

## SECOND AMENDED AND RESTATED LEASE AGREEMENT

THIS SECOND AMENDED AND RESTATED LEASE AGREEMENT (hereinafter referred to as "Agreement") is made and entered into as of the 19th day of May, 2009 (the "Effective Date"), by and between the CITY OF RICHMOND, a California municipal corporation ("CITY") and AUTO WAREHOUSING CO., a Washington corporation ("AWC").

### WITNESSETH:

WHEREAS, in 2004, the Surplus Property Authority of the City of Richmond ("SPA") leased to Richmond Joint Powers Financing Authority ("JPFA"), and JPFA subleased to CITY certain property located in or near the Pt. Potrero Marine Terminal as a terminal facility;

WHEREAS, CITY and AWC entered into an Amended and Restated Lease Agreement dated May 1, 2004, whereby CITY sub-subleased the facility to AWC;

WHEREAS, AWC elected to extend the term of the Amended and Restated Lease Agreement by letter dated October 23, 2008 (the "Extension Letter");

WHEREAS, the parties desire to increase the capacity of the existing facility to accommodate new and existing business, and to provide additional rail infrastructure to service such business;

WHEREAS, the parties wish to further amend and restate the Amended and Restated Lease Agreement, as previously amended by the Extension Letter (the "Prior Lease"), as provided in this Agreement;

WHEREAS, contemporaneously with this Agreement, SPA is leasing to JPFA and the City is leasing to JPFA, and JPFA is subleasing to CITY the property legally described on the attached Exhibits 1.1 and 1.2 respectively (collectively, the "Master Lease Premises");

WHEREAS, contemporaneously with this Agreement, CITY, AWC and American Honda Motor Co., Inc. ("AHM") have entered into a Minimum Annual Guaranty Agreement ("MAG Agreement"), providing, among other things, a guaranty by AHM that CITY will receive certain minimum revenues in connection with the transportation of vehicles by or on behalf of AHM to or from the Port of Richmond by vessel ("AHM MAG"); and

WHEREAS, the capital improvements contemplated by this Agreement (the "Projects") are subject to the California Environmental Quality Act, as amended (Public Resources Code, Sections 21000 – 21178), and the California Environmental Quality Act Guidelines (California Code of Regulations Title 14, Chapter 3) (collectively, "CEQA"); after completing the environmental review of the Projects in accordance with the requirements of CEQA, CITY certified the Environmental Impact Report for the Projects and all appeal periods have expired.

NOW, THEREFORE, in consideration of the promises hereinafter set forth, the Prior Lease is hereby amended and restated in its entirety as follows:

Section 1. Term of Agreement.

1.1 Term: The term of the Prior Lease commenced on May 1, 2004 (hereinafter called "Lease Term Commencement Date"). The term of this Agreement shall continue from the Effective Date and end on the fifteenth (15<sup>th</sup>) anniversary of the MAG Commencement Date (as defined in Section 6.1(h)) (the period from the Lease Term Commencement Date through such expiration date is hereinafter called the "Initial Term"). The term of this Agreement shall be subject to two (2) successive five (5) year extensions as set forth in Sections 1.2 and 1.3 of this Agreement (each such period is hereinafter called an "Extended Term"). The "Term" of this Agreement includes the Initial Term and the Extended Terms.

1.2 Extension Options: Subject to subsections 1.2(a) and (b) below, and providing that AWC is not in default under the provisions of this Agreement beyond applicable notice and cure periods, AWC may elect to extend the Term of this Agreement as provided herein for an additional five (5) year period commencing at the end of the Initial Term (such period is referred to herein as the "First Extended Term"), and, subject to the same conditions, AWC may elect to further extend the Term of this Agreement for an additional five (5) year period commencing at the end of the First Extended Term (such period is referred to herein as the "Second Extended Term"). AWC must notify CITY in writing no later than one (1) year before the expiration of the Initial Term or First Extended Term, as applicable, of its intention to extend the Term of this Agreement. Provided AWC gives timely notice of extension in accordance with the preceding sentence, the Term of this Agreement shall be extended for an additional five-year period; otherwise the Agreement shall terminate at the end of the Initial Term or First Extended Term, as applicable. In consideration of the foregoing extension options, the parties hereby agree as follows:

