

CITY OF LOS ANGELES HARBOR DEPARTMENT  
Port of Los Angeles

REVOCABLE PERMIT

No. 11-07

The City of Los Angeles, a municipal corporation ("City") acting by and through its Board of Harbor Commissioners ("Board") hereby grants permission to Terminal Islanders, Inc., a California corporation (hereinafter called "Tenant"), 22587 Waterbury Street, Woodland Hills, CA 91364-4924 to occupy and use certain lands, waters and/or facilities within the Harbor District owned or under the control of City acting through the Board, subject to the following terms and conditions:

1. Premises. Tenant is permitted to use the lands, waters and/or facilities (hereinafter called "premises"), consisting of approximately 2,158 square feet of land as more particularly shown on the drawing (Drawing No. 5-7207) attached hereto as Exhibit "A", the original of which is on file in the office of the Chief Harbor Engineer, Engineering Division, of the Harbor Department (hereinafter called "Harbor Engineer"). By mutual agreement of Executive Director and Tenant, land and water not exceeding ten percent (10%) of the area granted or 20,000 square feet, whichever is greater, may be permanently added to or deleted from the premises granted herein without further approval of the Board subject to the following conditions: (1) so long as such change in area is not temporary within the meaning of Tariff Item 1035 (or its successor), the compensation set forth in Section 4 shall be increased or decreased pro rata to reflect any such addition or deletion; (2) if the change involves the addition or deletion of any improvement, the adjustment to the compensation shall also take into account this change in the same manner in which the compensation was originally calculated; (3) if permanent changes in area are made on more than one occasion, the cumulative net change in area may not exceed ten percent (10%) or 20,000 square feet, whichever is greater, of the originally designated area, and (4) the change in area shall not result in the annual compensation changing by more than One Hundred Thousand Dollars (\$100,000). The Executive Director is authorized to execute amendment(s) to this Permit to effect the foregoing adjustments to area and compensation without further action of the Board.

2. Purpose. The premises shall be used for the purpose of operating and maintaining an existing memorial which depicts a Japanese fishing village consisting of two (2) statues, a viewing platform, a Torii gate, and rock garden and not for any other purpose without the prior written consent of Executive Director. Tenant also has the right of exclusive use of two (2) parking spaces for memorial visitors.

3. Effective and Termination Dates. This Permit shall have an effective date of August 12, 2011 after execution by City after receiving all required approvals and shall thereafter be revocable at any time by Tenant or by Executive Director, upon the giving of at least thirty (30) days' written notice to the other party stating the date upon which this Permit shall terminate. The right of Executive Director to revoke this Permit is and shall remain unconditional. Neither City, nor any board, officer or employee thereof, shall be liable in any manner to Tenant because of such revocation.

4. Compensation.

(a) Amount. Each month, in advance, Tenant shall pay to Board the sum of NONE AT THIS TIME Dollars (\$ none at this time) as rental for the use of the premises. Use of the premises for purposes not expressly permitted herein, whether approved in writing by Executive Director or not, may result in additional charges, including charges required by Port of Los Angeles Tariff No. 4, as amended or superseded. Tenant agrees to pay such additional charges. Executive Director may change the amount of rental required herein upon giving at least thirty (30) days' written notice to Tenant.

(b) Delinquency Charge. Rental payments which have not been paid within ten (10) days of the due date ("grace period") shall be subject to a service charge of one-thirtieth (1/30) of two percent (2%) of the invoice amount remaining unpaid each day. The service charge shall

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accrue from the first day after the original due date and shall be imposed even if all or a portion of any sum on deposit as a guarantee against delinquent rent is applied to the amount due. For the administrative convenience of both City and Tenant, City will not apply Tenant's deposit, which is described below, to unpaid rent until Tenant's occupancy is terminated or a notice to terminate the occupancy has been provided. The City has the unqualified right, upon thirty (30) days' prior notice to Tenant, to change the level of the delinquency service charge provided the rate shall not exceed the maximum permitted by law.

(c) Deposits. Prior to the issuance of this Permit, Tenant shall deposit with the Harbor Department NONE AT THIS TIME as a guarantee to cover delinquent rent and its other obligations under this Permit. If the rent is thereafter changed, Tenant shall modify its deposit as necessary to assure that Tenant at all times has on deposit a sum equal to two months of the current rental payments. If all or any part of said deposit is used to pay any rent due and unpaid or to meet other Tenant obligations, including, but not limited to, maintenance expenses, Tenant shall then immediately reimburse said deposit so that at all times during the life of this Permit said deposit shall be maintained. Failure to maintain the full amount of said deposit shall subject this Permit to forfeiture. In the sole discretion of the Executive Director, Tenant may post other forms of security but only if in a form acceptable to the City Attorney. If for any reason City has not initially required a deposit from Tenant, City may at any time and for any reason require a deposit in an amount the Executive Director determines necessary to secure performance of the Permit. Tenant agrees to post such deposit with City within ten (10) days of written request from City and agrees that its failure to do so constitutes a material breach of this Permit. No interest is payable by City on deposits if the deposits are subsequently refunded.

(d) No Right of Set-Off. Notwithstanding any other provision of this Permit, Tenant's obligation to pay all rent payable hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, any set-off, counterclaim, recoupment, defense or other right which Tenant may have against City.

(e) Deposits for Disputed Payments. Tenant recognizes that disputes may arise over monies due the City in accordance with this Permit. Tenant and City shall make a good faith effort to resolve any disputes as expeditiously as possible. Tenant agrees, upon receiving a billing from City which it disputes, to deposit with the City the disputed amount in the form of cash, certificate of deposit in the City's name or other security acceptable to City within thirty (30) days of the date of billing. City shall hold the deposit pending the resolution of the dispute. If the dispute is resolved in the City's favor, City shall retain the money and all interest earned on it. If the dispute is resolved in favor of Tenant, said deposit shall be returned to Tenant with all accumulated interest. Tenant understands that its failure to provide a deposit acceptable to City within thirty (30) days shall be considered a material default of this Permit and City shall be entitled to cancel this Permit upon seven (7) days' written notice. If Tenant is required under this Revocable Permit to pay City any sums in accordance with City's tariff, Tenant's failure to provide a deposit shall require Tenant to make all payments in accordance with Item 265 of the Tariff and Tenant shall be removed from the Credit List authorized by Item 260 of the Tariff or as amended or superseded. If the billing for any one disputed amount exceeds One Hundred Thousand Dollars (\$100,000), Tenant shall be required to deposit One Hundred Thousand Dollars (\$100,000) with City; if City prevails in the dispute and the amount due City exceeds One Hundred Thousand Dollars (\$100,000), Tenant shall pay the difference due within fifteen (15) days with interest at the rate set forth in Section 4(b) from the date of City's initial billing to Tenant.

