CITY OF OAKLAND

TRIPLE NET LEASE

WITH

OAKLAND MARITIME SUPPORT SERVICES, INC.

City Of Oakland

TRIPLE NET LEASE

THIS LEASE is made this 26th day of August, 2013 (the "***Execution Date***"), by and between the CITY OF OAKLAND, a municipal corporation (with its successors called "***Landlord***"), and OAKLAND MARITIME SUPPORT SERVICES, INC. ("OMSS"), a California corporation ("***Tenant***").

RECITALS:

WHEREAS, Landlord, on January 31, 2012 ("***Conveyance Date***"), received title to the property formerly known as the Oakland Army Base ("***Army Base***"), including the Premises; and

WHEREAS, Landlord is subject to agreements with the United States Department of the Army and the State of California that impose restrictions on the use of the Army Base property, including the "***Premises***" (as defined in Paragraph 1.2 below), and require the investigation, remediation and monitoring of environmental conditions existing on said property including the Premises; and

WHEREAS, Landlord desires to lease the Premises to Tenant upon the terms and conditions set forth herein and Tenant desires to lease said property from Landlord upon said same terms and conditions;

Now, THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth, Landlord and Tenant hereby agree as follows:

1. BASIC PROVISIONS:

1.1 Parties:

(a) Landlord: City of Oakland

(b) Tenant: Oakland Maritime Support Services, Inc.

1.2 Premises: Approximately 217,800 square feet (which includes approximately 2,000 square feet for the Maintenance Area described below) of fenced yard space at 2240 Wake Avenue, Oakland, California at the Army Base and designated on Exhibit B (the "Premises"). The statements of square footage herein will be binding on the parties for the purposes of this Lease.

1.3 Use of Premises:

Except as set forth herein, the sole purpose for which the Premises may be used is : (i) the storage of truck tractors, containers and trailers by licensing space to owner/operators and trucking companies; and (ii) the operation of mini-mart, truck scale, mobile food truck, transload

services, truck repair and maintenance, tire repair, container repair, and trailer repair, occupational medical center including but not limited to DMV services, physical examinations, drug testing, and fingerprinting.

To the extent Tenant performs any maintenance or repair on vehicles at the Premises, such maintenance or repair shall be performed only in the area designated on Exhibit B as the "Maintenance Area."

Tenant shall be permitted to place mobile office units on the Premises. Said mobile office units shall be removed upon the expiration or termination of this Lease and Tenant shall maintain and keep said mobile office units in good repair in accordance with the provisions of paragraph 11.1(b) herein.

1.4 Base Rent: $24,829.20 per month (217,800 x 11.4 cents)

1.5 Intentionally Omitted.

1.6 Intentionally Omitted.

1.7 Security Deposit: $25,000.00

1.8 Lease Commencement:

(a) Lease Commencement Date: August 26, 2013

(b) Rent Commencement Date: November 1, 2013

1.9 Lease Expiration Date:

The term of this Lease shall commence on the Lease Commencement Date (as defined in Paragraph 1.8(a)) and shall expire on December 31, 2015, unless sooner terminated as follows:

(1) By Tenant as to any portion or all of the Premises upon thirty (30) days prior written notice given to Landlord; or

(2) By Landlord as to any portion or all of the Premises upon one hundred eighty (180) days written notice given to Tenant, said notice may only be given after September 1, 2014.

In the event of a termination as to a portion of the Premises by either Landlord or Tenant under the conditions described by this Paragraph 1.9, the portion so terminated shall be clearly described in the notice and the Base Rent and any other provision hereof based upon the rentable area of the Premises will be reduced by an amount allocable to the portion of the Premises so terminated.

1.10 Minimum Insurance Coverage:

Commercial General Liability Insurance: $2,000,000.00

Worker's Compensation Insurance:	Statutory limits
Employer's Liability Insurance:	$1,000,000.00
Business Automobile Liability Amounts:	$1,000,000.00

1.11 Addresses for Payments (including Rent and Utilities):

City of Oakland
Real Estate Division
250 Frank Ogawa Plaza, 5th floor
Oakland CA 94612
Attn: Army Base Project Manager

Address for Notices:

To TENANT:

Oakland Maritime Support Services
2240 Wake Avenue
Oakland, CA 94607

Fax: (510) 868-1007

With copy of notices to:

To LANDLORD:

City of Oakland Real Estate Division
250 Frank Ogawa Plaza, Room 4314
Oakland, CA 94612
Attn: Army Base Project Manager

Fax: (510) 238-2240

1.12 Real Estate Broker(s): None.

1.13 Exhibits and Other Attachments: The following exhibits and other attachments are attached to this Lease and made a part of this Lease for all purposes.

A. Definitions
B. Premises
C. Addendum Regarding Hazardous Materials
D. Summary of Covenant to Restrict Use of Property
E. Summary of Oakland Army Base Remedial Action Plan/Remedial Management Plan ("***RAP/RMP***")
F. **INTENTIONALLY OMITTED**
G. **INTENTIONALLY OMITTED**
H. **INTENTIONALLY OMITTED**
I. **INTENTIONALLY OMITTED**
J. **INTENTIONALLY OMITTED**

Each reference in this Lease to any provision in the Basic Provisions will be construed to incorporate all of the terms provided under such referenced provision. In the event of any conflict between a provision in the Basic Provisions and a provision in the remainder of this Lease, the latter will control.

LANDLORD:

CITY OF OAKLAND,
a California municipal corporation

By: _____
Deanna J. Santana
City Administrator

Date: 8/26/13

TENANT:

OAKLAND MARITIME SUPPORT SERVICES, INC.,
a California corporation

By: _____
Bill Aboudi

Title: President

Date: 8/26/13

CITY OF OAKLAND REDEVELOPMENT AGENCY

TRIPLE NET LEASE

2. DEMISE.

2.1 Premises. For the Term, Landlord leases the Premises to Tenant and Tenant leases the same from Landlord, all upon and subject to the terms, covenants and conditions of this Lease.

2.2 Relocation of the Premises. Upon thirty (30) days written notice to Tenant, Landlord may relocate the Premises to another space at the Army Base consisting of approximately the same or greater rentable area with approximately the same street frontage, provided, that: (i) Landlord will pay all of Tenant's reasonable moving and relocation expenses.

2.3 No Commitment for Future Conveyance. ***TENANT UNDERSTANDS THAT THIS LEASE IS NOT AND DOES NOT CONSTITUTE A COMMITMENT BY LANDLORD TO ANY RENEWALS OR EXTENSION OF THE USE AUTHORIZED HEREIN FOR A TERM BEYOND THAT PROVIDED IN THE BASIC INFORMATION OF THIS LEASE OR TO ANY FUTURE REUSE OR DISPOSAL AND THIS LEASE DOES NOT CREATE ANY RIGHT OR EXPECTATION FOR TENANT TO ACQUIRE THE PREMISES, IN WHOLE OR IN PART.***

3. ACCEPTANCE OF PREMISES.

3.1 Physical and Environmental Conditions.

(a) Tenant acknowledges that it has conducted a thorough investigation and inspection of the Premises, and based on its investigation and inspection accepts the physical condition and current level of environmental hazards on the Premises and deems the Premises to be safe for Tenant's intended use. As an investigation aid, Tenant acknowledges that it has been provided the opportunity to review and inspect the (1) Army's Final Environmental Baseline Survey for Transfer ("FEBST"), a report detailing the level of environmental hazards on the Army Base, including the Premises, as of April 25, 2003, and (2) the Oakland Army Base Remedial Action Plan ("RAP") and Risk Management Plan ("RMP") approved by the State of California on September 26, 2002. The RAP/RMP sets forth remedies for the clean up and removal hazardous materials presently on Army Base property or which may subsequently be discovered on Army Base Property.

(b) Tenant further acknowledges that the RAP/RMP impose certain restrictions on the use of Army Base property, including the Premises. Accordingly, Tenant acknowledges and agrees that it has (1) reviewed the RAP/RMP summary as set forth in Exhibit E to this Lease, and (2) reviewed and accepts the Army Base property use restrictions detailed in Exhibit D to this Lease.

(c) As set forth in detail in the Hazardous Materials Addendum to this Lease, Tenant acknowledges and agrees that it will be responsible for all damages, liabilities, losses, fines, penalties, fees and claims arising out of Tenant's period of use and possession of the Premises.

3.2 Opportunity to Inspect for Lead-Based Paint and Asbestos Containing Material. Landlord hereby notifies Tenant that the Premises were built prior to 1978 and may contain lead-based paint and asbestos. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Landlord recommends Tenant obtain a risk assessment or inspection for possible lead-based paint hazards and asbestos. Tenant acknowledges that available information concerning (i) known lead-based paint and/or lead-based paint hazards, (ii) the location, if any, of lead based paint and/or lead-based paint hazards, and (iii) the condition of painted surfaces is contained in the EBS and FEBST and has been made available to the Tenant. Additional information pertaining to lead-based paint and/or lead-based paint hazards is available in a Lead-Based Paint Report dated October, 1997 prepared by the U.S. Army Corps of Engineers, and such report is available for Tenant's review at the Landlord's offices during normal business hours. Tenant further acknowledges that the Landlord has no knowledge regarding asbestos within the Premises other than what has been provided by the Army, and has conducted no independent investigations or studies regarding the friable and non-friable asbestos within the Premises. Tenant further acknowledges that it has had the opportunity to conduct a risk assessment or inspection of the Premises for the presence of lead-based paint and/or lead-based hazards and asbestos and asbestos containing material prior to execution of this Lease.

3.3 Acceptance in AS-IS Condition. ***The Premises are being accepted by Tenant in their current condition, "AS-IS" and "WITH ALL FAULTS" and, as such, Landlord makes no warranty concerning the state of repair or physical condition of the Premises, the Building or the Army Base or as to the Premises' usability generally or as to its fitness for any particular purpose, including the use identified in the Basic Provisions. Tenant acknowledges that Landlord has made no commitment to alter, remodel, repair or improve the Premises and no representation respecting the condition of the Premises.***

4. RENT. All amounts due hereunder from Tenant to Landlord, whether designated as Base Rent, Additional Rent, Late Charges, interest or otherwise, will be deemed "***rent***" or "***Rent***" hereunder. Unless Tenant is otherwise directed in writing by the Landlord, all Rent will be paid to the addresses set forth in the Basic Provisions. All Rent will be made by check payable to "City of Oakland" drawn on a bank doing business in the State of California. From the Rent Commencement Date, Tenant will pay Landlord, without prior notice, demand, offset or deduction (except as expressly provided herein), the following rent:

4.1 Base Rent. Tenant will pay the Base Rent (prorated for any partial month) in advance on the first day of each month during the term hereof.

4.2 Intentionally Omitted..

4.3 Late Payments. If any amounts payable hereunder from Tenant are not received by Landlord when due, then Tenant will also pay to Landlord a late charge of ten percent (10%) of the past due amounts ("***Late Charge***"). The parties agree that this Late Charge is a fair and reasonable estimate of the extra costs (including, without limitation, processing and accounting charges) Landlord will incur by reason of the late payment. Acceptance of any Late Charge will not constitute a waiver of Tenant's default with respect to such overdue amount, or prevent Landlord from exercising any of its other rights and remedies. Any amounts overdue from Tenant hereunder will accrue interest from the date due at the Prime Rate plus four percent (4%)

per annum, compounding annually, but in any event, shall not exceed the maximum interest rate allowed by law. If Tenant is late in the payment of Base Rent for two (2) consecutive months, Landlord may require Tenant to pay Base Rent in advance on a quarterly basis. If any check or other payment device is returned due to insufficient funds or any other reason, Landlord may require all future payments to be made by money order or cashier's check.

5. SECURITY DEPOSIT.

To secure its obligations under this Lease, Tenant will deliver to Landlord the Security Deposit. If Tenant defaults on any provision of this Lease, Landlord may, without prejudice to any other remedy it has, apply all or part of the Security Deposit to (a) any rent or other sum in default; (b) any amount that Landlord may spend or become obligated to spend in exercising Landlord's rights under Paragraph 19; and/or (c) any expense, loss, or damage that Landlord may suffer because of Tenant's default. Landlord may, however, apply to Security Deposit to any default hereunder. Tenant waives the provisions of California Civil Code section 1950.7, and all other provisions of law now in force or that become in force after the date of execution of this Lease, that provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant, or to clean the Premises. Neither the payment of the Security Deposit nor the application thereof by Landlord, as provided herein, will be a bar or defense to any action in unlawful detainer or to any action which Landlord may at any time commence for a breach of any provision of this Lease. If Landlord disposes of its interest in the Premises, Landlord may deliver or credit the Security Deposit to Landlord's successor in interest in the Premises and thereupon be relieved of further responsibility with respect to the Security Deposit. Landlord may commingle the Security Deposit with other funds. Following any application of the Security Deposit or any portion thereof, Tenant will, within five (5) days following Landlord's demand, restore the Security Deposit to their full original amount, and Tenant's failure to restore the Security Deposit will be deemed an Event of Default under this Lease without further notice or cure period. In the event of bankruptcy or other insolvency proceedings filed by or against Tenant, the Security Deposit will be deemed to be applied first to the payment of Rent and other charges due Landlord for all periods prior to the effective date of such proceedings. If Tenant is not in default at the termination of this Lease, Landlord will return any remaining Security Deposit upon receipt of Tenant's forwarding address, or as provided by law, whichever is later. Tenant will not assign or encumber the Security Deposit or attempt to do so, and Landlord will not be bound by any such assignment or encumbrance. Regardless of any assignment, Landlord may return the Security Deposit to the original Tenant. Interest will not accrue on the Security Deposit.

6. INTENTIONALLY OMITTED

7. USE OF PREMISES.

7.1 Permitted Use. Tenant will use and occupy the Premises only for the purpose set forth in Paragraph 1.3 and no other, using and maintaining the Premises in a careful, sanitary and proper manner. The Premises will not be used for any other purposes without prior written approval of the Landlord. All use or changes in use of the Premises will be consistent with: the Initial Study/Mitigated Negative Declaration for Interim Leasing Program at the Army Base, City of Oakland's Gateway Industrial Zone regulations, and the Covenant to Restrict Use of Property. Prior to any changes in the approved use, the Tenant will furnish, at Tenant's expense, any additional environmental analysis and documentation deemed necessary by the Landlord to comply with NEPA, CEQA, the City of Oakland's Environmental Review Regulations and other applicable environmental laws and regulations. In granting approval for the change in use, the Landlord may impose such additional environmental protection provisions as it deems appropriate.

