

**DRAYAGE SERVICES
CONCESSION AGREEMENT
FOR ACCESS TO THE
PORT OF LONG BEACH**

AGREEMENT NO. _____

THIS DRAYAGE SERVICES CONCESSION AGREEMENT ("Concession") is made and entered into the _____ day of _____, 20____, by and between the CITY OF LONG BEACH, 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 Long Beach Tariff No. 4 (Section 10).

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.
- (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 owned and operated by Concessionaire ("Concessionaire's Trucks") 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 _____, 20__ and terminating at 12:00 midnight on _____, 20__.

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) Clean Truck Tariff. Concessionaire shall cause all Concessionaire's Trucks to be modernized by either retrofit or replacement to comply with the Clean Truck Program requirements in accordance with Section 10 of Port of Long Beach Tariff No. 4. Concessionaire shall confirm that all Contractors' Trucks that operate under its Concession also comply with the Clean Truck Program requirements in accordance with Section 10 of Port of Long Beach Tariff No. 4.
- (b) 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).
- (c) Permitted Trucks. Concessionaire shall utilize Permitted Trucks 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.
- (d) Driver Compliance. Concessionaire may utilize employees or independent contractors as drivers, or a combination of the two, provided that Concessionaire shall be responsible for the compliance and performance of all drivers and other personnel utilized pursuant to this Concession, and the Port shall have no responsibility or liability therefor.
- (e) Driver Hiring. Concessionaire shall give a hiring preference to drivers with a history of providing drayage services in the port. 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.
- (f) Compliance with Truck Routes and Parking Restrictions. Concessionaire shall submit for approval by the Concession Administrator, a parking plan that includes off-street or lawful on-street parking locations for all Permitted Trucks. Concessionaire shall ensure that all Permitted Trucks remain in compliance with the parking plan and all state and local laws and Port tariffs regarding: (1) parking and stopping; and (2) truck routes and permit requirements for hazardous materials, extra-wide, over-height and overweight loads.

- (g) Truck Maintenance. Concessionaire shall prepare an appropriate maintenance plan in accordance with manufacturer specifications 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 specifications. Maintenance records for all Permitted Trucks shall be available for inspection by the Concession Administrator during business hours.
- (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.
- (i) Driver Health Insurance. Concessionaire shall provide proof to the Port that drivers were duly notified of available health insurance programs, including programs identified by the Port.
- (j) 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.
- (k) 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.
- (l) 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.
- (m) 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 emissions, safety and security compliance to the Concession Administrator and/or authorities.
- (n) 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.
- (o) Financial Capability. With the exception of licensed motor carriers in good standing on June 1, 2008, all Concessionaires shall demonstrate to the satisfaction of the Executive Director that they possess the financial capability to perform their 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

Schedule 5 – Standard Contract Provisions

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, when entering and leaving Port Property and while on Port Property shall comply with Port of Long Beach 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 570, Long Beach, California 90801, 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. 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 LONG BEACH,
acting by and through its
Board of Harbor Commissioners

Dated: _____

By _____

(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__
ROBERT E. SHANNON, Long Beach City Attorney

By _____

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 An application fee of \$250 and an annual fee of \$100 per Permitted Truck (Annual Truck Fees) will be assessed to the Concessionaire. These fees will be used to cover administrative costs of the Concession and may be adjusted from time to time.
- 2.1.2 The application fee shall be collected at the time of submission of the Concession Application. 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; and (ii) within 30 days of registration of additional Permitted Trucks into the Drayage Truck Registry, and (iii) on the annual anniversary dates of the Effective Date of this 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.
- 2.1.3 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.
- 2.1.4 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, status of commercial driver's license, and TWIC compliance
- (d) Such other information 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 for the sole 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 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 regardless of whether any act, omission, or negligence of the Port, its boards, officers, agents, or employees contributed thereto; provided that (1) if the Port contributes to a loss, Concessionaire's indemnification of the Port for the Port's share of the loss shall be limited to One Million Dollars (\$1,000,000), (2) notwithstanding the limitation in (1), Concessionaire shall remain responsible for one hundred percent (100%) of any loss attributable to it, and (3) the provisions in (1) and (2) apply on a per-occurrence basis.