(f) Records and Accounts. All books, accounts and other records showing the affairs of Tenant with respect to its business transacted at, upon or over the premises shall be maintained locally, and shall be subject to examination, audit and transcription by Executive Director or any person designated by her; and in the event it becomes necessary to make such examination, audit or transcription at any place other than within fifty (50) miles of the premises, then all costs and expenses necessary, or incident to such examination, audit or transcription shall be paid by Tenant. These records shall be retained during the term of this Permit so that the records for the four (4) most recent years are available. After this Permit terminates, Tenant shall maintain the records for the four (4) most recent years for at least two (2) years. Upon

request in writing by Executive Director or his or her designated representative, Tenant shall furnish a statement of the exact location of all records and the name and telephone number of the custodian of these records. The statement shall be submitted within fifteen (15) days of the request and shall contain such detail and cover such period of time as may be specified in any such request. From time to time Executive Director or designee shall audit Tenants' records and accounts. Information to be provided by Tenant will include, but not be limited to, general ledgers, charts of accounts, subledgers including cash receipts journals, cash disbursement journals, and all original receipts and documents which support the information provided to City.

(g) Promotion of Los Angeles Harbor Facilities. Tenant shall in good faith and with all reasonable diligence use its best efforts by suitable advertising and other means to promote the use of the premises granted by this Permit.

(h) Supervision of Business Practices. The nature and manner of conducting any and all business activities on the premises shall be subject to reasonable regulation by Board. In the event such business is not conducted in a reasonable manner as determined by Board, it may direct that corrective action be taken by Tenant or its sublessees to remedy such practices and upon failure to comply therewith within thirty (30) days of Tenant receiving such written notice, Board may declare this Permit terminated.

Pursuant to the provisions of the Los Angeles City Charter and of the tide and submerged land grant, Tenant and its sublessees shall use the premises in such a manner so that there shall be no discrimination made, authorized or permitted in the rates, tolls, or charges or in the facilities provided for any use or service in connection therewith.

Tenant shall also conduct its business and cause the businesses of its sublessees upon the premises (if any have been expressly authorized by City in writing) to be conducted in a first-class manner. Tenant shall furnish and maintain a standard of service at least equal to that of the better class of similar businesses providing similar services and facilities in the City of Los Angeles and adjacent communities during the entire term of this Permit.

Board reserves the right to have access to and inspect the schedule of rates and prices for services and facilities performed or provided upon the premises. In the event that after Tenant has been advised and given a reasonable opportunity to confer with Board and to justify any rate or price challenged by it as unreasonable or noncompensatory, and Board has determined such rate or price to be unreasonable or inappropriate for the services rendered or the facilities provided, such rates or prices shall be modified by Tenant as directed by Board.

5. Restoration Bond. Tenant shall provide a cash deposit, certificate of deposit in the name of the City, surety bond, irrevocable letter of credit or other form of security in the name of the City and acceptable to the Executive Director and City Attorney in the amount of NONE AT THIS TIME (\$ None at this time) payable to the City of Los Angeles, to guarantee, upon any termination, revocation or forfeiture of this Permit, the restoration of premises and the removal of works, structures and other improvements by Tenant as required by this Permit. Said deposit, or other form of security bond, shall be in a form acceptable to and subject to the approval of the City Attorney. No interest is payable by City on deposits if the deposits are subsequently refunded. If Executive Director becomes aware of facts which lead him or her to believe that the financial condition of Tenant has substantially changed such that Tenant may not be able to meet its restoration obligation, Executive Director may increase the restoration bond or deposit requirement, and where no restoration bond or deposit is initially required, Executive Director may require such a bond or deposit. If any property of any kind is on the premises at the request or with the permission of Tenant, its officers, agents, employees, sublessees, licensees or invitees, including vessels, machinery or equipment, and such property sinks in any channel or water area (hereafter "sunken property") and Tenant fails to remove such property within ten (10) days of a request by City to do so, Executive Director may require a restoration deposit or bond in the amount of the reasonable cost of removal as determined by Harbor Engineer. If Executive Director in his or her sole discretion determines sunken property is a safety hazard and so notifies Tenant, failure to remove the property may result in termination of this Permit upon three (3) days' notice.



6. Rights-of-Way. This Permit shall at all times be subject to such rights-of-way over the land embraced therein for such sewers, pipelines, conduits, and for such telephone, telegraph, light, heat or power lines as may from time to time be determined by Board; and shall also be subject to rights-of-way for streets and other highways and for railroads and other means of transportation as shall have been duly established, or as shall be reserved herein; and shall also be subject to rights-of-way as Board requires to drill and explore new or maintain existing oil, gas or mineral wells. This Permit shall at all times be subject to all prior exceptions, reservations, grants, easements, leases or licenses of any kind whatsoever as the same appear of record in the Office of the Recorder of Los Angeles County, California, or in the official records of City or any of its various departments.

7. Premises Satisfactory to Tenant/Required Modifications. Tenant has inspected the premises and agrees that they are suitable for the uses permitted herein. No officer or employee of City has made any representation or warranty with respect to the premises, except as described in writing and attached hereto as an addendum, and in entering into this Revocable Permit, Tenant agrees it relies only on the provisions of the Permit. Any modification, improvement, or addition to the premises and any equipment installation or removal required by the Fire Department, Department of Building and Safety, South Coast Air Quality Management District, Regional Water Quality Control Board, U.S. Coast Guard, Environmental Protection Agency, or any other agency in connection with Tenant's operations, shall be constructed, installed, or removed at Tenant's sole expense. Tenant shall obtain a Harbor Engineer's General Permit before making any modifications to the premises.