7.2 Prohibited Uses. Tenant will not cause anywhere within the Army Base, or permit in the Premises, the following:

(a) any activity or thing contrary to applicable law, ordinance, regulation, restrictive covenant, or insurance regulation whether now in force or hereafter in force; or which is in any way extra-hazardous or could jeopardize the coverage of normal insurance policies or increase their cost;

(b) any residential use of any kind;

(c) any liquidation, auction or bankruptcy sale;

(d) the sale or dispensing of any alcoholic beverages;

(e) waste or nuisance;

(f) except for mobile food truck operations, cooking or heating food, except for uses consistent with the operations of the mini-mart and except for incidental use of microwave ovens and beverage-brewing devices, provided that the foregoing do not use a flame and are approved by Underwriters Laboratories for residential use;

(g) overloading the floors or the structural or mechanical systems serving the Premises; or

(h) obstruction or interference with the rights of other tenants or users of the Army Base.

(i) construction or placement any item in or upon the Common Areas.

7.3 No Interference With Landlord Environmental Operations. Tenant will not conduct its operations, nor make any alterations, that would interfere with or otherwise restrict Landlord's operations or environmental clean-up or restoration action by the Landlord,

Environmental Protection Agency (EPA), State of California, the Army or their contractors. Environmental clean-up restoration, or testing activities by these parties will take priority over the Tenant's use of the Premises in the event of conflict.

7.4 Compliance with Laws. Tenant will at Tenant's sole cost and expense faithfully observe and promptly comply with all local, state and federal laws, statutes, ordinances and governmental resolutions, orders, rules, regulations and requirements (including, by way of example, building codes, Title 24, and the Americans With Disabilities Act of 1990) as amended and with the requirements of any board of fire underwriters (or other similar body now or hereafter constituted) whether now in force or which may hereafter be in force with respect to Tenant's use, occupancy, modification or possession of the Premises, Tenant's business conducted in the Premises or the design, equipment condition, use or occupancy of the Premises. Without limiting the generality of the provisions of this Paragraph 7, as between Landlord and Tenant, Tenant will make all alterations to the Premises, whether major or minor, reasonably necessary to comply at any time with the requirements referred to in this Paragraph 7.

8. COMMON AREAS.

8.1 Landlord hereby grants to Tenant, for the benefit of Tenant, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Landlord under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Army Base.

8.2 Landlord or such other person(s) as Landlord may appoint, will have the exclusive control and management of the Common Areas and will have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect thereto. Tenant agrees to abide by and conform to all such rules and regulations, as well as any private conditions, covenants, and restrictions of public record now or hereafter affecting the Premises and any amendment thereof, and to cause its employees, suppliers, shippers, customers and invitees to abide and conform. Landlord will not be responsible to Tenant for the non-compliance with said rules and regulations by other tenants or authorized users of the Army Base.

8.3 Landlord will have the right in Landlord's sole discretion, from time to time: (i) to make changes to the Common Areas; (ii) to close temporarily any of the Common Areas so long as reasonable access to the Premises remains available; and (iii) to do and perform such other acts and make such other changes in, to or with respect to the Common Areas and the Army Base as Landlord may, in the exercise of reasonable judgment, deem to be appropriate.

9. BROKERS. Landlord and Tenant warrant that they have had no dealing with any finder, broker or agent in connection with this Lease. Tenant will indemnify, defend and hold Landlord harmless from and against any and all costs, expenses or liability for commissions or other compensation or charges claimed by any finder, broker or agent based on dealings with Tenant with respect to this Lease.

10. TENANT'S TAXES. Tenant will be separately liable for and will pay, before delinquency, all possessory interest taxes payable with respect to this Lease, and all taxes levied or assessed against or attributable to any personal property or trade fixtures in the Premises. Tenant also will promptly collect and remit when due to the City of Oakland Finance Division all parking taxes owed by Tenant and its licensees during the Term, with no offset or deduction from rent.

11. ALTERATIONS, REPAIRS AND MAINTENANCE.

11.1 Repairs and Maintenance.

(a) Landlord will repair and maintain the Common Areas. To the extent any such maintenance and repairs are caused in part or in whole by the act, neglect or omission of any duty by Tenant or Tenant Parties, then Tenant will pay to Landlord, as Additional Rent, the entire cost of such maintenance and repairs. Landlord will have no obligation to make repairs under this Paragraph 11.1(a) until a reasonable time after receipt of written notice of the need for such repairs. Tenant expressly waives the benefits of any statute (including, without limitation, the provisions of subsection 1 of Section 1932, Section 1941 and Section 1942 of the California Civil Code and any similar law, statute or ordinance now or hereafter in effect) which would otherwise afford Tenant the right to make repairs at Landlord's expense (or to deduct the cost of such repairs from rent due hereunder) or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair.

(b) **Tenant Responsibility**. Tenant will provide, at its cost and expense, all labor, supervision, materials, supplies, and equipment necessary for the repair and maintenance of the Premises, including, without limitation, the repair and maintenance of the mobile office unit described in Paragraph 1.2. Tenant's repair and maintenance responsibilities include janitorial, internal security and refuse disposal, the maintenance of all interior doors, walls, and windows, ceiling tiles, flooring, the interior surfaces of the exterior walls, and the plumbing, electrical, heating, air conditioning and ventilating equipment and fixtures within the Premises and all telecommunications equipment and intrabuilding network cabling within the Premises. If the Premises is a "single tenant" building, then Tenant will also, at its cost and expense maintain the grounds, facilities, equipment and any utility infrastructure directly serving or situated within the Premises.

(c) **Pest Control and Abatement**. Tenant will be responsible for providing the necessary abatement and control against insects, weeds, fungi and pests within the Premises, including but not limited to routine treatment and other abatement actions deemed necessary by the Landlord. Prior to any action or application of any chemical treatment, the Tenant will coordinate any planned action with Landlord.

(d) **Landlord's Remedy**. In the event Tenant fails to perform Tenant's obligations under this Paragraph, Landlord will give Tenant notice to do such acts as Landlord deems are reasonably required to perform its obligations. If Tenant, within ten (10) days after notice from Landlord, fails to commence to do the work and diligently prosecute it to completion, then Landlord will have the right (but not the obligation) to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expensed by Landlord will be paid by Tenant promptly after demand as Additional Rent. Landlord will have no liability to Tenant for any damage, inconvenience or interference with the use of the Premises by Tenant as a result of performing any such work.

11.2 Alterations.

(a) Tenant will not make or permit alterations, improvements or additions (including Fixtures) in or to the Premises (collectively "***Alterations***") without Landlord's prior, written consent. Tenant's request for such consent will be in writing, accompanied by proposed detailed plans and specifications. Tenant will also submit to Landlord a narrative description of all proposed Alterations on the Premises, with the projected schedule and costs thereof, and an analysis as to how and why such Alterations will or will not be visible from the exterior of the Premises, or affect any historically significant features, or be substantially likely to adversely affect the environmental cleanup of the Army Base, human health, or the environment, or adversely impact the structural integrity of the Premises. Landlord may require Tenant to provide Landlord, at Tenant's cost and expense, a payment and performance bond in an amount equal to the estimated cost of such Alterations to insure Landlord against any liability for any mechanic's and materialmen's liens and to insure completion of the work. Tenant may engage its own contractors to perform remodel work upon written approval by Landlord. Any and all plans must be submitted to Landlord for approval, and building permits and City approvals must be obtained prior to commencement of any construction remodeling. All alterations, additions and improvements constructed by Tenant will remain the property of Tenant during the Lease Term but will not be damaged, altered, or removed from the Premises. At the expiration or sooner termination of the Lease Term, all alterations, additions, or improvements will be surrendered to Landlord as a part of the realty and will then become Landlord's property. Tenant will promptly notify Landlord of the value thereof for insurance and tax purposes. Tenant will hold Landlord forever harmless against any and all claims, expenses (including taxes) and liabilities of every kind which may arise out of or in any way be connected with any work performed by or on behalf of Tenant.

(b) Before Tenant undertakes any work or Alterations which will disturb any known friable or non-friable asbestos or ACMs, the Tenant will prepare a plan stating how it will handle any such asbestos or ACMs as part of its descriptive narrative submittal to Landlord and obtain its review and approval of the plan.

(c) Tenant will give Landlord written notice not less than ten (10) days notice prior to the commencement of any work by or on behalf of Tenant, and Landlord will have the right to post notices of non-responsibility as permitted by law. All Alterations, repairs and replacements by Tenant will be of a quality and class at least equal to the original work and performed in a good and workmanlike manner. Tenant will ensure that all work is performed in a manner that does not obstruct access to or through the Army Base or its

Common Areas and that does not interfere either with other tenants' use of their premises or with any other work being undertaken at the Army Base. Tenant will take all measures necessary to ensure that labor peace is maintained at all times. Before construction begins, Tenant will deliver to Landlord reasonable evidence that damage to, or destruction of, the Alterations and Premises during construction will be covered either by the policies that Tenant is required to carry under Paragraph 14 or by a policy of builder's all-risk insurance in an amount approved by Landlord. If Landlord requires Tenant to provide builder's all-risk insurance for the proposed Alterations, Tenant will provide to Landlord a copy of the policy, any endorsements, and an original certificate of insurance that complies with Paragraph 14. Tenant will cause each contractor and subcontractor to maintain all workers' compensation insurance required by law and liability insurance (including property damage) in amounts reasonably required by Landlord. Tenant will give Landlord opportunity to supervise all work. Should Tenant make any Alterations without Landlord's prior written approval, or in violation of such approval or the requirements of this Paragraph, Landlord may, at any time during the Term, either remove any part or all of the same on Tenant's behalf and at Tenant's expense, or require that Tenant do so.

12. LIENS. Tenant will not permit any lien on any part of the Premises or the Army Base allegedly resulting from any work or materials furnished or obligations incurred by or for Tenant. Landlord may cause such liens to be released by any means it deems proper, including payment, at Tenant's expense and without affecting Landlord's rights.

13. ENTRY.

13.1 Landlord may enter any part of the Premises at all reasonable hours (or in any emergency or suspected emergency, at any hour), to (a) inspect, test, clean, or make repairs, alterations and additions and take remedial actions with respect to environmental matters as Landlord believes appropriate in its sole discretion, or (b) provide any service which Landlord is now or hereafter obligated to furnish to tenants of the Army Base. Tenant further acknowledges that the Landlord and its authorized representatives have the right to enter the Premises at any time for any purpose necessary in connection with government purposes. Portions of the utilities systems serving the Army Base may be located within the Premises. The Tenant agrees to allow Landlord and its utility suppliers access to the Premises for operation, maintenance, repair and replacement of these systems. Tenant hereby waives any claim for abatement of rent or for damages for any injury, inconvenience to or interference, loss of occupancy or quiet enjoyment caused by any entry.

13.2 ***Tenant acknowledges the Army's right-of-access under the Oakland Army Base Quitclaim Deed specifically provides the right for Army, its officials, agents, employees, contractors and subcontractors to enter, upon reasonable notice, the Premises for the purposes of performing environmental investigation, remediation or other corrective actions of environmental conditions. Tenant acknowledges and consents to DTSC's right-of-access under the Covenant to Restrict Use of Property to the Army Base, including the Premises, to perform inspections, monitoring and other activities consistent with the CRUP or as deemed necessary by DTSC.***

13.3 Upon reasonable notice to Tenant and without limiting the generality of the foregoing, Landlord and/or the Army and their authorized representatives have the right to enter upon the Premises for the following purposes:

(a) To conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, testing soil borings and other activities:

(b) To inspect field activities of Landlord or the Army and its employees, agents, contractors and subcontractors;

(c) To conduct or verify any test, investigation, issue or survey relating to the implementation of the RAP/RMP, FOSET or environmental conditions at the Premises or to verify any data submitted to the U.S. EPA or California EPA, Department of Toxic Substances Control (DTSC) or any other relevant agency of the City of Oakland, County of Alameda, State of California or federal government relating to such conditions;

(d) To construct, operate, maintain, or undertake any other response or remedial action including, but not limited to, monitoring wells, pumping wells, and treatment facilities;

(e) To conduct environmental compliance audits; and

(f) To allow all future potential purchasers, lessees or other transferees, including but not limited to California Waste Solutions (CWS) and Custom Alloy Scrap Sales (CASS), to conduct investigations, tests and surveys of the Premises.

13.4 Any inspection, survey, investigation, or other response or remedial action, to the extent practicable, will be coordinated with representatives designated by Landlord and Tenant so as to minimize the disruption of Tenant's use of the Premises. If Tenant's use of the Premises is substantially disrupted because of actions taken by Landlord as set forth herein, the Tenant will be entitled to a Rent Adjustment (as defined in Exhibit A) for the period of disruption. Tenant will have no other claim or cause of action against Landlord on account of the disruption.

13.5 Tenant agrees to comply with the provisions of any health or safety plan in effect during the course of any of the response or remedial actions set forth here.

13.6 Tenant will not conduct or allow Tenant Parties, or Tenant's permitted sublessees to conduct any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of the Landlord. Tenant will be prohibited from tampering or interfering with any facilities, such as testing and remediation equipment, installed by Landlord or the Army.

14. INDEMNIFICATION AND EXCULPATION

14.1 Tenant will indemnify, defend and hold and save Landlord and its employees, officers, directors, shareholders, partners and agents (each an "***Indemnitee***") harmless from all fines, suits, losses, costs, expenses, liabilities, claims, demands, actions, damages and judgments ("***Liabilities***") suffered by, recovered from or asserted against the Indemnitee, of every kind and

character, resulting from (i) the operation, condition, maintenance, use or occupancy of the Premises, (ii) any bodily injury, death or property damage occurring in or about the Premises, (iii) any act, omission or negligence of Tenant or its agents, or (iv) any breach or default in the performance in a timely manner of any obligation on Tenant's part to be performed under this Lease. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Premises arising from any cause, and Tenant, on behalf of itself and its Indemnities, hereby waives, to the fullest extent permitted by law, all claims against Landlord and/or its Indemnities for personal injury or death, loss of, damage or destruction of any tangible or intangible property, including economic losses and consequential and resulting damages. Without limiting the foregoing, Landlord and its Indemnities will not be liable for the following: (i) any loss of or damage to property of Tenant or of others located in the Premises, by theft or otherwise, (ii) any injury or damage to persons, property, and/or the interior of the Premises resulting from tire, explosion, falling sheetrock, gas, electricity, water, rain, snow or leaks from any part of the Premises or the building where the Premises are located or any other acts of God, (iii) any injury or damage caused by other tenants or any person(s) either in the Premises or the Army Base, or by occupants of property adjacent to the Premises or the Common Areas, or by the public or by the construction of any private, public or quasi-public work; or (iv) any latent defect in the construction of the Premises. Any exculpation clause will not apply to claims against Landlord to the extent that a final judgment of a court of competent jurisdiction establishes that the injury, loss, damage or destruction was proximately caused by Landlord's gross negligence, fraud, willful misconduct or violation of law.