(a) In the event that AWC elects to extend the Term of this Agreement, in accordance with the provisions set forth in this Section 1.2, AWC shall guaranty to CITY that AWC's customers will transport at least 145,000 vehicles to or from the Port of Richmond by vessel each year during the applicable Extended Term. If AWC's customers transport more than 145,000 vehicles to or from the Port of Richmond in a given year, AWC may carry forward, on a cumulative basis, the excess vehicles to meet its obligations under this section in future years during the Extended Term. The cumulative total of excess vehicles from time to time is referred to in this Agreement as the "Bucket." The Bucket at the commencement of each Extended Term will be zero. The Bucket will thereafter be increased by the number of vehicles transported to or from the Port of Richmond in excess of 145,000 in any given year during the Extended Term, and reduced (but not below zero) by any vehicles applied from the Bucket to meet AWC's obligations under this section. Any vehicles remaining in the Bucket at the end of the Initial Term or First Extended Term shall not be carried forward into a subsequent Extended Term, and no credit for the Bucket shall be given except in accordance with the terms of this Agreement. If AWC's customers transport less than 145,000 vehicles in a given year during an Extended Term,

AWC will pay to CITY the amount of wharfage revenue (at the then prevailing tariff rate) which would have been generated on the deficiency, after credit for any vehicles in the Bucket carried forward from prior years.

(b) CITY may, in addition to the relocation rights set forth in Section 27, elect to relocate the Premises or any commercially reasonable portion thereof to a new location within the Port of Richmond beginning at the commencement of the First Extended Term or Second Extended Term, as applicable. CITY must notify AWC of its intention to relocate and a description of the relocated Premises at least two years before the commencement of such Extended Term. The relocation shall be at CITY's sole cost and expense and the resulting Premises shall provide an equally efficient site for AWC's operations. AWC shall be entitled to an equitable reduction of its guaranty obligations under Section 1.2(a) to the extent the relocation interferes with AWC's ability to fulfill those obligations.

## Section 2. Premises.

2.1 Premises: For and in consideration of the agreement by AWC to faithfully perform the agreements, covenants, terms and conditions hereof, CITY does hereby lease to AWC, and AWC does hereby lease from CITY, those premises situated in or near the Pt. Potrero Marine Terminal of the City of Richmond, County of Contra Costa, State of California, a portion of the Master Lease Premises, which portion is marked in green on the map attached hereto as Exhibit 2, and the existing improvements, if any, located on such portion as of the Effective Date of this Agreement (hereinafter collectively referred to herein as the "Premises"). CITY reserves for itself and SPA the right to enter the Premises as necessary and/or required for the installation, operation, maintenance, repair, replacement and removal of any and all SPA's or CITY's remediation, monitoring and/or operational equipment on the Premises as of the date hereof or installed in the future. The equipment presently on the Premises is set forth in Exhibit 5 attached hereto. Such installation, operation, maintenance, repair, replacement and removal of any and all SPA's or CITY's equipment shall be scheduled in a manner not to unreasonably interfere with AWC's use and enjoyment of the Premises. SPA and CITY shall cooperate with AWC to minimize any interference caused by such activity. Further, CITY reserves for itself and SPA the right to install, operate, maintain, repair, replace and remove additional equipment at new locations on the Premises for remediation, monitoring, and use in SPA's or CITY's operations on property adjacent to the Premises, provided that such work and/or equipment does not unreasonably interfere with AWC's use and enjoyment of the Premises.

2.2 Reserved Easements. SPA reserves to itself and the right to grant to others in the future nonexclusive utility easements (including easements for construction, maintenance, repair, replacement and reconstruction) over, under, through, across or on the Premises, provided that such work occurring and any easement is located such that it will not unreasonably interfere with AWC's use and enjoyment of the Premises. AWC shall not be obligated to maintain or repair easement facilities unless the need for repair is caused by AWC's negligence or other wrongful conduct. Any interference shall be temporary, and all work on the Premises shall proceed expeditiously. AWC shall be given reasonable notice before commencement of any work on the Premises. Such work

shall be scheduled and conducted in such a manner as to not interfere with the fulfillment by AHM and AWC of their respective MAG commitments to CITY. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Premises, or any portion thereof, including but not limited to pavement, curbs and sidewalks, the same shall be repaired by SPA or CITY to at least the condition in existence prior to the work referred to in this section at its expense, if not so repaired by the party installing and maintaining the line.

Section 3. Use of the Premises, Wharves and Port Rail Facility.