8. Use of Premises. Tenant agrees not to use the premises in any manner, even if the use is for the purposes enumerated herein, that will cause cancellation of any insurance policy covering any such premises or adjacent premises provided Tenant may in City's discretion remain if it pays the increase in City's insurance costs caused by its operations. No offensive or refuse matter, or any substance constituting any unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall ever be permitted by Tenant to be or remain, and Tenant shall prevent any such material or matter from being or accumulating upon said premises. Tenant further agrees not to keep on the premises or permit to be kept, used, or sold thereon, anything prohibited by any policy of fire insurance covering the premises or any structure erected thereon.

9. Repair and Maintenance. The repair and maintenance obligations of the parties are as follows (if Tenant's premises do not include wharves, maintenance provisions related to wharves shall not apply):

(a) No Maintenance Performed by City. City shall not have any obligation to repair or maintain any portion of the premises including but not limited to any structure on the premises.

(b) Repair and Maintenance Performed by Tenant at Its Expense. Tenant shall be responsible for performing and paying for all maintenance and repairs on the premises including but not limited to any structure on the premises. All improvements associated with the Japanese Fishing Memorial located on or about the premises shall stay vested with Tenant. Tenant understands and agrees that the risk of any loss or damage to the monument on the premises and all other property on the premises at all times remains with Tenant. If the monument or any part of it is damaged in any way from any cause, without exception, Tenant shall be responsible at Tenant's expense for correcting the damage. Tenant shall be responsible at its expense for inspecting and assuring that all necessary portable fire extinguishers are present on the premises and maintained in an operable condition. Tenant, shall maintain the premises in a safe, clean, sanitary and sightly condition. All maintenance performed by Tenant shall assure the premises are maintained in a first-class operating condition and in conformance with all applicable federal, state, regional, municipal and other laws and regulations. The appearance, safety and operational capability of the premises shall be maintained to the satisfaction of the Executive Director. Tenant shall make all efforts necessary to immediately discover and guard against any defects in all surfaces of timber decking, paving, buildings, structures and improvements on the premises without request from City. Tenant shall also completely maintain at its expense all buildings, structures, improvements, timber decking surfaces and paving it erects, owns, or installs, if applicable. All modifications and repairs which Tenant makes to City-owned or Tenant-owned buildings, structures, improvements, timber decking and paving require a Harbor



Department Engineering permit. Sample permits are available upon request from the Harbor Engineer and an Application for Discretionary Projects. Tenant agrees to strictly comply with all the terms and conditions of the Harbor Engineer's permit. Modifications and repairs shall be made in a first-class manner using materials of a kind and quality comparable to the items being replaced (in-kind replacement shall be utilized if material still manufactured). Tenant is obligated at its expense to take both such preventive and remedial maintenance actions as are necessary to assure that premises are at all times safe and suitable for use regardless of whether Tenant is itself actively using all of the premises. Tenant shall provide notice to the Director of Port Construction and Maintenance and Harbor Engineer five (5) work days before any paving work is performed; provided, however, Tenant shall immediately repair any condition creating a risk of harm to any user of the premises. All materials used and quality of workmanship shall be satisfactory to the Harbor Engineer.

(c) City's Option to Perform Work at Tenant's Expense. If Tenant fails to repair, maintain and keep the premises and improvements as above required, Executive Director may give thirty (30) days' written notice to Tenant to correct such default, except that no notice shall be required where, in the opinion of Executive Director, the failure creates a hazard to persons or property. If Tenant fails to cure such default within the time specified in such notice, or if Executive Director determines that a hazard to persons or property exists due to such failure, Executive Director may, but is not required to, enter upon the premises and cause such repair or maintenance to be made, and the costs thereof, including labor, materials, equipment and overhead cost, to be charged against Tenant. Such charges shall be due and payable with the next rent payment. During all such times, the duty shall be on Tenant to assure the premises are safe and Tenant shall erect barricades and warning signs to assure workers and the public are protected from any unsafe condition. None of City's remedies described above shall preclude City from terminating this Permit if City is not satisfied with Tenant's compliance with the maintenance provisions of this Permit.

(d) Inspection of Premises and Tenant Repairs. Tenant shall be responsible for inspecting the premises (including all surfaces of timber decking, paving, structures, buildings and improvements) and at all times maintaining the premises in a safe condition. Executive Director and/or his or her representatives shall have the right to enter upon the premises and improvements constructed by Tenant at all reasonable times for the purpose of determining compliance with the terms and conditions of this Permit or for any other purpose incidental to the rights of City. This right of inspection imposes no obligation upon City to make inspections nor liability for failure to make such inspections. By reserving the right of inspection, City assumes no responsibility or liability for loss or damages to the property of Tenant or property under the control of Tenant, whether caused by fire, water or other causes. City assumes no responsibility for any shortages of cargo handled by Tenant. If City requests drawings and/or specifications showing the location and nature of repairs to be made or previously made by Tenant (including by its invitees), Tenant agrees to provide to City the material requested in writing within ten (10) days of request by City.

(e) City's Access to Maintain and Repair Premises. If City deems it necessary to maintain or repair the premises, Tenant shall cooperate fully with City to assure that the work can be performed timely and during City's normal working hours. If City is required to perform any work outside its normal working hours, even work which would otherwise be at City's expense, the entire cost of such work shall be at Tenant's expense.

(f) Definition of City's Actual Costs. Whenever this Section requires Tenant to reimburse City for the City's cost of maintenance, the City's cost of maintenance is agreed to include all direct and indirect costs which City incurs whether with its own forces or with any independent contractor. These costs include salary and all other costs City incurs from its employees ("salary burden"), all material and equipment costs and general overhead costs.