14.2 Landlord will indemnify, defend and hold and save Tenant and its related Indemnitees harmless from and against all Liabilities suffered by, recovered from or asserted against Tenant and its related Indemnitees, of every kind and character, resulting from any injury or damage to person or property within the Property but only to the extent caused by the gross negligence or intentional misconduct of Landlord or its agents.

14.3 If any such proceeding is brought, the indemnifying party will retain counsel reasonably satisfactory to the indemnified party to defend the indemnified party at the indemnifying party's sole cost and expense. All such costs and expenses, including attorneys' fees and court costs, will be a demand obligation owing by the indemnifying party to the indemnified party. The indemnifying party's obligations under this Paragraph will survive the termination or expiration of this Lease. Any exculpation clause will not apply to claims against Landlord to the extent that a final judgment of a court of competent jurisdiction establishes that the injury, loss, damage or destruction was proximately caused by Landlord's gross negligence, fraud, willful misconduct or violation of law. The indemnification provisions herein are independent of the parties' insurance obligations herein, and neither party's obligation to indemnify will be limited or modified by such party's insurance coverage or obligations herein.

15. INSURANCE

15.1 Tenant, during the term and any other period of occupancy, will, at its expense, maintain insurance reasonably satisfactory to Landlord, but in no event less than:

(a) Commercial General Liability insurance with combined single limits not less than $2,000,000.00, for personal injury or death and property damage occurring in or about

or related to the use of the Premises or Tenant's or Tenant Parties' use of the Army Base. Such comprehensive general liability insurance will be extended to include a "blanket contractual liability" endorsement insuring Tenant's performance of Tenant's obligation to indemnify Landlord contained in Paragraph 14 and all of the other broadened liability features normally contained in an extended liability endorsement coverage.

(b) "***All Risk***" or broad form insurance (including earthquake coverage if available at commercially reasonable rates) for the full replacement cost of all Tenant's property on the Premises and all fixtures and leasehold improvements in the Premises. Unless this Lease is terminated upon damage or destruction, the proceeds of such insurance will be used to restore the foregoing.

(c) Worker's Compensation (as required by state law), and Employer's Liability insurance in the amount of not less than $1,000,000.00.

(d) Comprehensive business automobile liability insurance and where applicable, garage liability insurance providing automobile liability insurance for liability arising out of the ownership, operation, maintenance or use of "any auto" including owned, hired and non-owned autos.

15.2 All policies required hereunder will be issued by carriers rated A-IX or better by Best's Key Rating Guide and licensed to do business in the State of California. Tenant's policies will name Landlord, the City of Oakland, and Landlord's managing agent and any other person or entity that Landlord may designate from time to time as additional insureds and loss payees, with primary coverage non-contributing to and not in excess of any insurance Landlord may carry, and will provide that coverage cannot be cancelled or materially changed except upon thirty (30) days prior written notice to Landlord. Tenant's general liability policies will be endorsed as needed to provide cross-liability coverage for Tenant, Landlord, the City of Oakland, and Landlord's managing agent, and to provide severability of interests, and the coverage afforded to Landlord, Landlord's managing agent must be as broad as that afforded to Tenant. Under no circumstances will the Tenant be entitled to assign to any third party rights of action which the Tenant may have against Landlord. Landlord may require closure of Premises during any period for which Tenant does not have the required insurance coverage. Further, Tenant will be deemed to have self-insured and accepted the risk and liability as to any liability it fails to insure as required herein. At least thirty (30) days prior to expiration of such policies, and promptly upon any other request by Landlord, Tenant will furnish Landlord with copies of policies, or certificates of insurance, evidencing maintenance and renewal of the required coverage on ACORD 27, endorsement form CG-2011-1185 or other form acceptable to Landlord in its sole discretion, and a copy of the endorsement to Tenant's liability policy showing the additional insureds. In the event Tenant does not maintain said insurance, Landlord may, in its sole discretion and without waiving any other remedies hereunder, procure said insurance and Tenant will pay to Landlord as Additional Rent the cost of said insurance plus a ten percent (10%) administrative fee.

15.3 During the Term, and as an Operating Expense, Landlord will insure the Army Base (excluding any property which Tenant is obligated to insure) against damage with All-Risk, broad form insurance (including earthquake as commercially reasonable) and commercial

liability insurance, all in such amounts and with such deductibles as Landlord considers appropriate. Tenant has no right to receive any proceeds from any insurance policies carried by Landlord.

15.4 If the acts or omissions of Tenant or Tenant Parties, whether or not Landlord has consented to the same, increase the cost of Landlord's insurance, Tenant will pay the full cost of any such increase as Additional Rent.

16. MUTUAL RELEASE/WAIVER OF SUBROGATION. Notwithstanding anything to the contrary set forth in this Lease, Landlord and Tenant each hereby release the other from any and all liability or responsibility for any loss or damage to property located within the Premises, the Army Base, the Common Areas or any portions thereof, or any contents caused by fire or any other casualty, or accident during the Term of this Lease or any extensions thereof, even if such fire, casualty, or accident may have been caused by the negligence (but not the gross negligence or willful misconduct) of the other party or one for whom such party may be responsible; provided, however, that the foregoing release will be effective only to the extent that the releasing party is either compensated for its loss by insurance proceeds or such party would have been compensated for its loss by insurance proceeds had it complied with the insurance requirements imposed under Paragraph 15. Inasmuch as the above mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each party hereto hereby agrees, if required by said policies, to give to each insurance company which has issued to it policies of fire and extended coverage insurance, and other insurance, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waivers. To the extent either party is waiving its subrogation rights or is required to obtain waivers of subrogation rights with respect to its insurance policies, any such waiver by either party is expressly conditioned on (1) such a waiver not invalidating such party's insurance policies and (2) the availability of waiver of subrogation rights under such insurance policies.

17. DAMAGE OR DESTRUCTION. If the Premises or any part thereof are damaged by fire or other casualty, Tenant will promptly notify Landlord.

17.1 Cancellation of Lease; Restoration of Premises. If the Premises are damaged by fire or other casualty to the extent that material alteration or reconstruction is required in Landlord's sole opinion, Landlord may terminate this Lease by notifying Tenant within thirty days after the date the damage occurs. If this Lease is not terminated upon expiration of thirty days after the date the damage occurs, then Landlord within such period as reasonably necessary will commence to repair and restore the Premises and any portion of the Army Base required for access to the Premises, and will diligently complete the same, but Landlord is not required (a) to expend more for such repair of the Premises than the net insurance proceeds reasonably allocable to the Premises, or (b) to rebuild, repair or replace any of Tenant's furniture, furnishings, fixtures, personal property or equipment removable by Tenant under the provisions of this Lease or which Tenant has insured or is required to insure under the provisions of this Lease. Notwithstanding the above, if the damage to the Army Base or Premises was caused by the fault, omission or negligence of Tenant or Tenant Parties, such damage will be repaired by and at the

expense of Tenant under the direction and supervision of Landlord, and there will be no abatement of rent.

17.2 Intentionally Omitted.

17.3 Abatement of Rent. Provided the fire or other casualty was not the result of the negligence or willful misconduct of Tenant or Tenant Parties, then Landlord will allow Tenant a fair diminution of rent to the extent the Premises are rendered unusable due to such fire or other casualty and are not used by Tenant. Such abatement will end on the date Landlord substantially completes its restoration obligations. Except as expressly provided to the contrary in this Lease, this Lease will not terminate, and Tenant will not be entitled to damages or to any abatement of rent or other charges, as a result of a fire or other casualty, repair or restoration. Tenant hereby waives the provisions of California Civil Code Sections 1932(2) and 1933(4) which permit termination of a lease upon destruction of Premises, and any other present or future statute that may so permit.

18. CONDEMNATION. If all or substantially all of the Army Base or of the Premises is taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or is sold to the condemning authority in lieu of condemnation, then this Lease will terminate when physical possession is taken by the condemning authority. If a lesser but material portion of the Army Base is thus taken or sold (whether or not the Premises are affected thereby). Landlord may terminate this Lease by notice to Tenant within thirty (30) days after the taking or sale, in which event this Lease will terminate when physical possession of the applicable portion of the Army Base or the Premises is taken by the condemning authority. If the Lease is not terminated, rent payable will be reduced by the amount allocable to any portion of the Premises so taken or sold, and Landlord, at its sole expense, will restore the affected portion to substantially its former condition as far as commercially feasible. However, Landlord need not spend more for such restoration of the Premises than the Premises' allocable share of the net compensation or damages received by Landlord for the part taken. Landlord will be entitled to receive all of the compensation awarded upon a taking of any part or all of the Army Base or Premises, including any award for any unexpired term of this Lease. Tenant may seek an award in separate proceedings for its personal property, trade fixtures and moving expenses.

To the extent that it is inconsistent with the provisions of this Paragraph 17, each party hereto hereby waives the provisions of Section 1265.130 of the California Code of Civil Procedure allowing either party to petition a court to terminate this Lease in the event of a partial taking of the Premises.

19. DEFAULTS AND REMEDIES

19.1 Events of Default. The occurrence of one or more of the following events will constitute an Event of Default hereunder by Tenant:

19.1.1 Tenant fails to make a payment on the date it is due hereunder; or

19.1.2 Tenant fails to comply with any other obligation under this Lease, and the default is not remediable or, if remediable, continues unremedied for a period of ten (10) days

after written notice to Tenant, except that any failure by Tenant to provide access to Landlord or the Army or their agents, representatives, and/or contractors as required herein will be deemed an Event of Default hereunder without further notice or cure period; or

19.1.3 Tenant attempts any Transfer (as defined in Paragraph 20) except as expressly permitted pursuant to Paragraph 20; or

19.1.4 Tenant will do, or permit to be done, anything which creates a lien or stop notice upon the Premises or the Army Base; or

19.1.5 Tenant commits a default under any other agreement with the Landlord and/or City of Oakland whether or not relating to this Lease; or

19.1.6 To the extent permitted by law, in the event Tenant or any Guarantor becomes insolvent, makes a transfer in fraud of creditors or an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, or tiles a petition under any Section or Chapter of the United States Bankruptcy Code or any similar law or statute; or an order for relief is entered with respect to Tenant or any Guarantor in any bankruptcy, reorganization or insolvency proceedings; or a pleading seeking such an order is not discharged or denied within thirty (30) days after its filing; or the taking of any action at the corporate or partnership level by Tenant to authorize any of the foregoing actions on behalf of Tenant; or a receiver or trustee is appointed for all or substantially all assets of Tenant or any guarantor or of the Premises or any of Tenant's property located thereon in any proceedings brought by Tenant or Guarantor, or any receiver or trustee is appointed in any proceeding brought against Tenant or Guarantor and not discharged within thirty (30) days after appointment or Tenant or Guarantor does not contest such appointment, or any part of Tenant's estate under this Lease is taken by process of law in any action against Tenant (but in the event that any provision of this Paragraph is contrary to any applicable law, such provision will be of no force or effect); or

19.1.7 Tenant abandons the Premises; or

19.1.8 Three (3) times within any twelve-month period, Tenant fails to fulfill an obligation under this Lease, even if Tenant thereafter cures such failure within the time provided.

Any notice specified above will serve as, and not be in addition to, any notice required under California Code of Civil Procedure Section 1161 or otherwise regarding unlawful detainer actions.

19.2 Remedies. On an Event of Default, Landlord may terminate this Lease by notice to Tenant, or continue this Lease in full force and effect, and/or perform Tenant's obligations on Tenant's behalf and at Tenant's expense.

19.2.1 If and when this Lease is so terminated, all rights of Tenant and those claiming under it will terminate and Tenant will immediately surrender the Premises to Landlord. In such event, Landlord may recover from Tenant within a reasonable time thereafter:

(a) The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the unamortized principal balance of any suspended rent, moving allowance, legal and other professional fees and other costs incurred by Landlord in connection with the entering into of this Lease, using an amortization schedule equal to the initial term of this Lease and a discount rate of the Prime Rate plus 4% per annum, plus (A) expenses for cleaning, repairing or restoring the Premises; (B) expenses for altering, remodeling or otherwise improving the Premises for the purpose of reletting, including installation of leasehold improvements (whether such installation be funded by a reduction of rent, direct payment or allowance to the succeeding lessee, or otherwise); (C) real estate broker's fees, advertising costs and other expenses of reletting the Premises; (D) costs of carrying the Premises such as taxes and insurance premiums thereon, utilities and security precautions; (E) expenses in retaking possession of the Premises; and (F) attorneys' fees and court costs; plus

(e) Any other amounts in addition to or in lieu thereof that may be permitted by law.

As used in Subsections (a) and (b) above, the "worth at the time of award" is computed by allowing interest at the Prime Rate, plus four percent (4%) per annum (or at the maximum rate permitted by law, whichever is less). As used in Subsection (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

19.2.2 Landlord will have the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach, even if Tenant has abandoned the Premises, and enforce all of Landlord's rights and remedies under this Lease, including the right to recover rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations).

19.2.3 Upon termination of this Lease, Landlord may enter the Premises and dispose of Tenant's property as herein provided, and may perform Tenant's obligations hereunder on Tenant's behalf. Tenant will reimburse Landlord on demand for Landlord's attorneys' fees and other expenses in doing so. This Paragraph 19.2.3 will survive expiration or termination of this Lease.

19.3 Continuing Liability. No repossession, re-entering or reletting of the Premises or any part thereof by Landlord will relieve Tenant or any Guarantor of its liabilities and obligations under this Lease.

19.4 Remedies Cumulative. All rights and remedies of Landlord under this Lease will be non-exclusive of and in addition to any other remedies available to Landlord at law or in equity.

19.5 No Waiver. Landlord's failure to insist on strict compliance with any terms hereof or to exercise any right or remedy, does not waive the same. A receipt by Landlord of any rent whether with or without knowledge of the breach of any covenant or agreement contained in this Lease will not be a waiver of the breach, and no waiver by Landlord of any violation or provision of this Lease will be effective unless expressed in writing and signed by Landlord. Payment by Tenant or receipt by Landlord of a lesser amount than due under this Lease may be applied to such of Tenant's obligations as Landlord elects. No endorsement or statement on any check, and no accompanying letter, will make the same an accord and satisfaction, and Landlord may accept any check or payment without prejudice to Landlord's right to recover the balance of the rent or pursue any other remedy provided in this Lease.