3.1 Use of Premises. CITY and SPA authorize AWC to use the Premises for the purposes of operating a processing/freight transfer station; for loading, unloading, receiving, handling, processing, storing, transporting and delivering of new and used motor vehicles and purposes related thereto. AWC may load, unload, receive, handle, process, store, transport and deliver any other cargo with the prior written consent of the Port Director of CITY (the "Port Director"). The Port Director's prior written consent shall not be unreasonably withheld provided that AWC's proposed other cargo use shall generate substantial Tariff Revenue and shall not damage or destroy the Premises or SPA's or CITY's uses and uses of adjacent landowners or lessees. AWC shall not use or permit the Premises to be used in whole or in part during the term of this Agreement for any purpose other than as hereinabove set forth.

3.2 Uses of Wharves and Port Rail Facility. The Premises do not include the berthing facilities at Berths 6 and 7 (collectively the "Wharves" and individually a "Wharf") or the rail yard adjacent to the Premises (the "Port Rail Facility"), each as shown on Exhibit 2. CITY and SPA grant to AWC's customers throughout the Term of this Agreement the preferential right to use the Wharves for vehicles not exceeding the 250 pounds per square foot limitation of said Wharves. CITY shall charge AWC's customers for dockage and wharfage at the Wharves at the rates determined in accordance with this Agreement. CITY and SPA further grant to AWC and AWC's customers throughout the Term of this Agreement the preferential right to use the Port Rail Facility without additional charge on the terms set forth herein.

(a) Wharves: AWC's customers shall have the preferential right to use the Wharves; provided that, subject to Section 3.2(c), SPA or CITY may use a Wharf with AWC's prior consent. AWC shall not unreasonably withhold its consent to a request by SPA or CITY to use a Wharf on reasonable prior notice. AWC may withhold its consent to any use requested if AWC determines in its sole good faith discretion that such use may materially interfere with AWC's customers' use of such Wharf as authorized in this Agreement.

(b) Port Rail Facility. AWC and AWC's customers shall have the preferential right to use the Port Rail Facility for the loading and unloading of vehicles on or from rail cars (and other cargo to the extent permitted by the Port Director pursuant to Section 3.1); provided that, subject to Section 3.2(c), SPA or CITY may use the Port Rail Facility with AWC's prior consent. AWC shall not unreasonably withhold its consent to a request by SPA or CITY to use the Port Rail Facility on reasonable prior notice. AWC may withhold its consent to any use requested if AWC determines in its sole good faith discretion that such use may materially

interfere with AWC's or AWC's customers' use of the Port Rail Facility as authorized in this Agreement.

(c) Limitation on Use: Notwithstanding the foregoing, during the Term of this Agreement, CITY shall not use or permit the Wharves or the Port Rail Facility to be used by anyone other than AWC or AWC's customers as contemplated by this Agreement for the discharge, storage, processing, loading, unloading, shipping or transportation of vehicles; provided that a third-party railroad may provide switching services for automotive rail cars to and from the Port Rail Facility.

(d) Emergency Access: Nothing in this Section 3.2 shall be construed to limit CITY's access rights under Section 3.5 in the event of an emergency.

3.3 Adjacent Property. SPA and CITY acknowledge that vehicles and other cargo stored from time to time by AWC on the Premises are owned by AWC's customers. CITY shall include in its Tariff (as defined in Section 3.4 of this Agreement) a prohibition against any activity (including, without limitation, spray painting, sandblasting, blowing of stacks, funnels or exhaust pipes, or other releases of particulate matter) on land or at sea within the jurisdiction of the Port of Richmond that creates a significant risk of injury or damage to the premises or property owned or possessed by any tenant or its customers or which otherwise may materially interfere with the tenant's or customer's operations in the Port of Richmond. In addition, in the event SPA or CITY enters into any future lease, sublease or occupancy agreement for any portion of the Port of Richmond adjacent to the Premises or the Wharves, SPA or CITY shall include such prohibition in the particular lease, sublease or occupancy agreement and require that such tenant conduct its operations in such a manner that it does not create a significant risk of injury or damage to property or adversely impact AWC's or AWC's customers' use of the Premises or its operations hereunder. Such provisions shall specifically state that they are intended to benefit (and may be enforced by) AWC and AWC's customers. CITY agrees to take reasonable steps to enforce such provisions in applicable tariffs, leases, subleases or occupancy agreements. CITY shall not be liable to AWC or any of AWC's customers for any damages associated with such prohibited activities by third parties in violation of such restrictions, tariffs or regulations.