10. Defaults. Upon the neglect, failure or refusal of Tenant to comply with any of the terms or conditions of this Permit within the time stated in the written demand of Executive Director, the Executive Director may declare this Permit forfeited, and may forthwith enter upon said premises, using all reasonable force so to do, and exclude Tenant from further use of said premises and all improvements

thereon. Upon such forfeiture, Tenant shall immediately surrender all rights in and to the premises and all improvements. Upon any such forfeiture, any and all buildings, structures and improvements of any character whatsoever, erected, installed or made by Tenant under, through, or because of, or pursuant to the terms of this Permit, or any prior permit, shall immediately ipso facto either become the property of City free and clear of any claim of any kind or nature of Tenant or its successors in interest without compensation to Tenant or become removable by Executive Director at the sole expense of Tenant, at the option of Executive Director. In the event this Permit is forfeited as set forth above, Executive Director may enforce all of City's rights and remedies under this Permit. In addition to any other remedy available to City, City shall be entitled to recover from Tenant rent as it becomes due pursuant to the terms of this Permit and, in addition thereto, the damage that City may recover includes the worth at the time of the award of the amount by which the unpaid rent for the balance of the term of this Permit exceeds the amount of such rental loss for the same period that Tenant proves could have been reasonably avoided. Any default in Tenant's obligations to make payments to City under the terms of any berth assignment, lease, permit or other agreement, when such default involves the sum of Five Hundred Dollars (\$500.00) or more, shall constitute a material default on the part of Tenant with respect to this Permit. At any time Tenant has defaulted on payments due under other agreements with City, City may give Tenant a default notice and this Permit may be forfeited if the default in rental payments of such other agreements, including, but not limited to, berth assignments, leases and permits, is not cured within the time stated in said notice.

11. Effect of Nonuse. Tenant shall commence using the premises for the purposes permitted herein within thirty (30) days from the effective date hereof. If Tenant shall fail thereafter to use the premises or any substantial portion thereof for a period of thirty (30) consecutive days, this Permit shall cease and terminate and be forfeited unless Tenant, prior to the expiration of any such period of thirty (30) consecutive days, notifies Executive Director in writing that such nonuse is temporary and obtains the written consent of Executive Director to such nonuse.

12. Restoration and Hazardous Materials Management. Upon the termination of this Permit other than by forfeiture, Tenant shall quit and surrender possession of the premises to City and shall, without cost to City, remove any and all works, structures and other improvements located thereon, except works, structures or other improvements owned by City, and restore the premises to the same or as good condition, ordinary wear and tear excepted, as the same were in at the time of the first occupancy thereof by Tenant or its assignors, if any, under this or any prior permit or lease. "Ordinary wear and tear" does not permit Tenant to damage paving or to contaminate the premises with any material handled at the premises. Executive Director may, at his or her option, accept all or a portion of the works, structures, or other improvements on behalf of City in lieu of all or a portion of the removal or restoration required herein. Tenant shall leave the premises free from contamination of hazardous substance or hazardous waste including hazardous liquid bulk products and petroleum products (hereinafter sometimes collectively referred to as "hazardous materials") as defined below. Tenant shall leave the surface of the ground in a level, graded condition with no excavations, holes, hollows, hills or humps.

13. Hazardous Materials. Tenant may not handle, use, store, transport, transfer, receive or dispose of, or allow to remain on the premises (hereinafter collectively referred to as "handle") any substance classified as a hazardous material under any federal, state, local law or ordinance (hereinafter sometimes collectively referred to in this Permit as "law") in such quantities as would require the reporting of such activity to any person or agency having jurisdiction thereof without first receiving written permission of City. If Tenant has handled material on the premises classified by law as hazardous [Tenant's attention is particularly called to the Resource Conservation and Recovery Act of 1967 ("RCRA"), 42 U.S.C. Sec. 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. Sec. 9601, et seq.; the Clean Water Act, 33 U.S.C. Sec. 1251 et seq.; the Clean Air Act, 42 U.S.C. Sec. 7901 et seq.; California Health & Safety Code Sec. 25300 et seq. and Sec. 25100 et seq.; California Water Code Sec. 13000 et seq.; California Administrative Code, Title 22, Division 4, Chapter 30, Article 4; Title 49 CFR 172.101; Title 40 CFR Part 302 and any amendments to these provisions or successor provisions] and such material has contaminated or threatens to contaminate the premises or adjacent premises (including structures, harbor waters, soil or groundwater), Tenant, to the extent obligated by law and to the extent necessary to satisfy City, shall at its own expense perform soil and groundwater tests to determine the extent of such contamination, and shall immediately



remediate from the premises any such material. If in the determination of the Executive Director such hazardous material cannot be remediated on site to the satisfaction of City, Tenant shall remove and properly dispose of all contaminated soil, material or groundwater and replace such soil or material with clean soil or material suitable to City.

If during Tenant's occupancy hazardous materials are discovered on the premises or such materials have migrated to or threaten to contaminate adjacent premises (including structures, harbor waters, soil or groundwater), Tenant shall immediately notify the City, and Tenant, at its sole expense, shall perform such soil and groundwater testing as required by law and as City deems necessary and take immediate steps to remediate the premises to the satisfaction of City.

If Tenant disposes of any soil, material or groundwater contaminated with hazardous material, Tenant shall provide City copies of all records, including a copy of each uniform hazardous waste manifest indicating the quantity and type of material being disposed of, the method of transportation of the material to the disposal site and the location of the disposal site. The name of the City of Los Angeles shall not appear on any manifest document as a generator of such material.

Any tests required of Tenant by this Section shall be performed by a State of California Department of Health Services certified testing laboratory satisfactory to City. By signing this Permit, Tenant hereby irrevocably directs any such laboratory to provide City, upon written request from City, copies of all of its reports, test results, and data gathered. As used in this Permit, the term "Tenant" includes agents, employees, contractors, subcontractors, and/or invitees of the Tenant.

14. Rent During Restoration. Tenant understands and agrees it is responsible for complete restoration of the premises, including the clean up of any hazardous material contamination on or arising from the premises before the expiration or earlier termination of this Permit. If, for any reason, such restoration is not completed before such expiration, then Tenant is obligated to pay City compensation during such restoration as determined by the then fair market value of the land and the Harbor Department's then established rate of return; however, the new rent shall not be less than provided in Section 4. Tenant also agrees to provide City a surety bond to assure removal of hazardous material from the premises if at any time City demands such bond. Tenant's breach of any of the provisions of this Section shall entitle City to forfeit this Permit.

15. Site Restoration Plan. Upon request of Executive Director, Tenant shall provide City a site characterization study and site restoration plan in a form acceptable to City and at Tenant's expense as directed by City. The study and plan shall demonstrate to City's satisfaction that the premises have not been contaminated or that, if contamination exists, Tenant will remove it to the satisfaction of City.

16. Use for Tideland Purposes. This Permit is subject to the limitations, conditions, restrictions and reservations of the Tidelands Act, Stats. 1929, Ch. 651, as amended and/or reenacted, and the Charter of City relating to such lands, including particularly Article VI. Tenant agrees to use the premises only in such manner as will be consistent therewith.