3.2 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 Long Beach Harbor Department, and its board, officers, agents, and employees. See Exhibit "3-A".

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-B".

3.5 Carrier Requirements

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. and 3-B 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 City Attorney.

3.8 Renewal of Policies

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. 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 of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon Port property, or elsewhere within the Harbor District of the City of Long Beach 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 AUTO LIABILITY INSURANCE FORM

| | | | |
|--|---|---|---------------------------|
| AUTOMOBILE LIABILITY SPECIAL ENDORSEMENT | | ENDORSEMENT NO. | EFFECTIVE DATE (MM/DD/YY) |
| FOR THE CITY OF LONG BEACH, HARBOR DEPARTMENT | | | |
| PRODUCER | POLICY INFORMATION | | |
| Telephone _____ | Insurance Company: _____ | | |
| | Policy No.: _____ | | |
| | Policy Period: (from) _____ (to) _____ | | |
| | <input type="checkbox"/> Deductible \$ _____ OR <input type="checkbox"/> Self-Insured Retention of \$ _____ | | |
| NAMED INSURED & ADDRESS | APPLICABILITY. This insurance pertains to the operations and activities of the Named Insured under all written permits and agreements in force with the City unless checked here <input type="checkbox"/> in which case only the following specific permits and agreements with the City are covered: AGREEMENTS/PERMITS: _____ | | |
| TYPE OF INSURANCE | OTHER PROVISIONS | | |
| <input type="checkbox"/> BUSINESS AUTO POLICY | CLAIMS: Underwriter's Representative for claims pursuant to this Insurance (must be completed if different than producer) | | |
| <input type="checkbox"/> TRUCKERS AND MOTOR CARRIER LIABILITY POLICY | | | |
| <input type="checkbox"/> GARAGEKEEPERS LIABILITY | | | |
| <input type="checkbox"/> STUNT ACTIVITY | | | |
| <input type="checkbox"/> OTHER _____ | | | |
| LIABILITY LIMIT IN THOUSANDS \$ | Name: _____ | | |
| \$ _____ per accident, for bodily injury and property damage liability | Address: _____ | | |
| | Telephone: () _____ | | |
| In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows: | | | |
| <ol style="list-style-type: none"> 1. ADDITIONAL INSURED. The City of Long Beach, its Board of Harbor Commissioners, individually and collectively, and their officers and employees ("City") are included as additional insureds with regard to liability and defense of suits or claims arising from the operations and activities performed by or on behalf of the Named Insured. 2. CONTRIBUTION NOT REQUIRED. This insurance shall be primary. Any other insurance or self-insurance available to the insureds added by this endorsement shall be in excess of and shall not contribute with this insurance. 3. CANCELLATION NOTICE. With respect to the interests of City, this insurance shall not be canceled or materially reduced in coverage except after thirty (30) days prior written notice by receipted delivery has been given to City at address indicated below. (Except 10 days shall be allowed for non-payment of premium.) 4. SCOPE OF COVERAGE. This endorsement shall afford coverage at least as broad as Insurance Services Office form number CA0001, Code 1 ("any auto"). | | | |
| Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached. | | | |
| ENDORSEMENT HOLDER / ADDITIONAL INSURED | | | |
| CITY OF LONG BEACH BOARD OF HARBOR COMMISSIONERS 925 HARBOR PLAZA LONG BEACH, CA 90802 ATTENTION: <u>Risk Management Division</u> TELEPHONE: <u>562-901-1775</u> | | AUTHORIZED REPRESENTATIVE I _____ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement. Signature _____ Title _____ Employer of Signatory _____ Telephone: () _____ Date Signed _____ | |