20. ENCUMBRANCES, ASSIGNMENT AND SUBLETTING. Except for a limited right to sublet subject to Landlord's reasonable consent under Paragraph 20.1, and upon the conditions set forth in Paragraph 20.3, Tenant may not voluntarily, involuntarily or by operation of law, assign, transfer, or encumber this Lease or any estate or interest herein, or permit the same to occur, or sublet or grant any right of occupancy for any part of the Premises, or permit such occupancy by any other parties other than Tenant and Tenant's employees, or modify or terminate any agreement providing for any of the foregoing (the foregoing collectively referred to as "***Transfer***," and the other party thereto the "***Transferee***"). The following transactions will also be deemed Transfers: If Tenant is a partnership or limited liability company: (a) the transfer, within a twelve-month period, of fifty percent (50%) or more of the partnership or membership interests; or (b) the dissolution of the partnership or limited liability company without its immediate reconstitution. If Tenant is a corporation: (a) the sale or other transfer, within a twelve-month (12-month) period, of more than an aggregate of fifty percent (50%) of the voting shares of Tenant; or (b) the dissolution, merger, consolidation, or other reorganization of Tenant. With any request for Landlord's consent to any Transfer, Tenant will reimburse Landlord for any out-of-pocket costs (including without limitation attorney and architecture fees and remit to Landlord a Transfer Review Fee of $1,000 to cover Landlord's administrative expenses. Any prohibited Transfer is voidable by Landlord.

20.1 Limited Right to Sublet. Tenant shall have a limited right to sublet a portion of the Premises to subtenants who provide support services for Tenant's trucking customer as set forth in Paragraph 1.3 hereof, so long as: (A) individually, any one (1) sublease does not exceed 25 % of the total Premises. Any sublease must be approved in writing by Landlord, in its reasonable discretion. Without limiting the circumstances in which it may be reasonable for Landlord to withhold its consent to a subletting, Landlord and Tenant acknowledge that it will be reasonable for Landlord to withhold its consent in the following instances:

(i) in Landlord's reasonable judgment, the use of the Premises by the proposed sublessee would involve occupancy for a use other than that use expressly permitted by this Lease, would entail any alterations which would lessen the value of the leasehold improvements in the Premises, or would require increased services by Landlord;

(ii) in Landlord's reasonable judgment, the proposed sublessee does not meet the credit standards applied by Landlord;

(iii) the proposed sublessee (or any of its affiliates) has been in material default under a lease, has been in litigation with a previous landlord, or in the, seven (7) years prior to the sublease has filed for bankruptcy protection, has been the subject of an involuntary bankruptcy, or has been adjudged insolvent;

(iv) Landlord has experienced a previous default by or is in litigation with the proposed sublessee;

(v) in Landlord's reasonable judgment, the Premises, or the relevant part thereof, will be used in a manner that will violate any negative covenant as to use contained in this Lease;

(vi) the use of the Premises by the proposed sublessee will violate any applicable law, ordinance or regulation;

(vii) [INTENTIONALLY OMITTED] ;

(viii) the proposed sublease fails to include all of the terms and provisions required to be included therein pursuant to this Paragraph 20; or

(ix) the Landlord is entitled to withhold consent under the terms of Paragraph 4 of the Addendum to Lease Regarding Hazardous Materials, attached hereto.

20.2 Terms of Consent to Sublease. Consent by Landlord to any sublease will not be a waiver of Landlord's rights as to any subsequent sublease. Any approved sublease will expressly subject to the terms, and conditions of this Lease. If Tenant's obligations under this Lease have been guaranteed by third parties (herein called "***Guarantors***"), the Landlord's consent to the sublease may be conditioned upon Landlord's receipt of the written consent of each Guarantor to such sublease and the terms thereof. In the event of a sublease, each subleasee and all Guarantors will remain fully responsible and liable for all of Tenant's obligations under this Lease, and the subleasee will automatically be jointly and severally liable to the extent of the sublet portion of the Premises. Upon an Event of Default while a sublease is in effect, Landlord may collect directly from the subleasee any sums becoming due to Tenant under the sublease and apply this amount against any sum due Landlord by Tenant, and Tenant authorizes and directs any subleasee to make payment directly to Landlord upon notice from Landlord. No direct collection by Landlord from a subleasee will constitute a novation or release of Tenant or any Guarantor, a consent to the sublease or a waiver of the covenant prohibiting subleases. Landlord, as Tenant's agent, may endorse any check, draft or other instrument payable to Tenant for sums due under a sublease, and apply the proceeds in accordance with this Lease; this agency is coupled with an interest and is irrevocable.

20.3 Request to Sublet; Cancellation. Tenant will provide Landlord with not less than three (3) days prior notice of a proposed sublease. With any request for consent to a sublease, Tenant will submit a copy of the proposed sublease document to Landlord and notify Landlord of the proposed effective date of the sublease, the name of the proposed subleasee

(accompanied by evidence of the nature, character, ownership business, and financial condition of the subleasee and its business), a general description o any proposed alterations and all terms and conditions (including rental) of or relating to the sublease. Landlord may not unreasonably withhold its request for a sublease. Notwithstanding anything to the contrary in this Paragraph, if Tenant enters into any sublease without obtaining the consent of Landlord, Landlord, by notice to Tenant, may terminate this Lease (and, in the case of sublease of less than all of the Premises, Landlord may terminate this Lease in its entirely or may terminate this Lease as to all or any portion of the Premises proposed to be sublet), as to the proposed effective date of the sublease as if that were the original Lease Expiration Date (or immediately, if Tenant enters into the sublease without obtaining the consent o Landlord). If Landlord so elects to terminate, Landlord will have the right to relet (or not relet) the Premises (or the portion of the Premises as to which this Lease is terminate pursuant to Landlord's election as a result of a partial sublease) or any portion thereof to anyone (including the proposed subleasee) on any terms, and Tenant will not be entitled any portion of any profit Landlord may realize as a result of any such reletting. If this Lease is terminated as to a portion of the Premises as a result of the foregoing, then Base Rent Tenant's Share of Operating Expenses, Tenant's parking rights (if any), and any other provisions hereof based upon the rentable area of the Premises will be reduced by the amount allocable to such portion of the Premises so terminated. If Landlord does not terminate the Lease as provided herein, then Landlord will grant or deny its consent to the proposed sublease within thirty (30) days following submission of Tenant's request accompanied by the information required herein and the transfer review fee.

20.4 Intentionally Omitted.

20.5 Landlord Remedies. In the event that Tenant effects a Transfer without Landlord's consent as required herein, then in addition to the remedies set forth in Paragraph 20 herein or otherwise available to Landlord by law or in equity, Landlord may adjust the Base Rent payable hereunder to the then fair market rent, such change to be effective as the date of such Transfer.

21. NON-DISCRIMINATION. During the Term of this Lease, Tenant will not discriminate against any person or persons or exclude them from participation in the Tenant's operations, programs or activities conducted on the Premises, because of race, color, religion, sex sexual orientation, age, disability, marital status or national origin. The Tenant will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 200D); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and any other applicable law prohibiting discrimination on any basis.

22. ESTOPPEL CERTIFICATE. Upon Landlord's written request from time to time, Tenant will execute and deliver to Landlord, within ten (10) days after Tenant's receipt of Landlord's written request, certificates certifying: (i) the date of commencement of this Lease and the Lease Expiration Date; (ii) the fact that this Lease is unmodified (except as the certificate specifies) and in full force and effect; (iii) the date to which the sums payable under this Lease have been paid; (iv) that there are no current defaults under this Lease by either Landlord or Tenant except as specified; and (v) such other true and correct matters as Landlord requests. Failure to so execute and deliver said certificate will be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord,

(ii) that there are no uncured defaults in Landlord's performance, and (iii) that no more than one (1) month's rental has been paid in advance; and Tenant irrevocably authorizes Landlord, as Tenant's attorney-in-fact and in Tenant's name, to so execute and deliver said certificate.

23. SIGNS. Tenant will not place, maintain, or permit any sign, awning, canopy, marquee, or other advertising at the Premises or on the Army Base without the prior written consent of Landlord in Landlord's sole discretion and in compliance with all applicable laws and ordinances. Without limiting the generality of the foregoing, Tenant may not place any signage in any Common Area or along Maritime Avenue. Tenant will maintain its signage in good appearance and repair at all times during this Lease. If at the end of the Term, its signage is not removed from the Premises by Tenant, it may, without damage or liability, be removed and disposed of by Landlord at Tenant's expense.

24. SURRENDER OF PREMISES. Preceding the expiration or termination of this Lease, a close out report will be prepared by the Landlord in coordination with Tenant and will constitute the basis for settlement by Landlord and Tenant for any of the Premises shown to be lost, damaged, contaminated or destroyed by action of Tenant and/or Tenant Parties or otherwise caused as a result of Tenants' use of the Premises, during the Term of this Lease and will constitute the basis for determining any and all environmental restoration requirements to be completed by Tenant. As soon as its right to possession ends, Tenant will surrender the Premises to Landlord free of all subtenants and other occupants, with all Tenant's personal property removed and in the condition set forth in Exhibit J. Tenant will concurrently deliver to Landlord all keys to the Premises. If possession is not immediately surrendered by Tenant, Landlord may enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof and any and all property.

24.1 Holding Over. If Tenant does not surrender the Premises as required and holds over after its right to possession ends, Tenant will become a tenant at sufferance only, at a monthly rental rate equal to two hundred percent (200%) of the total rent payable in the last prior full month, or the then existing fair market rental, whichever is greater, without renewal, extension or expansion rights, and otherwise subject to the terms, covenants and conditions herein specified, so far as applicable. Nothing other than a fully executed written agreement of the parties creates any other relationship. Tenant is liable for Landlord's loss, costs and damage from such holding over, including, without limitation, those from Landlord's delay in delivering possession to other parties. These provisions are in addition to other rights of Landlord hereunder and as provided by law.

25. PROFESSIONAL FEES. Landlord will be entitled to reasonable attorneys' fees and all other costs and expenses incurred in the preparation and service of notices of Tenant's default and consultations in connection therewith. In any dispute between the parties (whether or not litigated) arising hereunder or out of Tenant's use or occupancy of the Premises or this Lease, the prevailing party's reasonable costs and expenses (including fees of attorneys and experts) will be paid or reimbursed by the unsuccessful party.

26. GENERAL PROVISIONS.

26.1 Delivery of Mail. Tenant acknowledges that door-to-door delivery of mail by the U.S. Postal Service is not available. Tenant will establish either an alternate offsite address or an offsite post office box. Within 15 days from the Lease Commencement Date, Tenant will notify the Landlord in writing of the address it will be initially using for delivery of mail to the Premises. In addition, Tenant further acknowledges that delivery by private overnight delivery services (i.e. Federal Express, DHL, UPS, etc.) may not be available. Tenant may contact such delivery services to ascertain their policy for delivery to the Premises.

26.2 Transfer of Landlord's Interest. Landlord may transfer, assign or convey any or all of its interest in the Army Base and/or its rights under this Lease. Upon transfer of its rights under this Lease, Landlord is freed and relieved of all then future obligations under this Lease, the transferee will be deemed to have assumed those obligations, and Tenant will look solely to the successor to Landlord. This Lease will inure to the benefit of and bind all parties hereto and their respective successors and assigns.

26.3 Historical Artifacts. The Tenant will not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered in, on, under, or upon the Premises, the Tenant will immediately notify the Landlord and protect the site and the material from further disturbance until the Landlord gives clearance to proceed.

26.4 Seismic Notification. The Premises are constructed on artificial fill and are located in an active seismic area. Structures may be subject to seismic damage.

26.5 Soil and Water Conservation. The Tenant will maintain, in a manner satisfactory to Landlord, all soil and water conservation structures that may be in existence upon the Premises at the beginning of the Term or that may be constructed by the Tenant or Landlord during the Term of this Lease. The Tenant will take appropriate measures to prevent or control soil erosion within the Premises. Any soil erosion resulting from the activities of the Tenant will be corrected by the Tenant.

26.6 Officials Not To Benefit. No member of or delegate to Congress will be admitted to any share or part of this Lease or to any benefits to arise therefrom. However, nothing contained in this Paragraph will be construed to extend to any incorporated company if this Lease is for the general benefit of such corporation or company.

26.7 Interpretation of Lease. Tenant acquires no rights by implication from this Lease, and is not a beneficiary of any past, current or future agreements between Landlord and third parties. Surrender or cancellation of this Lease will not work a merger, and will, at Landlord's option, assign to it all subleases or subtenancies. The delivery of keys to Landlord or Landlord's managing agent is not a termination of this Lease or a surrender of the Premises. Headings in this Lease are for convenience only, and do not affect the meaning of the text. Unless context indicates otherwise, words of any gender or grammatical number include all genders and numbers. Where context conflicts with the definition of any term, context will control, but only for that use and related uses. If any provision of this Lease or any application

thereof is invalid, void or illegal, no other provision or application will be affected. Time is of the essence of every provision of this Lease. California law governs this Lease. Neither party may record this Lease or a copy or memorandum thereof. Submission of this Lease to Tenant is not an offer, and Tenant will have no rights hereunder until each party executes a counterpart and delivers it to the other party.

26.8 Limitation on Liability. Landlord's rights hereunder are solely for Landlord's benefit, and Landlord has no duty to exercise them for the benefit of Tenant or others. Any liability of Landlord to Tenant under this Lease, or arising from the relationship under it, is limited to $250,000. Landlord and Landlord's employees, officers, directors, shareholders, partners and agents will not be personally liable for any deficiency.

26.9 Easements and Other Rights. Tenant acknowledges that the Lease is subject to all existing easements and rights-of-way for location of roadways, utilities and any type of facility over, across, in, under and upon the Premises or any portion thereof. Tenant further acknowledges that Landlord may grant such additional easements and rights-of-way over, across, in, under and upon the Premises as it will determine to be in the public interest; provided that any such additional easement or right-of-way will not unreasonably interfere with the access to, and the use and possession of, the Premises by Tenant. This Lease does not include any mineral rights.

26.10 Ingress and Egress. As required under the Lease, Tenant agrees to adhere to all base rules and regulations regarding Army Base security, ingress, egress, fire, health and safety and sanitation as may be prescribed from time to time by Landlord, with the understanding that such base rules and regulations regarding Army Base security, ingress, egress, safety and sanitation will not, except for security and emergency situations, unreasonably interfere with reasonable use and access of Tenant in the normal activities and uses permitted under the Lease. Such rules and regulations may include, but are not limited to, the number of persons on site, usable traffic routes, vehicle size and type, parking location and duration, hours of operation, and relocation or installation of fencing.