17. Federal Maritime Commission. Tenant shall not use the premises or furnish any facilities or services thereon for or in connection with a common carrier by water as that term is defined in the Shipping Act of 1916 and 1984, as amended, unless and until this Permit has been submitted to the Federal Maritime Commission and has become effective or determined not to be subject to said Acts.

18. Improvements. Tenant shall not construct on or alter the premises, including a change in the grade, without first submitting an Application for Discretionary Projects and submitting to Harbor Engineer a complete set of drawings, plans and specifications of the proposed construction or alteration and obtaining his approval in a written Harbor Engineer's General Permit. Harbor Engineer shall have the right to reject or order changes in said drawings, plans and specifications. Tenant, at its own expense, shall obtain all permits necessary for such construction. All construction by Tenant pursuant to this Permit shall be at Tenant's sole expense. Tenant shall keep the premises free and clear of liens for labor and materials and shall hold City harmless from any responsibility in respect thereto.

19. Construction. Tenant shall give written notice to Harbor Engineer, in advance, of the date it will commence any construction. Immediately upon the completion of the construction, Tenant shall

notify Harbor Engineer of the date of such completion and shall, within thirty (30) days after such completion, file with Harbor Engineer, in a form acceptable to Harbor Engineer, a set of "as built" plans for such construction.

20. Indemnity. Except as may arise from the sole negligence or willful misconduct of City, Tenant shall at all times relieve, indemnify, protect and save harmless City and any and all of its boards, officers, agents and employees from any and all claims and demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including cost of litigation (including all actual litigation costs incurred by the City, including but not limited to costs of experts and consultants), for death of or injury to persons or damage to property including property owned by or under the care and custody of City, and for civil fines and penalties, that may arise from or be caused directly or indirectly by:

(a) Any dangerous, hazardous, unsafe or defective condition of, in or on the Premises, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the Premises by Tenant, its officers, agents, employees, sublessees, licensees or invitees;

(b) Any operation conducted upon or any use or occupation of the Premises by Tenant, its officers, agents, employees, sublessees, licensees or invitees under or pursuant to the provisions of this Permit or otherwise;

(c) Any act, omission or negligence of Tenant, its officers, agents, employees, sublessees, licensees or invitees, regardless of whether any act, omission or negligence of City, its officers, agents or employees contributed thereto;

(d) Any failure of Tenant, its officers, agents or employees to comply with any of the terms or conditions of this Permit or any Applicable Laws; or

(e) The conditions, operations, uses, occupations, acts, omissions or negligence referred to in subdivisions (a), (b), (c) and (d) above, existing or conducted upon or arising from the use or occupation by Tenant or its invitees of any other premises within the Harbor District, as defined in the Charter of City.

Tenant also agrees to indemnify City and pay for all damages or loss suffered by City and City's Harbor Department, including, but not limited to, damage to or loss of property, to the extent not insured by City, and loss of City revenue from any source, caused by or arising out of the conditions, operations, uses, occupations, acts, omissions or negligence referred to in this Section. The term "persons" as used in this Section shall include, but not be limited to, officers and employees of Tenant.

Tenant shall also indemnify, defend and hold City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution of the value of the Premises, damages for loss or restriction on use of rentable or useable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Permit term as a result of Contamination of the Premises. This indemnification of City by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency because of Contamination present in the soil or groundwater on or under the Premises.

The obligations under this Section shall survive the Termination Date of this Permit and shall apply regardless of the active or passive negligence of City and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on City. As partial consideration for City's grant of the premises to Tenant, Tenant agrees to at all times relieve, indemnify, protect and save harmless City and any and all of its boards, officers, agents and employees from any and all claims and demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including expenses incurred in defending against legal actions, for death of or injury to persons or damage to property including property owned by or under the care and custody of City, and for civil fines and penalties, that may arise from or be caused directly or indirectly by:



(a) Any dangerous, hazardous, unsafe or defective condition of, in or on the premises, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the premises by Tenant, its officers, agents, employees, sublessees, licensees or invitees;

(b) Any operation conducted upon or any use or occupation of the premises by Tenant, its officers, agents, employees, sublessees, licensees or invitees under or pursuant to the provisions of this Permit or otherwise;

(c) Any act, omission or negligence of Tenant, its officers, agents, employees, sublessees, licensees or invitees, regardless of whether any act, omission or negligence of City, its officers, agents or employees contributed thereto;

(d) Any failure of Tenant, its officers, agents or employees to comply with any of the terms or conditions of this Permit or any applicable federal, state, regional, or municipal law, ordinance, rule or regulation; or

(e) The conditions, operations, uses, occupations, acts, omissions or negligence referred to in subdivisions (a), (b), (c) and (d) above, existing or conducted upon or arising from the use or occupation by Tenant or its invitees of any other premises within the Harbor District, as defined in the Charter of City.

Tenant also agrees to indemnify City and pay for all damage or loss suffered by City and the Harbor Department, including, but not limited to, damage to or loss of property, to the extent not insured by City, and loss of City revenue from any source, caused by or arising out of the conditions, operations, uses, occupations, acts, omissions or negligence referred to in subdivisions (a), (b), (c), (d) and (e) above. The term "persons" as used herein shall include, but not be limited to, officers and employees of Tenant. Tenant acknowledges that the City has set the compensation payable under this Permit in consideration of the indemnity and insurance obligations which Tenant assumes by this Permit.

Tenant shall also indemnify, defend and hold City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution of value of the premises, damages for loss or restriction on use of rentable or useable space or of any amenity of the premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Permit term as a result of contamination of the premises by hazardous materials for which Tenant is otherwise responsible for under the terms of this Permit. This indemnification of City by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency because of hazardous material present in the soil or groundwater on or under the premises. The foregoing indemnity shall survive the expiration or earlier termination of this Permit.