3.4 Compliance with Tariff. Although the Premises are owned by SPA and are not a part of the Port of Richmond enterprise, AWC shall nevertheless use the Premises in accordance with the rates, charges, rules and regulations of Port of Richmond Tariff No. 3 and all amendments, additions and supplements thereto (collectively called the "Tariff"), or reissued from time to time by CITY. To the extent that any such rates, charges, rules and regulations are inconsistent with the terms and provisions of this Agreement, the terms and provisions of this Agreement shall prevail. Said Tariff shall be adopted or amended in accordance with Section 6.7.

3.5 Access. Access to all the Premises, the Wharves and the Port Rail Facility shall be provided at all times by AWC to SPA and CITY and their lessees, assignees, subleases, licensees and authorized users in the case of an emergency. Otherwise, access to the Premises,

the Wharves and the Port Rail Facility shall be provided by AWC as scheduled in advance upon reasonable notice, provided that such access does not materially interfere with AWC's operations thereon. AWC shall be responsible for operation of the security gate between the Premises and the Port Rail Facility; and CITY shall be responsible for operation of the security gate between the Port Rail Facility and the rail corridor between the Port Rail Facility and the Rail Support Yard (as depicted in Exhibit 2).

3.6. Surrender of the Property. AWC shall at the end of the Term hereof surrender to CITY the Premises and all alterations, additions and improvements thereto in the same condition as on the Effective Date or subsequently constructed, but excepting ordinary wear and tear, improvements or alterations permitted under the terms of this Agreement, and, unless such damage is caused by SPA or CITY or any of their employees, agents, contractors, licensees or invitees, also excepting damage by fire, earthquake, act of God or the elements.

#### Section 4. Capital Improvements

The Projects will be constructed in accordance with the Work Agreement attached to this Agreement as Exhibit 3.

#### Section 5. Maintenance and Repair

5.1 Except as otherwise provided in this Agreement, CITY hereby delivers and AWC hereby accepts possession of the Premises in their "AS-IS" condition as of the Effective Date of this Agreement and "WITH ALL FAULTS" AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED ON THE PART OF LESSOR, OR ARISING BY OPERATION OF LAW INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY and AWC agrees that its use of the Premises will be at AWC's sole risk except as otherwise provided in this Agreement. CITY shall not be liable to AWC for any theft, damage or destruction to the personal property of AWC, its guests, licensees, vendors, contractors, agents, subcontractors, employees or invitees. AWC represents that it is a sophisticated user of real property and acknowledges that its entry into this Agreement and its use of the Premises will be on the basis of AWC's own investigation of all aspects of the Premises.

5.2 The parties understand and agree that neither CITY nor AWC shall have any obligation or responsibility to make any repairs or capital improvements to the Premises except as expressly set forth in this Agreement.

5.3 Pursuant to California Health and Safety Code Section 25359.7, CITY hereby notifies AWC that industrial activities have occurred on and near the Premises, including other areas in Terminal 3, in the past and that by reason of such prior activities CITY knows or has reasonable cause to believe that the release of hazardous substances (as defined in California Health and Safety Code Section 25316), petroleum or petroleum products, pollutants, contaminants or waste (hereinafter collectively called "Materials of Environmental Concern")

have come to be located on, in, about or beneath said Premises and other areas of Terminal 3. CITY further notifies AWC that the documents listed on Exhibit 4 (the "Disclosure Statement") attached hereto and by this reference made a part hereof, receipt of which are hereby acknowledged by AWC, describe all of the investigations undertaken on, in, about, or beneath the Premises and other areas of Terminal 3. There may be other release of Materials of Environmental Concern on, in, about or beneath the Premises and Terminal 3 of which CITY may not be aware and which have not been identified in the Disclosure Statement. CITY represents and warrants to AWC that it knows of no other such releases, and that it knows of no inaccuracies in the Disclosure Statement.

5.4 Except as set forth in this Agreement and the Disclosure Statement, CITY does not make any representations or warranties as to the physical condition of the Premises, or as to the impact or potential impact of Materials of Environmental Concern on the condition, value, fitness or use of the Premises which AWC has relied upon, either directly or indirectly. AWC understands and acknowledges that the Premises are a part of property which has previously been used for industrial purposes, including ship building, ship repair, ship dismantling, metals recycling, vehicle handling, vehicle processing and storage, and other industrial uses. AWC acknowledges that it has read, or been given the opportunity to read, all reports, studies and remediation plans prepared by or for SPA or CITY and relating to the condition of the Premises and other property at Terminal 3 listed on the Disclosure Statement, and that CITY does not make, and has not made, any representations or warranties concerning the accuracy, completeness or content of such reports (except as set forth in this Agreement) or as to the result of CITY's efforts, if any, to remove or otherwise remediate Materials of Environmental Concern located on the Premises or other areas of Terminal 3 in accordance with any remediation plans.