26.11 Quiet Enjoyment. If Tenant pays all sums and performs all its other obligations under this Lease, Tenant will and may peaceably and quietly have, hold and enjoy the Premises. subject to this Lease and to rights to which the Lease is subordinate. Tenant acknowledges that it may be subject to inconveniences and disturbance arising from the development and environmental investigation and remediation of the Army Base, such as entry detours, construction, and additional noise, dust and vibrations.

26.12 Payments and Notices. Any notice required or permitted to be given under this Lease will be in writing and (i) personally delivered, (ii) sent by United States mail, registered or certified mail, postage prepaid, return receipt requested, (iii) sent by Federal Express or similar nationally recognized overnight courier service, or (iv) transmitted by facsimile with a hard copy sent within one (1) business day by any of the foregoing means, and such notice will be deemed to have been given upon the date of actual receipt or delivery (or refusal to accept delivery) at the address specified in the Basic Provisions (or such other addresses as may be specified by notice in the foregoing manner) as indicated on the return receipt or air bill. Tenant hereby appoints as its agent, to receive the service of all dispossessory or distraint proceedings and notices

thereunder, the person in charge of or occupying the Premises at the time, and, if no person will be in charge of or occupying the same, then such service may be made by attaching the same to the main entrance of the Premises.

26.13 Invoices. Tenant will promptly notify Landlord of any dispute it may have regarding Landlord's invoices. If Tenant does not notify Landlord within ten (10) days after receiving the invoice, Tenant will be conclusively deemed to have agreed to the invoice and all underlying facts.

26.14 Negotiated Transaction. The parties mutually acknowledge that this Lease has been negotiated at arm's length. The provisions of this Lease will be deemed to have been drafted by all of the parties and this Lease will not be interpreted or constructed against any party solely by virtue of the fact that such party or its counsel was responsible for its preparation.

27. WAIVERS AND ACKNOWLEDGEMENTS.

27.1 Waiver of Jury Trial. ***Each party, on behalf of itself, its employees, contractors, agents, successors and assigns, hereby waives any right to a trial by jury with respect to any dispute arising under this Lease or in connection with Tenant's use, possession or occupancy of the Premises or Landlord's and/or Army's exercise of its rights and the fulfillment of its obligations herein. Each party acknowledges that it has had the opportunity to consult with counsel with respect to the meaning and significance of this Paragraph.***

Landlord's Initials: _____ *Tenant's Initials:* _____ *Tenant's Initials:* _____

27.2 No Commitment for Future Conveyance or Relocation Assistance. ***Tenant understands and acknowledges that this Lease is not and does not constitute a commitment by Landlord to any renewals or extension of the use or occupancy authorized herein for a term beyond that provided in the Basic Provisions of this Lease or to any future reuse or disposal, and this Lease does not create any right or expectation for Tenant to acquire the Premises, in whole or in part, nor any obligation by the Landlord to assist Tenant, monetarily or otherwise, with moving, locating substitute space, or otherwise relocating or discontinuing its operations at the Army Base on or before the Term Expiration Date.***

Tenant's Initials: _____

Tenant's Initials: _____

27.3 **Acceptance in AS-IS Condition.** ***Tenant understand and acknowledges that Tenant is fully familiar with the condition of the Premises and the Army Base, that the Premises are being accepted by Tenant in their current condition, "AS-IS" and "WITH ALL FAULTS" and, as such, Landlord makes no warranty concerning the state of repair or physical condition of the Premises, the Building or the Army Base or as to the Premises' usability generally or as to its fitness for any particular purpose, including the use identified in the Basic Provisions. Tenant understands and acknowledges that Landlord has made no commitment to alter, remodel, repair or improve the Premises and no representation respecting the condition of the Premises or the Army Base.***

Tenant's Initials: _____

Tenant's Initials: _____

27.4 ***Right of Entry. Tenant understands and acknowledges the Army's right-of access under the Oakland Army Base Quitclaim Deed specifically provides the right for Army, its officials, agents, employees, contractors and subcontractors to enter, upon reasonable notice, the Premises and Common Areas for the purposes of performing environmental investigation, remediation or other corrective actions of environmental conditions. Tenant acknowledges and consents to DTSC's right-of-access under the Covenant to Restrict Use of Property to the Army Base, including the Premises and Common Areas, to perform inspections, monitoring and other activities consistent with the CR UP or as otherwise deemed necessary by DTSC.***

Tenant's Initials: _____

Tenant's Initials: _____

THIS LEASE CONTAINS ALL AGREEMENTS OF THE PARTIES CONCERNING THIS SUBJECT MATTER, SUPERSEDING ANY SUCH PRIOR AGREEMENTS, REPRESENTATIONS OR WARRANTIES, AND MAY BE AMENDED OR MODIFIED ONLY BY A WRITTEN AGREEMENT SIGNED BY BOTH PARTIES.

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IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first above written.

LANDLORD:

CITY OF OAKLAND,
a municipal corporation

By: _____ for
Deanna J. Santana
City Administrator

Date: 8/26/13

Approved as to Form:

_____
Counsel to the City

Tenant and the persons executing this Lease on Tenant's behalf represent and warrant that they are duly authorized and empowered so to execute and deliver this Lease, and that this Lease is binding upon Tenant in accordance with its terms.

TENANT:

OAKLAND MARITIME SUPPORT SERVICES, INC.

By: _____
(signature)
Bill Aboudi
(print name)

Its: President
(insert title)

Date: 8/26/13

EXHIBIT A

LEASE
DEFINITIONS

In addition to the definitions set forth in the Lease, the following capitalized terms are defined below for the purposes of this Lease.

"***Army***" means the Secretary of the Department of the Army of the United States of America.

"***Army Base***" means the Oakland Army Base.

"***CEQA***" means the California Environmental Quality Act, as may be amended from time to time.

"***City***" means the City of Oakland.

"***Common Area***" or "***Common Areas***" means all areas outside the Premises and within the exterior boundary of the Army Base that are provided and designated by Landlord for the general non-exclusive use of Landlord, Tenant and other tenants of the Army Base and their respective employees, suppliers, shippers, customers, contractors, and invitees, including, but not limited to, parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways and landscaped areas.

"***Conveyance Date***" means the date the title to the Army Base was transferred by the Redevelopment Agency of the City of Oakland to the City of Oakland.

"***Covenant to Restrict Use of Property***" means the agreement between Landlord and the State of California, Department of Toxic Substances Control, which restricts or prohibit various specified uses of the property at the Army Base, including the Premises. The Covenant to Restrict Use of Property (or "CRUP") is attached to the DTSC Consent Agreement as Exhibit D and is attached hereto as Exhibit D to the Lease.

"***DTSC Consent Agreement***" means the Consent Agreement entered on September 27. 2002 between the State of California. Department of Toxic Substances Control for the purpose of imposing environmental restrictions on the use of the Army Base property, including the Premises, to protect human health and the environment and to require the remediation of hazardous substances present on the Army Base property in accordance with the Oakland Army Base Remedial Action Plan (RAP) and Risk Management Plan (RMP).

"***EBS***" means the Environmental Baseline Survey prepared by the Army.

"***FEBST***" the Final Environmental Baseline Survey for Transfer prepared by the Army.

"***FOSET***" means the Oakland Army Base environmental remediation program to remediate the hazardous materials, conditions and waste on the Army Base.

"***Prime Rate***" means the rate of interest published in the "Money Rates" column of Wall Street Journal as the Prime Rate, as such rate may change from time to time (or, if such rate is no longer published in the Wall Street Journal, such reasonable substitute as Landlord may select).

"***RAP/RMP***" means the Oakland Army Base Remedial Action Plan (RAP) and Risk Management Plan (RMP) approved by the State of California, Department of Toxic Substances Control on September 26, 2002, which set forth the remedies for the clean up and removal of hazardous materials present on the Army Base property or which may subsequently discovered on the base property and which impose certain restrictions on the use of the base property.

"***RAP/RMP Work Plan***" means the environmental remediation work plan, approved by the State of California, which sets forth a schedule for the remediation of hazardous substances at the Army Base, which may include the Premises.

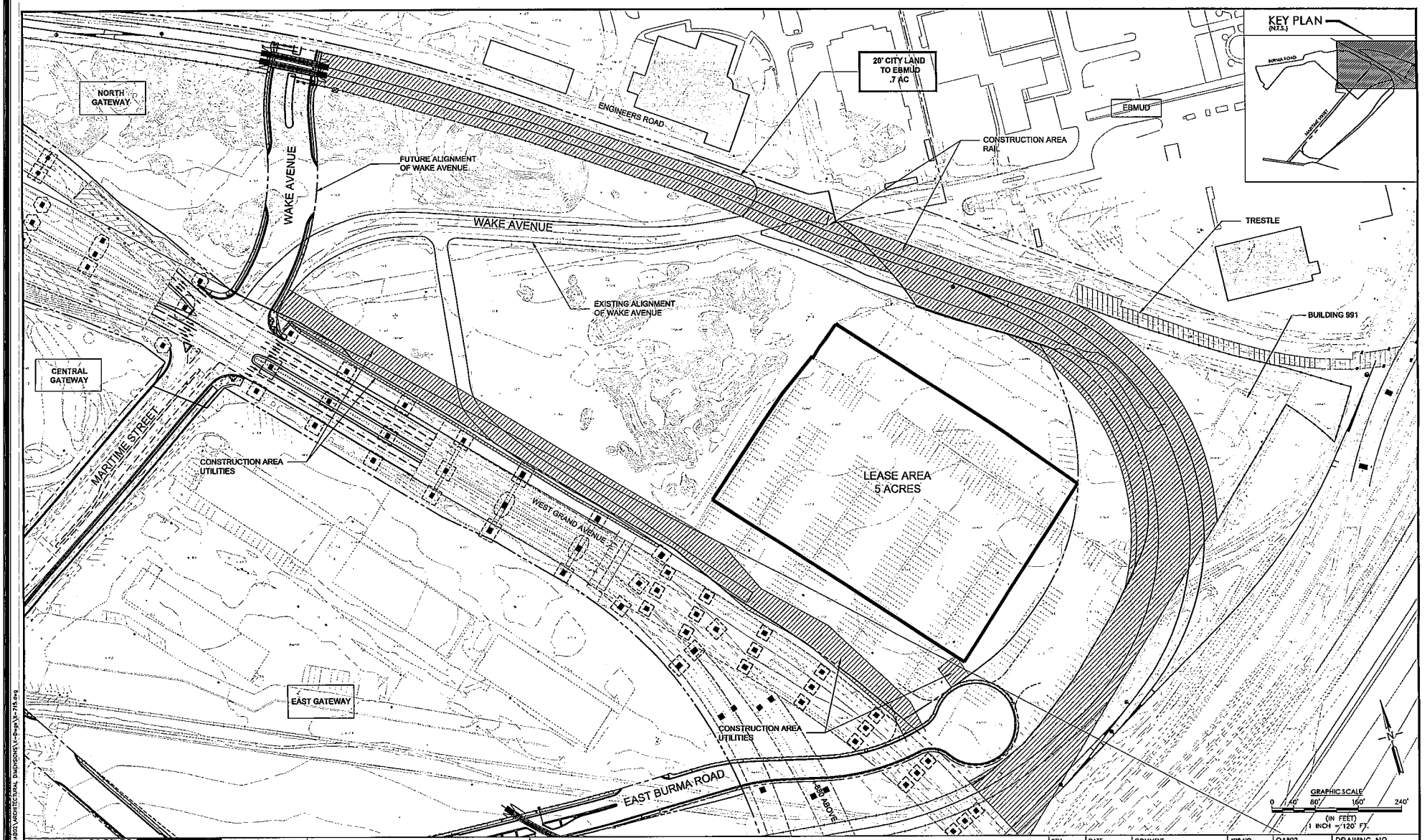
"***Rent Adjustment***" means a credit against base rent resulting by Landlord's entry on to the Premises and the performance of environmental remediation activities that substantially interfere with Tenant's use of the Premises. The credit will be based on the amount of square feet of the Premises affected and the number of days for which such substantial interference occurs.

"***Real Property Taxes***" means any form of general or special assessment, license fee, license tax, business license fee, any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond, levy or tax (other than inheritance, personal income or estate taxes) imposed on the Army Base or any portion thereof by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, sanitary, fire, street, drainage or other improvement district, or any other governmental entity or public corporation, as against (a) any legal or equitable interest of Landlord in the Army Base or any portion thereof, (b) Landlord's right to rent or other income therefrom, (c) the square footage thereof, (d) the act of entering into any lease, (e) the occupancy of tenant or tenants generally, or (f) Landlord's business. The term "real property taxes" will also include any tax, fee, levy, assessment or charge including, without limitation, any so-called value added tax, (i) which is in the nature of, in substitution for or in addition to any tax, fee, levy, assessment or charge hereinbefore included within the definition of "real property taxes," (ii) which is imposed for a service or right not charged for prior to June 1, 1978, or if previously charged for, which has been increased since June 1, 1978, (iii) which is imposed or added to any tax or charge hereinbefore included within the definition of real property taxes as a result of a "change in ownership" of the Property or any portion thereof, as defined by applicable statutes and regulations, for property tax purposes, or (iv) which is imposed by reason of this transaction, any modification or change hereto or any transfer hereof.

"***Tenant Parties***" means Tenant and its affiliates, volunteers, employees, contractors, suppliers, agents, representatives, invitees, and sublessees.

"***Year***" or "***year***" means a calendar year.

EXHIBIT B



OAKLAND GLOBAL

"one vision, one team, one project"

ARCHITECTURAL DIMENSIONS

ARCHITECTURAL DIMENSIONS
JAMES HERBRONNER
510-463-8300
300 FRANK H. OGAWA PLAZA, SUITE 375
OAKLAND, CA 94612

PROJECT INFO.

EXHIBIT B
OMSS LEASE AREA - NORTH GATEWAY
CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

CAT. NO	AD-0337.08
INV. NO.	25969

REV	DATE	COMMENT

JOB NO.	OA802
SCALE:	1" = 80'
DATE:	8/27/2013
DRAWN BY:	K. ROSSO
CHECKED BY:	K. ROSSO

DRAWING NO.
X-715
SHEET 1 OF 1

Tenant Initials: 8/27/13

EXHIBIT C

LIST OF HAZARDOUS MATERIALS

ADDENDUM TO LEASE
REGARDING HAZARDOUS MATERIALS

This Addendum is made and entered into by and between City of Oakland, as Landlord, and Oakland Maritime Support Services, Inc., as Tenant, and is dated as of the date set forth on the first page of the Lease between Landlord and Tenant to which this Addendum is attached (the "***Lease***"). The promises, covenants, agreements and declarations made and set forth herein are intended to and will have the same force and effect as if set forth at length in the body of the Lease. To the extent that the provisions of this Addendum are inconsistent with the terms and conditions of the Lease, the terms of this Addendum will control.