21. Insurance. Tenant shall procure and maintain at its expense and keep in force at all times during the term of this Permit the following insurance:

(a) Commercial General Liability. Commercial general liability insurance, including contractual liability, auto liability and property damage insurance written by an insurance company authorized to do business in the State of California, or approved by the California Department of Insurance as a surplus lines insurer eligible to do business in California, rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if a Best's Rating is not available) with Tenant's normal limits of liability, but not less than One Million Dollars (\$1,000,000.00) for injury or death to one person and One Million Dollars (\$1,000,000.00) for injury or death to more than one person arising out of each accident or occurrence and One Million Dollars (\$1,000,000.00) for property damage for each accident or occurrence. Tenant shall also procure and maintain at its expense and keep in force at all times during the term of this Permit automobile insurance with limits of liability not less than One Million Dollars (\$1,000,000.00) covering injuries or death resulting from each accident or claim arising out of any one claim or accident. 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 Tenant. The retention or self-insurance provided

shall provide that any other insurance maintained by City's Harbor Department shall be excess of Tenant'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 and a severability of interest clause.

The submitted policy shall, in addition, provide the following coverage either in the original policy or by endorsement substantially as follows:

"Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that City, Board, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all operations, uses, occupations, acts and activities of the insured under Revocable Permit No. \_\_\_\_, and under any amendments, modifications, extensions or renewals of said Permit regardless of whether such operations, uses, occupations, acts and activities occur on the Premises or elsewhere within the Harbor District;"

"The policy to which this endorsement is attached shall provide a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons to the Risk Manager"

"The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by City is excess coverage;"

"In the event of one of the named insureds incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability;" and

"Notice of occurrences or claims under the policy shall be made to the Risk Manager of City's Harbor Department with copies to the City Attorney's Office."

(b) Fire Legal Liability Insurance. If there are any Port-owned structures on the premises, in addition to and concurrently with the aforesaid insurance coverage, Tenant shall also procure and maintain, either by an endorsement thereto or by a separate policy, fire legal liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000.00), covering legal liability of Tenant for damage or destruction to the works, buildings and improvements owned by City provided that said minimum limits of liability shall be subject to adjustments by Executive Director to conform with the deductible amount of the fire insurance policy maintained by the Board with waiver of subrogation in favor of Tenant so long as permitted by Board's fire insurance policy, upon thirty (30) days' prior written notice thereof to Tenant at any time during the time of this Permit. Neither City nor Board should be named as additional insureds on this policy.

(c) Such insurance procured by Tenant shall include the following features:

(i) Notice of Cancellation. Each insurance policy described above shall provide that it will not be cancelled or reduced in coverage until after City's Risk Manager has been given a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reason.

(ii) Acceptable Evidence and Approval of Insurance. Electronic submission is the required method of submitting Tenant's insurance documents. Track4LA<sup>®</sup> is the City's online insurance compliance system which is designed to be used by insurance brokers and agents to submit client insurance certificates directly to the City. Tenant's insurance broker or agent shall obtain access to Track4LA<sup>®</sup> at <http://track4la.lacity.org> and follow the instructions to register and submit the appropriate proof of insurance on Tenant's behalf.

(iii) Renewal of Policies. Prior to the expiration of each policy, Tenant shall show through submitting to Track4LA<sup>®</sup> that the policy has been renewed or extended or, if new insurance has been obtained, submit the appropriate proof of insurance to Track4LA<sup>®</sup>. If Tenant neglects or fails to



secure or maintain the required insurance, or if Tenant fails to submit proof of insurance as required above, the City's Harbor Department may, at its option and at the expense of Tenant, obtain such insurance for Tenant.

(iv) Modification of Coverage. Executive Director, at his or her discretion, based upon recommendation of the Risk Manager of City's Harbor Department, may request that Tenant increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Tenant.

(v) Accident Reports. Tenant shall report in writing to Executive Director within fifteen (15) days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Fifty Thousand Dollars (\$50,000) to property, occurring upon the Premises, or elsewhere within the Harbor District, if Tenant's officers, agents or employees are involved in such an accident or occurrence while undertaking the Permitted Use. 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 Tenant, its officers or managing agents.

22. Assignments/Subleases. No assignment, sublease, transfer, gift, hypothecation or grant of control, or other encumbrance of this Permit, or any interest therein or any right or privilege thereunder, whether voluntary or by operation of law, shall be valid for any purpose. For purposes of this subsection, the term "by operation of law" includes:

(a) The placement of all or substantially all of Tenant's assets in the hands of a receiver or trustee;

(b) An assignment by Tenant for the benefit of creditors.

23. Transfer of Stock. If Tenant is a corporation and more than ten percent (10%) of the outstanding shares of capital stock of Tenant is traded during any calendar year after filing its application for this Permit, Tenant shall notify Executive Director in writing within ten (10) days after the transfer date; provided, however, that this provision shall have no application in the event the stock of Tenant is listed on either the New York Stock Exchange, the NASDAQ or the NYSE Arca Options. If more than twenty-five percent (25%) of the Tenant's stock is transferred, regardless of whether Tenant is a publicly or privately held entity, such transfer shall be deemed an assignment within the meaning of the preceding paragraph. Any such transfer shall void this Permit. Such a transfer is agreed to be a breach of this Permit which shall entitle City to evict Tenant on at least seven (7) days' notice.

24. Signs. Tenant shall not erect or display, or permit to be erected or displayed, on the premises any signs or advertising matter of any kind without first obtaining the written consent of Executive Director. Tenant shall post, erect and maintain on the premises such signs as Executive Director may direct.

25. Termination for Misrepresentations. This Permit is granted pursuant to an application filed by Tenant with Board. If the application or any of the attachments thereto contain any misstatement of fact which, in the judgment of Executive Director, affected his or her decision to grant said Permit, Executive Director may terminate this Permit. Termination pursuant to this Section shall not be termination by forfeiture.

26. Laws and Directives. Tenant shall comply with all applicable laws, ordinances and regulations. In addition, Tenant shall comply immediately with any and all directives issued by Executive Director or his or her authorized representative under authority of any such law, ordinance or regulation. This Permit shall be construed in accordance with California law.

27. Possessory Interest. THIS PERMIT MAY CREATE A POSSESSORY INTEREST BY TENANT WHICH MAY BE SUBJECT TO PROPERTY TAXATION. TENANT SHALL PAY ALL SUCH TAXES SO ASSESSED, AND ALL OTHER ASSESSMENTS OF WHATEVER CHARACTER LEVIED

UPON ANY INTEREST CREATED BY THIS PERMIT. TENANT SHALL ALSO PAY ALL LICENSE AND PERMIT FEES REQUIRED FOR THE CONDUCT OF ITS OPERATIONS.