5.5 Notwithstanding the provisions of Section 5.1 through 5.4, CITY agrees to make all alterations, repairs, additions and improvements and to perform any other items designated as the responsibility of CITY on the "Maintenance Matrix" attached hereto as Exhibit 6. The foregoing maintenance shall be performed by CITY at its sole cost and expense and shall not be charged to AWC under this Agreement; providing, however, nothing in this Section shall require CITY to repair any damage negligently or willfully caused by AWC or its agents or employees. In discharging its maintenance and repair obligations, CITY shall use its best efforts not to materially interfere with AWC's business operations.

5.6 AWC agrees to make all alterations, repairs, additions and improvements and to perform any other items designated as the responsibility of AWC on the "Maintenance Matrix" attached hereto as Exhibit 6. The foregoing maintenance shall be performed by AWC at its sole cost and expense and shall not be charged to CITY under this Agreement; providing, however, nothing in this Section shall require AWC to repair any damage negligently or willfully caused by CITY or its agents or employees. In discharging its maintenance and repair obligations, AWC shall use its best efforts not to materially interfere with CITY's business operations.

5.7 During the Term of this Agreement, CITY, at its own expense, shall maintain berthing space alongside the Wharves dredged to thirty-two feet mean low water or to such other

depth as the parties (and AHM so long as the MAG Agreement is in effect) may agree in writing. The obligations of CITY under this Section 5.7 shall be subject to CITY's securing all necessary permits to perform the dredging. If such permits are needed, CITY shall seek such permits with due diligence. In the event that CITY is unable to obtain permits necessary to fulfill its obligations under this Section 5.7, resulting in a material adverse effect on AWC's business, AWC shall be entitled to an equitable reduction of the AWC MAG (as defined in Section 6.1(k) of this Agreement) based on the extent of such adverse effect.

5.8 AWC agrees to assume any and all liability related to the excavation, handling, removal, storage and transportation of any Materials of Environmental Concern which have come or may come to be located on the Premises as a result of acts, omissions or activities of AWC (including any subsidiary of AWC) and its officers, agents and representatives from and after the Effective Date. Notwithstanding anything in this Agreement to the contrary, AWC shall have no liability or obligation with respect to Materials of Environmental Concern which are present on the Lease Term Commencement Date or subsequently introduced by SPA, JPFA or CITY, their respective tenants, subtenants or licensees, or any employee, contractor or agent of any of the foregoing.

5.9 The provisions of this Section 5 shall not apply in the case of damage or destruction by fire, earthquake, flood or other casualty or by eminent domain, in which event the obligations of the parties shall be controlled by Section 22 of this Agreement.

## Section 6. Compensation.

### 6.1 Definitions

(a) "Tariff Revenue" shall mean all revenue generated under this Agreement or the MAG Agreement from dockage, wharfage, wharf demurrage, tariff storage, storage demurrage, transfer fees and other applicable tariff charges as published from time to time in the Tariff and any other applicable tariff charges. Tariff Revenue shall also include without limitation the following charges established by contract rather than tariff: (i) Wharfage Revenue, as defined in Section 6.1(d) of this Agreement, (ii) Surcharge, as defined in 6.1(e) of this Agreement, and (iii) Storage Fees, as defined in Section 6.1(f) of this Agreement.

(b) "Processed Vehicles" means those new and used motor vehicles (other than Pass-Through Vehicles) which under this Agreement AWC uses the Premises to materially increase the value of the vehicle for resale through the provision of processing services ("value-added processing"). Without limitation, the following services by themselves do not constitute value-added processing: basic port-of-entry services, loading, unloading, transportation, repair/warranty work, storage, and/or throw-in services (including literature, booklets, key securement, labels, stickers, floor mats, and similar items which do not materially increase the value of the vehicle for resale).

(c) "Pass-Through Vehicles" means those new and used motor vehicles which under this Agreement AWC uses the Wharves to unload and transport elsewhere than the Premises without value-added processing.