1. **Use Restrictions**. Use Restrictions. Tenant will not use, generate, manufacture, produce, store, release, discharge or dispose of, on, under or about the Premises, or transport to or from the Premises, any Hazardous Materials or allow its employees, agents, contractors, invitees or any other person or entity to do so except in full compliance with all federal, state and local laws, regulations and ordinances and this Agreement. Without limiting the foregoing, Tenant will be responsible for determining the need for and obtaining, at its cost and expense within 60 days from the execution of this 15th Amendment, any environmental permits, plans or approvals required for its operations under this Lease and for the Premises, including, but not limited to Hazardous Materials Business Plans, Storm Water Pollution Prevention Plans, Spill Response Plans, Air Pollution Control Permits, Waste Discharge Requirements and NPDES Permits. Tenant will not discharge waste or effluent from the Premises, nor allow storm water runoff, in a manner that will contaminate streams or other bodies of water or otherwise become a public nuisance, or that will violate any local, state, or federal law pertaining to the discharge of pollutants or Hazardous Materials into streams or bodies of water. Tenant will submit an application to the provider for discharging same to the sanitary sewer system and it will comply with all applicable laws, regulations, standards, or other requirements. Tenant will maintain the Premises so that no sediments, litter, debris or other waste material enters the storm drain system. Tenant will obtain approval in writing from Landlord before using any pesticides or herbicides at, on or upon the Premises. Only U.S. EPA and California EPA approved pesticides are authorized and application must be in accordance with the manufacturer's instructions. Empty containers or unused pesticides or other hazardous wastes must be disposed of off the Army Base in accordance with U.S. EPA and California EPA disposal standards. Tenant must submit to Landlord documentation of its compliance with the entirety of this section of the Addendum To Lease Regarding Hazardous Materials, including, but not limited to all environmental permits, plans and/or approvals required for its operations, within 60 days from the date of execution of the 15th Amendment. Determination of compliance with this section will be made by Landlord in its sole and absolute discretion. Tenant's failure to comply with this section or to submit documentation of compliance is a material breach of this Lease and is subject to all remedies under this Lease, including termination.

2. The term "***Hazardous Materials***" will include without limitation: (1) Those substances included within the definitions of "***hazardous substances***", "***hazardous materials***", "***toxic substances***" or "***solid waste***" under CERCLA, RCRA and the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, *et seq.*, and in the regulations promulgated pursuant to said Laws; (2) Those substances defined as "***hazardous wastes***" in Section 25117 of

the California Health & Safety Code, or as "***hazardous substances***" in Section 25316 of the California Health & Safety Code, and in the regulations promulgated pursuant to said Laws; (3) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or designated by the Environmental Protection Agency (or any successor agency) as hazardous substances; (4) Such other substances, materials and wastes which are or become regulated under applicable local, state or federal Law or the United States government, or which are or become classified as hazardous or toxic under federal, state or local Laws or regulations; and (5) Any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a "***hazardous substance***" pursuant to Section 311 of the Clean Water Act of 1977, 33 U.S.C. Sections 1251, *et seq.* (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. Section 1317), (v) flammable explosives, or (vi) radioactive materials. Army Base accumulation points of hazardous and other waste facilities will not be used by Tenant. Tenant will not permit its hazardous wastes to be commingled with the hazardous waste of Landlord. Tenant will not construct or permit to be constructed any well within the boundary of the Premises, and will not extract, use, consume, or permit to be extracted, any groundwater below the surface of the Leased Property for any use unless prior written approval is obtained from the Landlord, California Environmental Protection Agency, Regional Water Quality Control Board RWQCB and U.S. EPA. In case such approval is obtained, the Tenant and Tenant's permitted sublessees will be solely responsible for any costs and expenses associated with obtaining use of such water, including but not limited to, the costs of permits, studies, analysis or remediation and Landlord will bear no cost whatsoever. Tenant acknowledges that Landlord may impose any additional environmental protection conditions and/or restrictions during the term of the Lease that it deems necessary by providing written notice to Tenant of such conditions and/or restrictions to the Lease. Tenant further acknowledges that as part of the NPDES requirements it may be required to file a Notice of Intent (NOI) with the San Francisco Bay Regional Water Quality Board for general permit coverage and to follow all requirements of the general permit, under the National Storm Water Program.

3. Tenant's Indemnity. Tenant will be liable to Landlord for and will indemnify, defend and hold and save Landlord and its Board members, employees, officers, partners and agents harmless from and against all suits, costs, expenses (including, without limitation, attorneys' and expert witness' fees), demands, actions, damages (including, without limitation, investigation and remedial costs), liabilities, losses (including diminution of value of the Premises), fines, penalties, fees, claims and judgments arising out of Tenant's and Tenant's agents' activities associated with Hazardous Materials, including all costs and expenses incurred by Landlord in remediating, cleaning up, investigating or responding to any governmental or third party claims, demands, orders or enforcement actions. In the event Tenant and/or Tenant's agents' activities with Hazardous Materials create a contamination problem on or adjacent to the Premises or the Army Base, Tenant will promptly commence investigation and remedial activities to fully clean up the problem. If appropriate or required by law, these activities will be conducted in conjunction with federal, state and local oversight and approvals. If any action of any kind is required or requested to be taken by any governmental authority to clean up, remove remediate or monitor any Hazardous Materials (the presence of which is the result of the acts or omissions of Tenant or its agents) and such action is not completed prior to the expiration or earlier termination of the Lease, Tenant will be deemed to have impermissibly held over until such time as such required action is completed, and Landlord will be entitled to all damages

directly or indirectly incurred in connection with such holding over, including, without limitation, damages occasioned by the inability to re-let the Premises or a reduction of the fair market and/or rental value of the Premises. If any proceeding is brought against Landlord covered by the indemnity provided under this Paragraph, the Tenant will engage counsel selected by Landlord to defend the Landlord at the Tenant's sole cost and expense. All such costs and expenses, including attorneys' and expert witness' fees and court costs, will be a demand obligation owing by the Tenant to the Landlord. The Tenant's obligations under this Paragraph will survive the termination or expiration of this Lease. The indemnification provisions in this Paragraph are independent of the Tenant' insurance obligations under the Lease, and Tenant's obligation to indemnify will not be limited or modified by Tenant's insurance coverage or obligations under the Lease.

4. Subletting. It will not be unreasonable for Landlord to withhold its consent to any proposed subletting if (i) the proposed subtenant's anticipated use of the Premises involves the storage, generation, discharge, transport, use or disposal of any Hazardous Material in a greater intensity and scope than Tenant's permitted use, or (ii) the proposed subtenant has been required by any prior landlord or governmental authority to "clean-up" or remediate any Hazardous Material and has failed to do so, or (iii) the proposed subtenant is subject to a criminal investigation or enforcement order or proceeding by any government authority in connection with the use, generation, discharge, transport, disposal or storage of any Hazardous Material.

5. List of Hazardous Materials. Upon request of Landlord, Tenant will provide Landlord with a list of Hazardous Materials (and the quantities thereof) which Tenant uses or stores (or intends to use or store) on the Premises, which list will be attached to this Lease as **Exhibit G**.

(a) Prior to Tenant using, handling, transporting or storing any Hazardous Material at or about the Premises, Tenant will submit to Landlord a Hazardous Materials Management Plan ("**HMMP**") for Landlord's review and approval, which approval will not be unreasonably withheld. The HMMP will describe: (aa) the quantities of each material to be used, (bb) the purpose for which each material is to be used, (cc) the method of storage of each material, (dd) the method of transporting each material to and from the Premises and within the Premises (ee) the methods Tenant will employ to monitor the use of the material and to detect any leaks or potential hazards, and (ff) any other information any department of any governmental entity (city, state or federal) requires prior to the issuance of any required permit for the Premises or during Tenant's occupancy of the Premises. Landlord may, but will have no obligation to review and approve the foregoing information and HMMP, and such review and approval or failure to review and approve will not act as an estoppel or otherwise waive Landlord's rights under this Lease or relieve Tenant of its obligations under this Lease. If Landlord determines in good faith by inspection of the Premises or review of the HMMP that the methods in use or described by Tenant are not adequate in Landlord's good faith judgment to prevent or eliminate the existence of environmental hazards, then Tenant will not use, handle, transport, or store such Hazardous Materials at or about the Premises unless and until such methods are approved by Landlord in good faith and added to an approved HMMP. Once approved by Landlord, Tenant will strictly comply with the HMMP and will not change its use, operations or procedures with respect to Hazardous Materials without submitting an amended HMMP for Landlord's review and approval as provided above.

(b) Tenant will pay to Landlord when Tenant submits an HMMP (or amended HMMP) the amount reasonably determined by Landlord to cover all Landlord's costs and expenses reasonably incurred in connection with Landlord's review of the HMMP which costs and expenses will include, among other things, all reasonable out-of-pocket fees of attorneys, architects, or other consultants incurred by Landlord in connection with Landlord's review of the HMMP, but in no event shall Tenant be liable for any actual costs above $10,000. Landlord will have no obligation to consider a request for consent to a proposed HMMP unless and until Tenant has paid all such costs and expenses to Landlord irrespective of whether Landlord consent to such proposed HMMP. Tenant will pay to Landlord on demand the excess, if any, of such costs and expenses actually incurred by Landlord over the amount of such costs and expenses actually paid by Tenant over the amount such costs and expenses actually incurred by Landlord. Tenant will immediately notify Landlord or any inquiry, test, investigation, enforcement proceeding by or against Tenant or the Premises concerning any Hazardous Material. Any remediation plan prepared by or on behalf of Tenant must be submitted to Landlord prior to conducting any work pursuant to such plan and prior to submittal to any applicable government authority and will be subject to Landlord's consent. Tenant acknowledges that Landlord, at its election, will have the sole right to negotiate, defend, approve and appeal any action taken or order issued with regard to any Hazardous Material by any applicable governmental authority. Landlord will have the right to appoint a consultant to conduct an investigation to determine whether any Hazardous Material is being used, generated, discharged, transported to or from, stored or disposed of in, on, over, through, or about the Premises, in an appropriate and lawful manner and in compliance with the requirements of this Lease. Tenant, at its expense, will comply with all reasonable recommendations of the consultant required to conform Tenant's use, storage or disposal of Hazardous Materials to the requirements of applicable Law or to fulfill the obligations of Tenant hereunder.

6. Provisions Survive Termination. Upon the expiration or earlier termination of the Lease, Tenant, at its sole cost, will remove all Hazardous Materials from the Premises that Tenant or its agents introduced to the Premises. The provisions of this Paragraph will survive the expiration or termination of this Lease.

Exhibit D

EXHIBIT D

NOTIFICATION OF THE RESTRICTIONS ON USE OF PROPERTY

A release of hazardous substances has come to be located on or beneath some portions of the property known as the former Oakland Army Base. A summary of the releases is contained in Exhibit E of this Lease.

The following land use restrictions apply to the property known as the former Oakland Army Base.

(a) Sensitive land uses, including, but not limited to, residential housing, schools, day-care facilities, hospitals, and hospices are prohibited.

(b) The construction of groundwater wells and extraction of groundwater from new and existing wells for all purposes are prohibited unless specifically approved by DTSC.

(c) Activities that disturb surface or subsurface soil, disturb existing soil covers, disturb or restrict access to groundwater monitoring wells, generate water in excavations, extract groundwater from excavations, or alter groundwater conditions are prohibited except as conducted pursuant to the RAP and RMP.

(d) The Owner and Occupants are required to comply with the RAP and RMP, including the provisions for soil and groundwater management, maintenance of existing cover or construction of new cover, mitigation measures during earthwork, management of below grade structures, and construction dewatering.

RECORDING REQUESTED BY:
City of Oakland

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Sacramento Regional Office
8800 Cal Center Drive
Sacramento, California 95826-3268
Attn: Anthony J. Landis, P.E.
Chief, Northern California Operations
Office of Military Facilities

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Former Oakland Army Base
Oakland, California

This Covenant to Restrict Use of Property ("Covenant") is made by and between the Oakland Base Reuse Authority and the City of Oakland by and through the Oakland Redevelopment Agency, collectively herein referred to as the "City or Covenantor," the current owner of property situated in Oakland, County of Alameda, State of California, described in Exhibit A, which is attached and incorporated here by this reference ("Property"), and the State of California, Department of Toxic Substances Control ("DTSC"). Pursuant to California Civil Code ("Civil Code") section 1471(a)(3), DTSC has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials, as defined in California Health and Safety Code ("Health and Safety Code") section 25260. The Covenantor and DTSC, collectively referred to as the "Parties," hereby agree that in accordance with Civil Code section 1471 and Health and Safety Code sections 25222.1 and 25355.5 that the use of the Property be restricted as set forth in this Covenant to protect human health, safety, and the environment and that this Covenant shall run with the land.

ARTICLE I
STATEMENT OF FACTS

1.01 The Property, totaling 363.5 acres, is more particularly described and depicted in Exhibit A. Exhibit A contains the Property map in seven sheets showing the Property boundary and the legal description in seventeen pages. The Property is located in a developed area of the former Oakland Army Base, in the City of Oakland, County of Alameda, State of California.

1.02 The Covenantor and DTSC entered into a Consent Agreement on September 27, 2002, and subsequently by agreement modified the Consent Agreement to include new signatories and other modifications. The Consent Agreement was resigned by all signatories on May 16, 2003. The Consent Agreement establishes the process and timetable for the completion of the response and corrective actions at specified portions of the Property. The Consent Agreement is on file with DTSC and the Covenantor.

1.03 As described in the Consent Agreement, the soil and groundwater at the Property are known to be contaminated with hazardous substances, as defined in Health and Safety Code section 25316, which include, but are not limited to, the following general contaminants of concern: metals, volatile organic compound, semi-volatile organic compounds, polynuclear aromatic hydrocarbons, polychlorinated biphenyls, and petroleum hydrocarbons. Several of these hazardous substances are carcinogens. The Property has not been fully characterized with respect to nature and extent, and risk resulting from the presence of these contaminants.