28. Utility Charges. Unless otherwise provided for herein, Tenant shall pay all charges for services furnished to the premises or used in connection with its occupancy, including, but not limited to, heat, gas, power, telephone, water, light and janitorial services, and pay all deposits, connection fees, charges and meter rentals required by the supplier of any such service, including City.

29. Termination by Court. If any court having jurisdiction in the matter renders a final decision which prevents the performance by City of any of its obligations under this Permit, then either party hereto may terminate this Permit by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations) shall thereupon terminate.

30. Conflict of Interest. It is understood and agreed that the parties to this Permit have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of the Harbor Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Permit. Notwithstanding any other provision of this Permit, it is further understood and agreed that if such a financial interest does exist at the inception of this Permit, City may immediately terminate this Permit by giving written notice thereof. Termination pursuant to this Section shall not be termination by forfeiture.

31. Service of Notice. In all cases where written notice including the service of legal pleadings is to be given under this Permit, 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. Unless changed by notice in writing from the respective parties, notice to City shall be addressed to Executive Director, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, and notice to Tenant shall be addressed to it at the address stated in the preamble, to the attention of: Minori Tonai, Vice-President or at such address designated by Tenant in writing. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law. All notice periods under this Permit refer to calendar days unless otherwise specifically stated.

32. No Waivers. No waiver by either party at any time of any terms or conditions of this Permit shall be a waiver at any subsequent time of the same or any other term or condition. The acceptance of late rent by Board shall not be deemed a waiver of any other breach by Tenant of any term or condition of this Permit other than the failure of Tenant to timely make the particular rent payment so accepted.

33. Immediate Access to Repair/Maintain Premises. Tenant is aware that the City Department of Water & Power or Harbor Department maintenance personnel may need to service or repair facilities on the premises. If such repair is necessary, Tenant agrees to relocate, at its expense, all of its cargo equipment or personal property to provide Department of Water & Power or Harbor Department personnel adequate access. Tenant agrees to complete such relocation within six (6) hours of receiving notice from City. Tenant agrees neither Department of Water & Power nor City shall be responsible for any loss Tenant may suffer as a result of such maintenance or repair.

34. Time of the Essence. Time is of the essence in this Permit.

35. Nondiscrimination and Affirmative Action Provisions. Tenant agrees not to discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition. All subcontracts awarded under or pursuant to this Permit shall contain this provision. The applicable provisions of Section 10.8 et seq. of the Los Angeles Administrative Code are attached hereto as Exhibit "B" and are incorporated herein by this reference.

36. Minority, Women and Other Business Enterprise (MBE/WBE/OBE) Outreach Program. It is the policy of the City to provide minority business enterprises (MBEs), women's business enterprises (WBEs), and all other business enterprises (OBEs) an equal opportunity to participate in the performance



of all City contracts in all areas where such contracts afford such participation opportunities. The Tenant or Consultant shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for MBEs, WBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including MBEs, WBEs, and OBEs, have an equal opportunity to compete for and participate in any such participation opportunity which might be presented under this Permit.

37. Wage and Earnings Assignment Orders/Notices of Assignments. The Tenant is obligated to fully comply with all applicable state and federal employment reporting requirements for the Tenant and/or its employees. Tenant 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. The Tenant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with California Family Code §§ 5230 et seq. The Tenant will maintain such compliance throughout the term of this Permit.

38. Equal Benefits Policy. The Board adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the City's Harbor Department. Tenant shall comply with the policy wherever applicable. Violation of the policy shall entitle the City to terminate any agreement with Tenant and pursue any and all other legal remedies that may be available. See Exhibit "C."

39. Business Tax Registration Certificate. The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This section provides that every person, other than a municipal employee, who engages in business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Los Angeles Harbor Department.

40. Paragraph Headings. Paragraph headings used in the Permit are merely descriptive and not intended to alter the terms and conditions of the paragraphs.

41. Prior Permits. This Revocable Permit shall supersede Permit No. 835. From and after the effective date of this Revocable Permit, said permit shall have no further force or effect except to the extent either party has accrued any rights or obligations under said permit.

CITY OF LOS ANGELES  
HARBOR DEPARTMENT.  
By its BOARD OF HARBOR COMMISSIONERS

DATED: \_\_\_\_\_, 2011

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

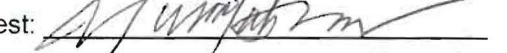
Attest: \_\_\_\_\_  
Secretary

The undersigned Tenant hereby accepts the foregoing Permit and agrees to abide and be bound by and to observe each and every of the terms and conditions thereof, including those set forth in the addendum, if any, and excluding those marked as being deleted.