(d) "Wharfage Revenue" shall mean all revenue generated under this Agreement attributable solely to wharfage (exclusive of demurrage, storage and other special charges). For purposes of this definition, the term "wharfage" shall mean a charge assessed by the Port of Richmond against vehicles, for passage of such vehicles onto, over, through or under wharves or wharf premises, or between vessels or overside vessels (to or from barge, lighter, or water) when berthed at wharves or wharf premises, or when moored in a slip adjacent to a wharf or wharf premise. Wharfage is solely the charge for use of the wharves or wharf premises and does not include charges for any service or facility. Wharfage Revenue also includes without limitation the following wharfage charge established by contract rather than tariff: "Wharfage" (as defined in the MAG Agreement) paid by AHM under the MAG Agreement, but excludes "Surcharge" (as defined in the MAG Agreement).

(e) "Surcharge" shall have the meaning set forth in the MAG Agreement.

(f) "Storage Fees" shall have the meaning set forth in Section 6.6 of this Agreement.

(g) "Substantial Completion Date" means the date the rail infrastructure improvements in the Port Rail Facility, Rail Corridor and Rail Support Yard (all as depicted on Exhibit 2) are substantially completed and available for operation, as certified by the Building Official for the City of Richmond Planning and Building Services Department in accordance with the Work Agreement attached hereto as Exhibit 3.

(h) "MAG Commencement Date" shall mean the date, being the first day of a calendar month, which first occurs on or after the earlier of (1) fifteen (15) days after the Substantial Completion Date, or (ii) the earliest date after the Substantial Completion Date that any vehicle is transported by AHM to or from the Port of Richmond by vessel.

(i) "MAG Year" means any 12-month period during the Term of this Agreement commencing on the MAG Commencement Date or any anniversary thereof.

(j) "Lease year" has the same meaning as MAG Year, except that, with respect to the period from the Effective Date to the MAG Commencement Date, "lease year" means any 12-month period (or portion thereof prior to but not including the MAG Commencement Date) during the Term of this Agreement commencing on the Effective Date or any anniversary thereof.

(k) The "AWC MAG" means the guarantees provided by AWC in Section 6.2 of this Agreement, which supercede any similar guarantees in the Prior Lease.

6.2 AWC guarantees that, during the period from the Effective Date through the MAG Commencement Date, the number of vehicles transported to or from the Port of Richmond by vessel will average at least 3,000 vehicles per month. In the event the number of such vehicles averages less than 3,000 vehicles per month during such period, AWC shall pay to CITY an amount equal to the Wharfage Revenue that would have been generated on the shortfall at the applicable tariff rate for wharfage. AWC further guarantees that, as of the end of each MAG Year during the Term of the MAG Agreement, commencing on the MAG Commencement Date, CITY will have received Wharfage Revenue generated under this Agreement on a cumulative basis from all sources (including GLOVIS, AHM and any new customer) not less than the minimum amount of "Wharfage" (as defined in the MAG Agreement, but excluding Surcharge) due and payable by AHM pursuant to Section 4 of the MAG Agreement on a cumulative basis through the end of such MAG Year. In the event that CITY has not received Wharfage Revenue from all sources at least equal to the AWC MAG, AWC shall pay the amount of the deficiency to CITY pursuant to Section 6.11 of this Agreement. AWC shall be subrogated pursuant to Section 7.3 to the rights of CITY to recover from the responsible party the amounts so paid. In the event of the occurrence of Force Majeure (as defined in Section 1(h) of the MAG Agreement), there shall be fair and equitable reduction of the AWC MAG and the AHM MAG in accordance with the provisions of Section 4(j) of the MAG Agreement.

6.3 Except for revenue sharing to which AWC is entitled under Section 6.4 and/or Section 6.5, all revenue collected and received from all layberthing and other revenues generated by CITY at the Basins and/or Pier 1 and Pier 2 on or adjacent to the Premises and all Tariff Revenue generated under this Agreement or the MAG Agreement shall belong solely to CITY and shall not count toward any sum AWC is required to pay under this Agreement; nor shall AWC be entitled to any such revenue.

6.4 If the AWC MAG is exceeded during any lease year, AWC shall be entitled, as revenue sharing, to twenty-five percent (25%) of all Wharfage Revenues (net of rebates and discounts associated with such Wharfage Revenue, including rebates and discounts under the MAG Agreement) generated and collected from any Processed Vehicle and twenty-five percent (25%) of all Storage Fees generated and collected from any Processed Vehicle or Pass-Through Vehicle, in each case where such vehicle is received by AWC after the date the AWC MAG is exceeded, regardless of whether such Wharfage Revenues or Storage Fees are generated or collected during such lease year or during any subsequent lease year. Such revenue sharing shall be determined and paid on a monthly basis in accordance with Section 6.9 below.