Revised 9-06

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

| WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY SPECIAL ENDORSEMENT | |
|--|---|
| FOR THE CITY OF LONG BEACH, HARBOR DEPARTMENT | ENDORSEMENT NO. _____ EFFECTIVE DATE (MM/DD/YY) _____ |
| PRODUCER | POLICY INFORMATION |
| Telephone _____ | Insurance Company: _____ Policy No.: _____ Policy Period: (from) _____ (to) _____ |
| | <input type="checkbox"/> Self-Insured Retention of \$ _____ |
| NAMED INSURED & ADDRESS | APPLICABILITY. This insurance pertains to the operations and activities of the Named Insured under all written agreements and permits in force with the City unless checked here <input type="checkbox"/> in which case only the following specific agreements and permits with the City are covered: AGREEMENTS/PERMITS: _____ |
| | OTHER PROVISIONS |
| COVERAGES (check as applicable) | |
| <input type="checkbox"/> Statutory Workers' Compensation | <input type="checkbox"/> Employers Liability Limits _____ Bodily Injury (each accident) |
| <input type="checkbox"/> U. S. L. & H. | _____ Bodily Injury by Disease (each employee) |
| <input type="checkbox"/> Jones Act | _____ Bodily Injury by Disease (policy limit) |
| <input type="checkbox"/> Federal Employers Liability Act (FELA) | |
| In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows: | |
| 1. WAIVER OF SUBROGATION. The Insurance Company agrees to waive all rights of subrogation against the City of Long Beach, its Board of Harbor Commissioners, individually and collectively, and their officers and employees ("City") for losses paid under the terms of this policy. | |
| 2. CANCELLATION NOTICE. With respect to the interests of City, this insurance shall not be canceled or materially reduced in coverage except after thirty (30) days prior written notice by receipted delivery has been given to City at address indicated below. (Except 10 days shall be allowed for non-payment of premium.) | |
| Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached. | |
| ENDORSEMENT HOLDER | |
| CITY OF LONG BEACH BOARD OF HARBOR COMMISSIONERS 925 HARBOR PLAZA LONG BEACH, CA 90802 | AUTHORIZED REPRESENTATIVE |
| ATTENTION: <u>Risk Management Division</u> | I _____ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement. |
| TELEPHONE: <u>562-901-1775</u> | Signature _____ Title _____ Employer of Signatory _____ Telephone: () _____ Date Signed _____ |

Revised 9-06

SCHEDULE 4 – DEFAULT AND TERMINATION

4.1 Default

In the event Concessionaire fails to comply with the terms and conditions of this Concession or commits an event of Default (as defined in Section 4.2, below), such event shall be deemed a Default by the Concessionaire and the Port shall give Concessionaire written notice of such Default and, if specified in the Notice, opportunity for the Concessionaire to cure the Default. If Concessionaire fails to cure the Default or fails to take substantial and diligent steps towards such corrections, within ten (10) calendar days after Concessionaire's receipt of such notification, the Port may treat this Concession as terminated not earlier than at 11:59 p.m., Pacific Time on the thirtieth (30th) day following the date of Concessionaire's receipt of notice. Upon such termination, the Port may deny any and all access to Port property by the Concessionaire. In the event that the nature of the Default is such that it cannot be cured within ten (10) calendar days, Concessionaire must take substantial steps toward corrections within said ten (10) calendar days, and diligently continue substantial efforts to complete the cure of the Default as soon as is reasonably practicable. 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;
- (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 10 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 10 of Port Tariff No. 4;
- (h) Any assignment or transfer of this Concession or substantial change in the ownership and control of Concessionaire without prior notice to and consent of the Port;
- (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, briefly state the nature of the Default, state the Remedy imposed, 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 Long Beach 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 as a Minor Default shall be effective and final fourteen (14) 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 the 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 as a Major Default shall be effective and final thirty (30) 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 the 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 immediately.
- 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 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 following Remedy may be contained in a Notice of Default and may imposed by the Port for a breach of this Concession or other event of Default

- 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.

SCHEDULE 5 – STANDARD CONTRACT PROVISIONS

1. DISCRIMINATION

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.

2. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Concession have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees. 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 Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, Port may immediately terminate this Agreement by giving written notice thereof.