TERMINAL ISLANDERS, INC., a California corporation

DATED: 10/26/2011

By:   
VICZ PRESIDENT  
Type/Print Name and Title


Attest:   
YUKIO TATSUMI, President

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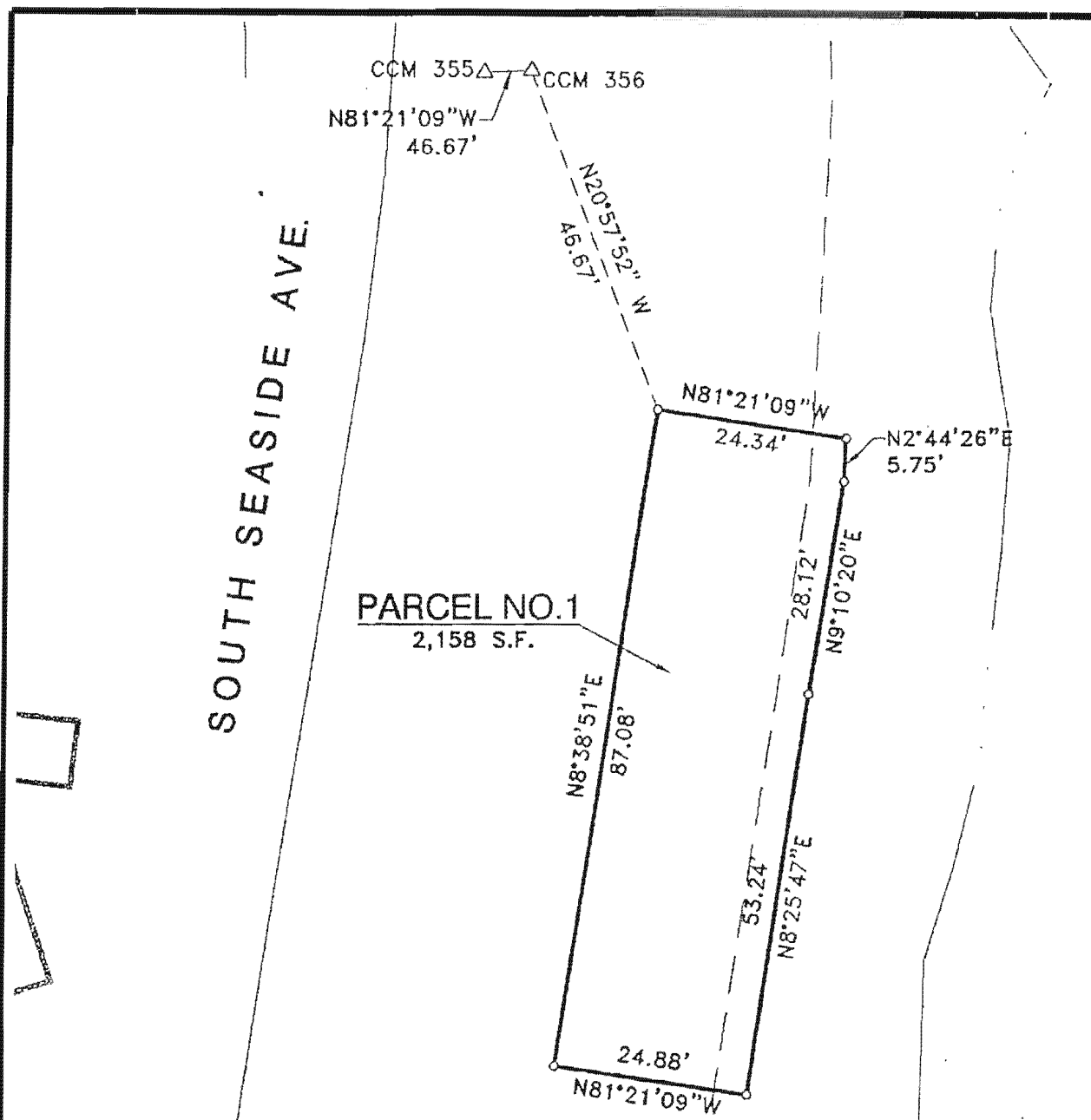
Type/Print Name and Title

APPROVED AS TO FORM AND LEGALITY

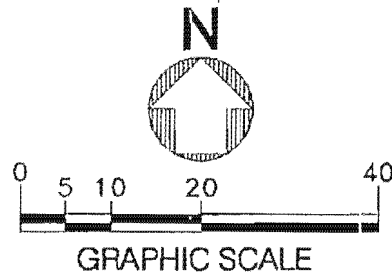
Dec. 26, 2011  
CARMEN A. TRUTANICH, City Attorney  
Thomas A. Russell, General Counsel

By:   
Estelle M. Braaf, Deputy





- NOTE:
- 1) No substructures are shown on this drawing. Accurate substructure information must be obtained from lessees and L.A.H.D. engineering records.
  - 2) Horizontal Datum is based on the North American Datum of 1983 (NAD 83), California Coordinate System, Zone 5, Feet.
  - 3) All distances shown on this drawing are grid distances. To obtain a reasonable representation of the ground distance, divide the distance herein by the average scale factor of 1.000076.



SCALE: 1"=20'		DATE:		RECOMMENDED FOR APPROVAL		PERMIT MAP - AUTHORITY NO. P835	
DRAWN: PSOMAS		CHECKED: PSOMAS		APPROVED: [Signature]		TERMINAL ISLANDERS, INC.	
DESIGNED: PSOMAS		ASSISTANT CITY ENGINEER: [Signature]		CITY ENGINEER: [Signature]		DRAWING NUMBER: 5-7207	
ENGR/ARCH: [Signature]		THE PORT OF LOS ANGELES		[Seal]			

**EXHIBIT A**

PL04P005\_VER.1.12/96  
5-7207

## **EXHIBIT B - AFFIRMATIVE ACTION PROGRAM PROVISIONS**

### **Sec. 10.8.4 Affirmative Action Program Provisions.**

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

- A. During the performance of City contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
  - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
  - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  - 3. The contractor shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify on an electronic or hard copy form to be supplied, that the contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- D. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request to provide evidence that it has or will comply therewith.



## **EXHIBIT B - AFFIRMATIVE ACTION PROGRAM PROVISIONS**

- E. The failure of any contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.
- F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.
- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it

## **EXHIBIT B - AFFIRMATIVE ACTION PROGRAM PROVISIONS**

registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve

months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
  2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
  2. Classroom preparation for the job when not apprenticeable;
  3. Pre-apprenticeship education and preparation;



## **EXHIBIT B - AFFIRMATIVE ACTION PROGRAM PROVISIONS**

4. Upgrading training and opportunities;
  5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
  6. The entry of qualified women, minority and all other journeymen into the industry; and
  7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
- P. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.

## EXHIBIT C

### Sec. 10.8.2.1. Equal Benefits Ordinance.

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. Los Angeles law prohibits entities doing business with the City from discriminating in employment practices based on marital status and/or sexual orientation. The City's departments and contracting agents are required to place in all City contracts a provision that the company choosing to do business with the City agrees to comply with the City's nondiscrimination laws.

It is the City's intent, through the contracting practices outlined in this Ordinance, to assure that those companies wanting to do business with the City will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Ordinance are designed to ensure that the City's contractors will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City's property.

#### (c) Equal Benefits Requirements.

(1) No Awarding Authority of the City shall execute or amend any Contract with any Contractor that discriminates in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(2) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the DAA, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance.

(3) A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." The posted statement must also include a City contact telephone number which will be provided each Contractor when the Contract is executed.

(4) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by the Equal Benefits Ordinance.



(d) Other Options for Compliance. Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

a. The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits; or

b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

(e) Applicability.

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.

(f) Mandatory Contract Provisions Pertaining to Equal Benefits. Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.



# Terminal Islanders Japanese Fishing Memorial



TRANSMITTAL 2

0 12.5 25 50  
Feet

Harbor Department  
Planning & Economic Development  
Map Produced 8/2011