6.5 AWC shall be entitled, as revenue sharing, to twenty-five percent (25%) of all Wharfage Revenue (other than Surcharge and net of rebates and discounts associated with such Wharfage Revenue, including rebates and discounts under the MAG Agreement) generated and collected with respect to Pass-Through Vehicles shipped by/to AWC or AWC's customers at the Port of Richmond without value-added processing by AWC. Such revenue sharing shall be determined and paid on a monthly basis in accordance with Section 6.9 below.

6.6 AWC's customers shall be charged a per-calendar-day fee for storage of Processed Vehicles and Pass-Through Vehicles ("Storage Fee"), after an initial period when no Storage Fee is charged. The Storage Fee shall be charged based on an agreement with AWC's customer that is acceptable to CITY, or, in the absence of such agreement, based on CITY's Tariff established in accordance with Section 6.7 of this Agreement. All Storage Fees shall belong to CITY, subject to any revenue sharing to which AWC may be entitled under Sections 6.4 and/or 6.5.

6.7 CITY shall from time to time establish and publish all tariff charges to be applied under this Agreement. CITY shall establish all tariff charges reasonably and in good faith and shall employ its best efforts to remain competitive with other California ports, promote and aid the commerce of the Port of Richmond and will from time to time review and amend said tariff charges as appropriate. CITY hereby agrees that at least thirty (30) days prior to establishing or amending any tariff charges applicable to the Premises after the date the parties entered into this Agreement, CITY shall consult with AWC and permit AWC a reasonable opportunity to provide to CITY information regarding the competitiveness of such proposed charges with other California ports and other relevant information which CITY may consider. CITY shall establish and enforce all tariff and other charges to AWC's customers in a nondiscriminatory manner so as not to foster competition with AWC's then existing business at the Facility. Notwithstanding the foregoing, the Wharfage Revenues generated with respect to vehicles transported to or from the Port of Richmond by or on behalf of AHM shall be fixed at the rates set forth in Schedule 1 to the MAG Agreement.

6.8 CITY shall be responsible for the collection of all Tariff Revenues except as otherwise provided in this Section 6.8. Notwithstanding the foregoing, AWC shall invoice AWC's customers (including but not limited to AHM) on behalf of CITY as its billing agent. AWC shall exercise commercially reasonable efforts to collect (at no additional out-of-pocket cost to AWC), all Wharfage Revenues and Storage Fees generated under this Agreement, except for Wharfage and Surcharge payable by AHM directly to CITY pursuant to the terms of the MAG Agreement. AWC does not guarantee the collection of Wharfage Revenues or Storage Fees.

6.9 Wharfage Revenues, Storage Fees and revenue sharing shall be administered on a monthly basis during each lease year of the Term. AWC shall, on or before the fifteenth (15<sup>th</sup>) day following the close of each calendar month, deliver to CITY a written statement itemized per each vehicle identification Number ("VIN"), which includes the total Wharfage Revenue, Storage Fees and revenue sharing generated for such month, the amounts collected in each of the foregoing categories, and the disposition of any such collected amounts. So long any bonds issued to finance the construction of the Projects are outstanding, AWC shall, on or before the fifteenth (15<sup>th</sup>) day following the close of each calendar month, pay to the bond trustee any Wharfage Revenues and Storage Fees actually received by AWC during such month. The bond documents will provide that all Wharfage Revenue and Storage Fees, whether received from AWC, AHM or other person, will be applied in the following order of priority; first, to pay debt service on the bonds and required sinking fund deposits; second, to pay any revenue sharing due

to AWC under Section 6.4 and/or Section 6.5; and third, to pay any surplus to CITY. When the bonds are no longer outstanding, then AWC shall, on or before the fifteenth (15<sup>th</sup>) day following the close of each calendar month, apply any Wharfage Revenue and Storage Fees actually received by AWC during such month in the following order of priority; first, to pay any revenue sharing due to AWC under Section 6.4 and/or Section 6.5; and second, to pay any surplus to CITY.

6.10 Upon CITY's request, AWC will provide an aged accounts receivable report showing the age of any uncollected amounts in each of the foregoing categories. CITY shall, on or before the fifteenth (15<sup>th</sup>) day following the close of each calendar month, deliver to AWC a written statement, itemized per each customer, which includes the total Wharfage Revenue and Storage Fees received by CITY or the bond trustee from AWC's customers during such month. CITY shall, on or before the twentieth (20<sup>th</sup>) day following the close of each calendar month, pay to AWC any unpaid revenue sharing to which AWC is entitled under Section 6.4 and/or Section 6.5.