Based on preliminary analyses, DTSC has concluded that use of the Property in a manner inconsistent with the restrictions set forth in Article IV of this Covenant may entail an unacceptable health risk to the users or occupants of such property operated or occupied. DTSC has further concluded that the Property operated or occupied subject to the restrictions of this Covenant and subject to the restrictions and requirements set forth in the final Remedial Action Plan (RAP) dated September 27, 2002 and accompanying Risk Management Plan (RMP) dated September 27, 2002 which the Covenantor must implement pursuant to the Consent Agreement, does not present an unacceptable threat to human safety or the environment.

The RAP describes contamination in various locations throughout the base that is known to be significant, and describes means by which such contamination will be remediated. The RMP, which covers the entire Property, is a component of the remedies selected in the RAP. The RMP serves two purposes. The first is to determine and implement presumptive style remedies for locations with standard contaminant profiles and site conditions. These remedies apply to both known and as yet unidentified contaminated locations (RMP locations). It also contains a mechanism to elevate RMP locations to RAP sites if warranted. The second purpose of the RMP is to serve as an institutional control that establishes site identification and risk management protocols.

ARTICLE II
DEFINITIONS

2.01 Covenantor. "Covenantor" shall mean the Oakland Base Reuse Authority and the City of Oakland by and through the Oakland Redevelopment Agency.

2.02 DTSC. "DTSC" means the State of California, Department of Toxic Substances Control and includes its successor agencies, if any.

2.03 Occupant. "Occupant" shall mean any person or entity entitled by leasehold or other legal relationship to the right to occupy any portion of the Property.

2.04 Owner. "Owner" means the Covenantor and shall include the Covenantor's successors in interest, and their successors in interest, including heirs and assigns, during their ownership of all or any portion of the Property.

ARTICLE III
GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively, "Environmental Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Environmental Restriction: (a) runs with the land pursuant to Health and Safety Code sections 25222.1 and/or 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by DTSC; and (d) is imposed upon the entire Property unless expressly stated in a document or an attachment that a specific portion or area is the subject of a DTSC approved waiver to allow a restricted use. Exhibit B contains a DTSC approved interim land use waiver.

3.02 Binding upon Owner and Lessees/Occupants. Pursuant to Health and Safety Code section 25355.5(a)(1)(C), this Covenant binds all Owner and Occupants of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of DTSC.

3.03 Written Notification of Hazardous Substance Release. The Owner and/or Occupant shall, at least thirty (30) days prior to the sale, lease, or rental of the Property, give written notice to the subsequent transferee that a release of hazardous substances has come to be located on or beneath the Property, pursuant to Health and Safety Code section 25359.7. Such written notice shall include a copy of this Covenant, and a notification of the restrictions on use of the property contained herein.

3.04 **Incorporation into Deeds, Leases, or Rental Agreements.** The Environmental Restrictions set forth herein shall be incorporated by reference in each and all deeds, leases, or rental agreements entered into for any portion of the Property to which they are in effect and applicable. Within ten (10) days of the effective date of this Covenant, the Covenantor shall provide a copy of this Covenant to all existing occupants on the Property.

3.05 **Conveyance of Property.** Until the Property has been certified as being free of known or suspected hazardous substance releases by DTSC per chapter 6.8 of the Health and Safety Code, the Owner shall provide to DTSC not less than ninety (90) days prior to any proposed conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances) notice of such proposed conveyance. The Owner shall provide notice to DTSC not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances).

3.06 **Access for DTSC.** DTSC shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by DTSC to protect the public health or safety or the environment.

ARTICLE IV
ENVIRONMENTAL RESTRICTIONS

4.01 **Environmental Restrictions.**

(a) Sensitive land uses, including, but not limited to, residential housing, schools, day-care facilities, hospitals, and hospices are prohibited.

(b) The construction of groundwater wells and extraction of groundwater from new and existing wells for all purposes are prohibited unless specifically approved by DTSC.

(c) Activities that disturb surface or subsurface soil, disturb existing soil covers, disturb or restrict access to groundwater monitoring wells, generate water in excavations, extract groundwater from excavations, or alter groundwater conditions are prohibited except as conducted pursuant to the RAP and RMP.

(d) The Owner and Occupants are required to comply with the RAP and RMP, including the provisions for soil and groundwater management, maintenance of existing cover or construction of new cover, mitigation measures during earthwork, management of below grade structures, and construction dewatering.

(e) The Owner is required to submit annual certification to DTSC attesting to compliance with Section 4.01 of this Covenant.

4.02 Procedures for Obtaining Waivers from DTSC.

(a) At any time before or after the effective date of this Covenant, the Owner, or with the Owner's consent, an Occupant, may request DTSC's approval of a waiver for a portion of the Property to be used in a manner inconsistent with the restrictions set forth in Section 4.01 of this Covenant or to engage in an activity prohibited by Section 4.01 of this Covenant. Such requests shall provide sufficient information to enable DTSC to evaluate the appropriateness of the request. DTSC shall act upon such requests as expeditiously as feasible, but in no event later than thirty (30) days after DTSC receives the request unless DTSC extends this period for no more than thirty (30) days upon written notice to the requesting party of the reason therefore. DTSC's extension as described above may occur more than once. DTSC shall base its decision on protection of public health and the environment.

(b) DTSC will consider any submittal of a remedial investigation workplan or remedial action decision document consistent with the RAP or RMP to be a waiver request for any included actions that are inconsistent with the restrictions set forth in Section 4.01 of this Covenant.

(c) Nothing in this Covenant shall be construed to require an Owner to apply for, or DTSC to issue, a variance, termination or release pursuant to Article VI of this Covenant, in order to obtain DTSC's approval of a request that a portion of the Property be used in a manner inconsistent with the restrictions set forth in Section 4.01 of this Covenant or to obtain DTSC's approval to engage in an activity prohibited by Section 4.01 of this Covenant.

(d) An Owner or Occupant may perform, or cause to be performed, any interior or exterior renovation, rehabilitation, or demolition without DTSC approval, as long as such activities are consistent with, and do not violate the terms of, this Covenant.

ARTICLE V
ENFORCEMENT

5.01 Enforcement. Failure of the Owner to comply with any of the Environmental Restrictions specifically applicable to it shall be grounds for DTSC to obtain injunctive relief prohibiting commencement or continuation of any activities restricted by this Covenant. Actual or threatened violation of this Covenant, including but not limited to commencement or completion of any activities that violate this Covenant, may be prohibited or restrained, or the interest intended for protection by this Covenant may be enforced, by injunctive relief or any other remedy as provided by law.

ARTICLE VI
VARIANCE, TERMINATION AND RELEASE

6.01 **Variance.** In addition to the procedures set forth in Section 4.02 of this Covenant, the Owner, or with the Owner's consent, any Occupant may apply to DTSC for a written variance from the provisions of this Covenant. DTSC will grant the variance only after finding that such a variance would be protective of human health, safety and the environment. Such application shall be made in accordance with Health and Safety Code section 25233. DTSC will grant the variance only after finding that such a variance would be protective of human health, safety and the environment.

6.02 **Application for Termination.** In addition to the procedures set forth in Section 4.02 of this Covenant, the Owner, or with the Owner's consent, any Occupant, may apply to DTSC for a termination of the Environmental Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03 **Release.** This Covenant shall continue in effect in perpetuity unless ended by law or by DTSC under this paragraph 6.03. DTSC shall provide a release, suitable for recording, of the Environmental Restrictions in this Covenant with respect to a particular portion of the Property promptly after any of the following occur:

(a) DTSC approves an application for termination of the Covenant with respect to a portion or all of the Property pursuant to Section 6.02.

(b) DTSC makes a determination pursuant to this Section 6.03(b) without receiving an application, that any or all of the Environmental Restrictions on the use of any or all parts of the Property are no longer necessary to protect present or future human health, safety, or the environment. In making a determination pursuant to this Section 6.03(b) that any or all of the Environmental Restrictions on the use of any or all parts of the Property are no longer necessary to protect present or future human health or safety or the environment, DTSC shall make a finding that the hazardous materials that caused the land to be restricted have since been sufficiently investigated, removed or altered in a manner that allows DTSC to determine there is no significant existing or potential hazard to present or future human health or safety or the environment.

ARTICLE VII
MISCELLANEOUS

7.01 **No Dedication Intended.** Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02 **Recordation.** The Covenantor shall record this Covenant, with Exhibits A and B, in the County of Alameda within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03 **Notices.** Whenever any person gives or serves any notice ("notice" as used herein includes any demand or other communication with respect to this Covenant), each such notice shall be in writing and shall be deemed effective: (a) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (b) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Covenantor: Oakland Base Reuse Authority
700 Murmansk Street, Suite 3
Oakland, California 94607-5009
Attention: Aliza Gallo
Executive Director

To DTSC: Department of Toxic Substances Control
Sacramento Regional Office
8800 Cal Center Drive
Sacramento, California 95826-3268
Attention: Anthony J. Landis, P.E.
Chief, Northern California Operations
Office of Military Facilities

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

7.04 **Partial Invalidity.** If any portion of this Environmental Restriction or other terms set forth herein are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included.

7.05 **Exhibits.** All exhibits referenced in this Covenant are deemed incorporated into this Covenant by reference.

7.06 **Section Headings.** The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

7.07 **Representative Authority.** The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

7.08 **Statutory References.** All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor:

By: _____ Date: 5-16-2003
Jerry Brown
Mayor
City of Oakland

By: _____ Date: 5-15-2003
Aliza Gallo
Executive Director
Oakland Base Reuse Authority

By: _____ Date: 5/15/03
Robert C. Bobb
City Manager/Agency Administrator
City of Oakland/Oakland Redevelopment Agency

Approved as to form and legality on _____.

By: _____ Date: 5-16-03
John Russo
City Attorney/Agency Council
City of Oakland/Oakland Redevelopment Agency

Department of Toxic Substances Control:

By: _____ Date: _____
Anthony J. Landis, P.E.
Chief, Northern California Operations
Office of Military Facilities

STATE OF CALIFORNIA)

)

COUNTY OF Alameda)

On this 15th day of May, in the year 2003, before me Cheryl M. Moore, a Notary Public in and for said State, personally appeared Aliza Gallo,

personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity~~(ies)~~, and that by ~~his~~/her/~~their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

Signature

CHERYL M. MOORE
Commission # 1298275
Notary Public - California
Alameda County
My Comm. Expires Apr 1, 2005

STATE OF CALIFORNIA)

)

COUNTY OF Alameda)

On this 15th day of May, in the year 2003, before me Cheryl Moore, a Notary Public in and for said State, personally appeared Robert C. Bobb,

personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person~~(s)~~ whose name~~(s)~~ is~~/are~~ subscribed to the within instrument and acknowledged to me that he~~/she/they~~ executed the same in his~~/her/their~~ authorized capacity~~(ies)~~, and that by his~~/her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

Signature C M Moore

CHERYL M. MOORE
Commission # 1299275
Notary Public - California
Alameda County
My Comm. Expires Apr 1, 2005

STATE OF CALIFORNIA)

)

COUNTY OF ALAMEDA)

On this 16TH day of MAY, in the year 2003, before me JAMIE R. SMITH, a Notary Public in and for said State, personally appeared JERRY BROWN,

personally known to me (or ~~proved to me on the basis of satisfactory evidence~~) to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

JAMIE R. SMITH
Commission #1313659
Notary Public - California
Alameda County
My Comm. Expires Jul 17, 2005

Signature Jamie R. Smith

STATE OF CALIFORNIA)

)

COUNTY OF ALAMEDA)

On this 16TH day of MAY, in the year 2003, before me JAMIE R. SMITH, a Notary Public in and for said State, personally appeared CURTIS S. KIDDER, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/her/their authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

JAMIE R. SMITH
Commission #1313659
Notary Public - California
Alameda County
My Comm. Expires Jul 17, 2005

Signature Jamie R. Smith

STATE OF CALIFORNIA)

)

COUNTY OF _____)

On this _____ day of _____, in the year _____, before me _____, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

EXHIBIT E

Summary of Oakland Army Base Remedial Action Plan/Remedial Management Plan ("RAP/RMP")

Environmental Condition and Remedy Selection for RAP Sites

Former Oil Reclaiming Plant (ORP)/Building 1 Area

The former ORP consisted of a building and several aboveground tanks in the vicinity. Waste disposal practices likely resulted in the release of tarry residue to ground adjacent to these operations, which was covered by fill to construct Building 1 in 1941. On several occasions, the tarry residue has migrated to the surface under and around Building 1 and has been detected in 1994, 1998, 2000, and 2002. Laboratory analysis of the tarry residue has confirmed the presence of lead, polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), polychlorinated dibenzodioxins (PCDDs), and polychlorinated dibenzofurans (PCDFs) at concentrations of concern. One sample also showed the presence of 1,2,3-trichloropropane (TCP). The tarry residue is very acidic with measured pH of 1 in some locations. The tarry residue is a Resource Conservation and Recovery Act (RCRA) hazardous waste subject to land ban restrictions when excavated.

The proposed remedial action for the tarry residue is to excavate and neutralize, as needed for transport, the pH of the material and high concentrations of lead with lime, fly ash, or other appropriate binders. It is assumed that this neutralized material would be disposed as a RCRA hazardous waste at an off-site permitted facility. Five years of post remediation groundwater monitoring is included for this RAP site.

The viability of this proposed remedial action depends upon obtaining a variance from federal land disposal restrictions (LDR) treatment standards for PAHs, PCDDs, and PCDFs in the tarry residue. Without a variance, the tarry residue may have to be incinerated to achieve LDR treatment standards for these underlying hazardous constituents. Incineration of the tarry residue is likely to be cost prohibitive and may necessitate that the untreated material be left in-place at the OARB, which would severely restrict redevelopment opportunities for the OARB. Therefore, the LDR variance is considered a critical component of this remedial action.

VOCs in Groundwater at Eastern End of Building 807

Volatile Organic Compounds (VOCs) in the shallow water-bearing zone were discovered by the Army in 1992 and consist primarily of vinyl chloride, cis-1,2-dichloroethene (cis-1,2-DCE), trans-1,2-dichloroethene (trans-1,2-DCE), trichloroethene (TCE), and 1,1,2,2-tetrachloroethane. The VOCs do not appear to be migrating; however, the residual VOC concentrations in groundwater may pose a vapor intrusion threat to building occupants if a building is constructed over the area in the future.

Therefore, in-situ chemical oxidation/reduction is proposed as the remedial action for the VOCs in groundwater here. Treatability studies, if needed, will be conducted to establish the types and amounts of oxidants or reductants required and the approximate grid spacing of injection points across the surface area of the impacted shallow water-bearing zone. Five years of groundwater monitoring is included for this RAP site.

