal Hearing on the Notice of Default. At the Informal Hearing, the Port and the Concessionaire will present any relevant information and legal contentions with respect to the Notice of Default. The Informal Hearing shall be conducted informally under such procedures as may be designated by the Hearing Officer and any rules of evidence may be dispensed with. The Decision of the Hearing Officer on the Notice of Default shall be final when rendered and shall include either upholding

the Notice of Default and the Remedy stated therein or disallowing the Notice of Default. The Decision shall be in writing and signed by the Hearing Officer, but need not be accompanied by reasons or findings.

#### 4.3.6. Major Defaults

- 4.3.6.1. The Remedy stated in a Notice of Default which is designated by the Port as a Major Default shall be effective and final sixty (60) calendar days after the Notice of Default is mailed or personally delivered, unless (i) the Concessionaire has delivered a completed Notice of Contest to the Port, on a form for such a purpose, that it contests the Notice of Default within thirty (30) calendar days, or (ii) the Notice of Default contains the finding set forth in Section 4.3.6.4, in which event the Remedy shall take immediate effect as provided in Section 4.3.6.4.
- 4.3.6.2. If the Concessionaire has delivered a completed Notice of Contest under Section 4.3.6.1, the Executive Director will designate a person (the "Hearing Officer"), who did not sign the Notice of Default, to hold an Informal Hearing on the Notice of Default. At the Informal Hearing, the Port and the Concessionaire will present any relevant information and legal contentions with respect to the Notice of Default. The Informal Hearing shall be conducted informally under such procedures as may be designated by the Hearing Officer and any rules of evidence may be dispensed with. A transcription or recording of the Informal Hearing shall be made. The decision of the Hearing Officer on the Notice of Default shall be final, except as stated in Section 4.3.6.3. The Decision shall include any of the following results: (a) upholding the Notice of Default and the Remedy stated therein; (b) upholding the Notice of Default but ordering a greater or lesser Remedy than stated in the Notice; or (c) disallowing the Notice of Default. The Decision shall be in writing, signed by the Hearing Officer, and shall briefly state the Hearing Officer's reasons for the Decision.
- 4.3.6.3. The decision of the Hearing Officer under Section 4.3.6.2 shall be final unless either the Concessionaire or the Port staff, within ten (10) calendar days requests that the Decision be reviewed by the Executive Director. The Executive Director or his/her designee shall conduct the review based upon the record created before the Hearing Officer and such further arguments as may be ordered. The Decision upon review shall be in writing and shall contain the Remedy. The Decision upon review shall be final and whatever sanction is upheld thereby shall take effect ten (10) days after the Decision.
- 4.3.6.4. A Notice of Default which designates a Major Default may contain a finding that the Default constitutes a substantial risk of physical danger or injury to the Port, its customers or facilities, or persons or property at or near the Port. Such a Notice of Default may contain a Remedy that takes effect immediately upon issuance of the Notice and is intended to prevent or lessen the risk of danger or injury. If such an immediate Remedy is contained in the Notice of Default, the Remedy shall take effect immediately and shall remain in effect pending the procedures contained

in Sections 4.3.6.2 and 4.3.6.3. If the Concessionaire completes a Notice of Contest, the Port will endeavor to hold an Informal Hearing as expeditiously as possible.

#### 4.4 Remedy

The potential Remedy will be contained in a Notice of Default and may be imposed by the Port for a breach of this Concession or other event of Default as follows:

- 4.4.1. For a Minor Default any one or more of the following may be contained in a Notice of Default as a Remedy and imposed by the Port:
  - (a) A warning letter;
  - (b) An order that corrective action be undertaken within a specified period of time;
  - (c) An order that the cost of investigation and administration of the Default be paid to the Port;
  - (d) An order that a course of education or training be completed within a specified period of time.
  
- 4.4.2. For a Major Default any one or more of the following may be contained in a Notice of Default as a Remedy and imposed by the Port:
  - (a) Any Remedy provided for a Minor Default;
  - (b) An order suspending for a period not to exceed thirty (30)] days the right of the Concessionaire to provide Drayage Services at the Port;
  - (c) An order of revocation of this Concession Agreement and of the right of the Concessionaire to provide Drayage Services at the Port.
  
- 4.4.3. For any Major Default in which there is a finding of willful or intentional fraud or misrepresentation of material information in the Concession application, information or data submitted to the Port required under the Concession, the Port may order the revocation of the Concession Agreement and of the right of the Concessionaire to provide Drayage Services at the Port, without the opportunity to cure the Default.
  
- 4.4.4. The failure to comply with a Remedy imposed by the Port shall itself be grounds for a Notice of a Major Default.