VOCs in Groundwater Near Buildings 808 and 823

Vinyl chloride and lesser concentrations of other VOCs are present in shallow groundwater in an area north of Building 808 and south of Building 823. The VOCs are not migrating, but the VOC-impacted groundwater poses a potential vapor intrusion threat.

Therefore, in-situ bioremediation of vinyl chloride in groundwater by injecting oxygen release compound (ORC) or another appropriate oxidant into the subsurface is proposed for this site. Five years of groundwater monitoring is included for this RAP site.

VOCs in Groundwater Near Building 99

An area of the shallow water-bearing zone near Building 99 is impacted with VOCs, including vinyl chloride and cis-1,2-DCE. No source or significant soil contamination has been identified; however, VOC-impacted groundwater poses a vapor intrusion threat.

Because vinyl chloride and cis-1,2-DCE are amenable to aerobic degradation by microorganisms, the proposed remedy for this site is in-situ bioremediation with ORC to remove or significantly reduce remaining chemical of concern (COC) quantities prior to redevelopment. Five years of groundwater monitoring is included for this RAP site.

Benzene and MTBE in Groundwater Near Former USTs 11A/12A/13A

Following removal of former fuel underground storage tanks (USTs) in the area near Building 828, significant concentrations of petroleum hydrocarbons, and benzene, toluene, ethylbenzene, and xylenes (BTEX) were found to remain in soil and shallow groundwater near the location of the former tanks. Additionally, methyl tertiary butyl ether (MTBE), which is a fuel oxygenate, was also detected in the shallow water-bearing zone.

Because impacted soil may act as a source of petroleum hydrocarbons and fuel constituents that could migrate to groundwater, the proposed remedy is to excavate contaminated soil in the vicinity of the former location of the tanks. Benzene and MTBE remaining in the shallow water-bearing zone is proposed to be treated by in-situ bioremediation using ORC. Five years of groundwater monitoring is included for this RAP site.

Building 991 Area

Building 991 was used as a locomotive engine maintenance shop. Petroleum hydrocarbons, pesticides, and lesser concentrations of other COCs have impacted soil and groundwater in the vicinity. MTBE has also been detected at low concentrations in the groundwater.

The proposed remedy is to excavate contaminated soil containing petroleum hydrocarbons, pesticides, or other COCs that may continue to leach COCs to groundwater and dispose of the soil as non-RCRA hazardous waste at an off-site permitted facility. Residual petroleum hydrocarbons in groundwater are proposed to be addressed by in-situ bioremediation using ORC. Five years of groundwater monitoring is included for this RAP site.

Building 99

Building 99 was initially used for ship manufacturing, then metalworking before the Army converted it to a vehicle and electrical maintenance shop, which included such activities as sand blasting, metal spraying, steam cleaning, and tractor-trailer repair. Analytical results of available soil samples do not suggest significant releases of VOCs, PAHs, total petroleum hydrocarbons (TPH) or metals have occurred from the building.

However, given the historical uses at Building 99 and the limited nature of the investigations, additional sampling at Building 99 is warranted. The proposed remediation, if required, consists of excavating soil with COCs greater than site-specific remediation goals after Building 99 has been demolished.

Environmental Condition and Remedy Selection for RMP Locations

Washracks, Sumps, Oil/Water Separators, and Miscellaneous Operations

Approximately 82 washracks, sumps, oil/water separators, and miscellaneous structures or activity areas have been identified at approximately 55 locations. These locations include: (1) areas requiring the removal of an existing subsurface structure, (2) areas requiring additional characterization, (3) areas where residual, impacted soil is anticipated and will be removed when encountered during infrastructure installation or redevelopment, and (4) areas with no currently identified environmental issues but which will be inspected for undiscovered contamination in accordance with the soil management protocols in the RMP.

For sites requiring removal of an existing structure or sites where impacted soil is anticipated, the proposed remedy assumes that an average of approximately 50 cubic yards (cy) of debris and contaminated soil will be removed at each site and disposed as non-RCRA hazardous waste at an off-site permitted facility. For sites requiring additional characterization, the site will be inspected and sampled during redevelopment as outlined in the RMP. Finally, for RMP locations where no contamination has been found to date, the area will be inspected and sampled in accordance with the RMP during redevelopment to confirm no contamination exists above the remediation goals at these locations.

Tanks

Approximately 93 USTs and aboveground storage tanks (ASTs) have been identified at approximately 73 locations on the OARB. These locations include: (1) tank sites that

potentially require the removal of an existing tank, (2) former tank sites where residual, impacted soil is anticipated and will be excavated and disposed, when encountered, during infrastructure installation or redevelopment, and (3) former tank sites anticipated to possibly require excavation of residual, impacted soil or groundwater monitoring, and (4) former tank sites with no currently identified environmental issues but which will be inspected and sampled for undiscovered contamination in accordance with the soil management protocols in the RMP.

With respect to the proposed remediation, removal of any remaining USTs, including removal and disposal of impacted soil will be performed during infrastructure replacement or when otherwise encountered during new building construction as redevelopment proceeds. Soil containing petroleum hydrocarbons will be managed and disposed at a permitted off-site facility. Additionally some of these tank sites will require groundwater monitoring to meet regulatory closure requirements specified by the RWQCB. Tank sites with no currently identified issues will be inspected and sampled in accordance with the RMP during redevelopment to confirm no contamination exists above the remediation goals at these locations.

Former Industrial and Chemical Handling Locations

There are seven such locations, and although no significant contamination was known to exist at these sites, historical operations suggested the likelihood for past chemical releases.

1. **Debris Area Near Building 99:** Approximately 15 tons of soil mixed with so-called "boiler debris" was excavated by the Army and disposed as a non-RCRA hazardous waste from a debris area near Building 99. Samples of the remaining debris in this area contained visible indication of slag-like material with lead, other metals, and benzo(a)pyrene at concentrations greater than the remediation goals. Other PAHs were detected but at concentrations below the remediation goals. In addition, petroleum hydrocarbons were found.

   The proposed remedy for this site assumes that approximately 200 cy of soil mixed with debris will be excavated and disposed as non-RCRA hazardous waste at an off-site permitted facility. Recent Phase II sampling has indicated this volume may be greater than originally estimated and some portion of it may be RCRA hazardous waste when excavated. The RMP provides mechanisms to address encountered field conditions for sites such as this with DTSC oversight as redevelopment proceeds.

2. **Building 85:** Although this building was used chiefly to carry out administrative functions, it was equipped with a photograph-processing laboratory and may have been used historically as a printing plant. No COCs were detected at concentrations greater than the remediation goals. However, some remediation may be necessary during site preparation for redevelopment, and the proposed remedy assumes approximately 100 cy of contaminated soil will be excavated and disposed as non-RCRA hazardous waste at an off-site permitted facility, if such

material is encountered.

3. **Building 812:** This building was used by the Army as an "ordnance" (meaning vehicles) maintenance shop and contained a welding booth, machine shop, and two repair and grease areas. Used oil tank 8A was formerly located at the southwest corner of the building. No contamination greater than remediation goals has been identified near Building 812.

   Nevertheless, the proposed remedy assumes approximately 100 cy of contaminated soil will be excavated and disposed as non-RCRA hazardous waste at an off-site permitted facility, if such material is encountered during redevelopment.

4. **Building 823:** This building contained a paint room, paint booth finishing room, and carpenter shop. It also may have been used as a heavy equipment maintenance facility. Identified chemical release sites near Building 823 include former UST A and the VOC-impacted groundwater near Buildings 808 and 823. No other residual chemical sources in soil have been identified.

   The proposed remedy assumes approximately 200 cy of contaminated soil will be excavated and disposed as non-RCRA hazardous waste at an off-site permitted facility, if such material is encountered during redevelopment.

5. **Potential Drum Drainage Area East of Buildings 805 and 806:** In this area, Army personnel reportedly allowed damaged drums of chemicals to drain onto railroad track ballast. COC impacts appear minor and limited primarily to shallow soil where VOCs such as toluene, ethylbenzene and xylene have been found. The proposed remedy assumes the presence of VOCs renders approximately 250 cy of excavated soil as RCRA hazardous waste that will be disposed at an off-site permitted facility. Residual VOCs in the shallow water-bearing zone are proposed to be addressed through in-situ chemical oxidation/reduction, if needed.

6. **Former Motor Pool and Salvage Operations at Building 640:** The former Army motor pool and salvage area included a gasoline station possibly with a UST, a motor repair shop, a paint spray booth, several grease racks and washracks, vehicle storage sheds, gasoline pipeline, and several salvage warehouses, which were demolished when the Army constructed Building 640 in 1945. Although only low concentrations of petroleum hydrocarbons, PAHs and other COCs have been detected, the need for limited soil remediation is assumed.

   The proposed remedial action assumes that approximately 250 cy of contaminated soil will be excavated and disposed as non-RCRA hazardous waste at an off-site permitted facility. In addition, in-situ bioremediation of the shallow water-bearing zone is assumed to be necessary, if COCs greater than remediation goals are encountered during redevelopment. Five years of groundwater monitoring is

included for this RAP site.

7. **Benzidine at Former Used Oil Tank 21:** Former used oil tank 21 was part of a facility constructed by the Army in 1986 for preparing privately owned vehicles for overseas transport and included a washrack and an oil/water separator. Structures were removed and contaminated soils were remediated in 1997. Following this cleanup, the soil contained residual concentrations of petroleum hydrocarbons, lead, and PAHs. However, residual concentrations of benzidine were also reported in the excavated area and stockpiled soil, which the Army disposed of at an off-site, permitted waste management facility.

   Further testing will be performed here. The proposed remedy assumes approximately 50 cy of contaminated soil will be excavated and disposed as non-RCRA hazardous waste at an off-site permitted facility, if COCs such as benzidine are encountered at greater than remediation goals.

Historical Spills and Stains

Numerous spills and stains have been observed over the years at the OARB, as found on historical photographs or Army records. Given the use history of the OARB, most of these releases in stained areas likely involved petroleum hydrocarbons associated with diesel fuel or motor oil. Many were sampled during the Phase II investigations in 2002. As a consequence, under the proposed remedy, soil excavated during new construction will be inspected for staining or other signs of contamination. Protocols for inspecting, sampling and managing contaminated soil encountered during and after redevelopment are specified in the RMP.

Lead in Soil Around Buildings

The Army has identified the buildings that may contain Lead Based Paint based upon surveys and the age of construction. Redevelopment includes demolition of many of these buildings.

Under the proposed remedy, excavated soil with representative total lead concentrations less than 350 mg/kg may be reused anywhere on-site provided such reuse complies with the risk-based remediation goals and applicable law and regulations. Excavated soil with representative total lead concentrations between 350 mg/kg and the lead remediation goal of 750 mg/kg will be disposed at an off-site permitted facility unless specifically exempted by DTSC. Soil with representative lead concentrations exceeding the site-specific remediation goal of 750 mg/kg will be excavated and disposed at an off-site permitted facility.

Former PCB-Containing Transformers and Equipment Locations

Existing inventories list approximately 110 pieces of electrical transformers or other equipment that may have, or still, contain PCBs.

Under the proposed remedy, electrical equipment at the OARB that still contains PCBs will be removed from service and managed in accordance with TSCA regulations prior to

building demolition. Outdoor areas where transformers were located will also be inspected and sampled for the presence of PCBs in concrete, asphalt, and underlying soil as specified in the RMP before improvements are razed. Soil containing PCBs greater than remediation goals will be excavated and disposed at an off-site permitted facility. Management of PCB-containing equipment and media contaminated by PCBs is also subject to U.S. EPA requirements under TSCA.

Storm Drains and Sanitary Sewers

The storm drain system at the OARB consists of approximately 110,000 linear feet (lf) of pipe that conveys water to the San Francisco Bay. The sanitary sewer system consists of approximately 25,000 lf of pipe and four pump or lift stations, which convey sewage to the EBMUD wastewater treatment plant. Army studies indicate that both the storm drain and sanitary sewer systems are in poor condition and presence of contamination in and around the pipes has been documented.

Under the proposed remedy, investigation of sediment inside the storm drains will be conducted in advance of infrastructure replacement. Interim remedial actions will be performed if COC-containing sediment is discovered. Such actions may consist of flushing segments of storm drain line with water to remove and capture the contaminated sediments for disposal at an off-site permitted facility. Alternatively, cement grout or similar means can be used to seal the ends of storm drain branch lines that are collapsed or otherwise can be removed from service without exacerbating flooding concerns.

Railroad Tracks

Approximately 26 miles of railroad track remain at the OARB. In addition, former railroad track ballast is covered with imported gravel in the former Baldwin Railyard. Typical contamination in old railyards can include petroleum hydrocarbons, PCBs, metal and asbestos, solvents, benzene, toluene, ethylbenzene, and xylenes (BTEX), and other VOCs. Additionally, surface soil in railyards may become contaminated with creosote, pentachlorophenol (PCP) or chromated copper arsenate (CCA) that originate from railroad ties. Herbicides sprayed near tracks may also be present. Testing at OARB indicates that benzo(a)pyrene, lead, and arsenic were detected at concentrations greater than remediation goals in some track locations.

The railroad tracks at the OARB will be removed or replaced during redevelopment. Protocols for inspecting and testing potentially contaminated railroad track sub-ballast have been established in the RMP. Under the proposed remedial action, sub-ballast found during redevelopment to contain COCs greater than remediation goals will be excavated for disposal at an off-site permitted facility or, if specifically approved by DTSC, may be incorporated into the on-site railroad beds upon which new tracks will be laid and covered with clean ballast.

Marine Sediments

The Army has identified COC impacts to marine sediments near storm drain outfalls from the portions of the OARB being transferred via EDC (Outfalls 5 through 7) as well as the adjacent Outfalls 8 through 11). These outfalls discharge to the Oakland Outer

Harbor in San Francisco Bay.

The Army has concluded that marine sediments at Outfalls 5 through 7 "are unlikely to result in unacceptable adverse effects on aquatic or wildlife receptors," therefore, no further action is proposed for those sediment locations.

Contaminants of concern have been detected at Outfalls 8 through 11, and the Army concludes from its ecological risk assessment that marine "sediments at Outfalls 8 through 11, if not capped in the future, may result in limited impacts to aquatic communities." The Port of Oakland intends to fill 26 acres to provide additional terminal capacity and create two berths in the Oakland Outer Harbor (New Berth 21) as outlined in its Seaport Plan for 2020 and the EIR. The Port of Oakland's project will result in covering the marine sediments adjacent to Outfalls 8 through 11, thereby addressing potential impacts.