6.11 Within sixty (60) days after the end of each lease year during the Term of this Agreement, AWC shall deliver to CITY a statement setting forth in reasonable detail (a) the calculation of any AWC MAG payment due to CITY under Section 6.2 of this Agreement and (b) any payment due to or from CITY and/or of any increase or decrease in the Bucket balance under the MAG Agreement. Any such payment by AWC or CITY shall be paid within thirty (30) days of receipt of such statement.

#### Section 7. Remedies for Non-Payment.

7.1 In addition to any other remedies at law, in equity or under this Agreement, if, at such time as a payment under this Agreement is not paid when due, the party entitled thereto may make demand therefore, in writing, at any time following said delinquency. If said delinquency continues following a written demand therefore such unpaid sums shall become a lien against any payments owing to the defaulting party under this Agreement. Any sums which remain unpaid after the expiration of ten (10) days written notice shall bear interest at the rate of eight percent (8%) per annum from the date the sum is due until paid.

7.2 Each party acknowledges that late payment of the sums due hereunder will cause the other party to incur costs not contemplated by this Agreement, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing, accounting and late charges. Therefore, if any sums due are not received within ten (10) days after written demand therefore, the defaulting party shall pay to the non-defaulting party an additional sum equal to the greater of \$500 or five percent (5%) of the portion of the sums due and unpaid as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that each party will incur by reason of late payment of sums due hereunder. Such late charge is not an exclusive remedy for late payment. Acceptance of any late charge shall not constitute a waiver of any default with respect to the overdue amount, nor shall the late charge limit or prevent the non-defaulting party from exercising any of the other rights

and remedies available to it at law, in equity or under this Agreement (including, but not limited to, the right to indemnification under Section 20.3).

7.3 If AWC pays or advances amounts due from AHM or other responsible party to CITY, which the responsible party failed to pay when due, AWC shall be subrogated to the rights of CITY to recover from the responsible party the amounts so paid or advanced.

Section 8. Fees and Taxes.

Subject to the provisions of the Work Agreement, AWC, at its own expense, shall pay all taxes, fees and assessments, which may be levied, imposed or assessed upon or against and applicable to the Premises from and after the Effective Date. AWC, at its own expense, shall pay all taxes, assessments, and charges on goods, merchandise, appliances, equipment and property owned by it in or about the Premises and any tax or assessment levied or assessed on the occupancy of AWC on the Premises. AWC understands and agrees that by entering into this Agreement a possessory interest subject to property taxation may be created and if created, AWC may be subject to the payment of property taxes levied on such interest by a taxing authority other than CITY. AWC shall have the right in good faith to contest any such taxes or assessments.

Section 9. Access to Premises and Port Rail Facility; Security

9.1 At all times during the Term of this Agreement, and at all hours of every day, AWC, its agents, employees using the Premises shall have access to the Premises through all gates and access roads as set out on Exhibit 2. Third persons using the Premises with the consent and approval of AWC shall have reasonable access to the Premises in accordance with the security measures in place for the Premises.

9.2 AWC shall provide, at its own expense, such security guards or alarm systems as it may deem necessary for the security and protection of the interior of the Premises including all persons and property located thereon. (See also Section 3.5.)

9.3 At all times during the Term of this Agreement, and at all hours of every day when use of the Port Rail Facility by a third-party operator is not required, AWC, its agents and employees using the Premises shall have access to the Port Rail Facility in accordance with security measures reasonably acceptable to CITY and AWC.

Section 10. Safety Precautions and Storm Water Pollution Control.

10.1 AWC shall not (a) employ or use in the conduct of its business ways or means which present a danger of fire, explosions or other hazardous risks over and above the risk normally incurred in the type of business contemplated by this Agreement, or (b) load or unload, handle, process or store in, on or around the Premises any material or substance which would be dangerous or cause risks because of the reasons set forth in clause (a) hereinabove, or otherwise.

10.2 Subject to Section 5.8 of this Agreement, AWC shall comply with all applicable environmental standards set by federal, state and local laws, rules, regulations, orders or permits related to AWC's use and occupancy of the Premises. In connection with AWC's use and occupancy of the Premises, AWC shall take measures to minimize the potential for pollutants to enter the San Francisco Bay and/or Port of Richmond's storm water drainage system. The targeted pollutants include heavy metals, toxic materials, floatable materials, oxygen demanding substances (e.g. plant debris, street litter and organic substances), oil and grease, bacteria and viruses, sediment, and nutrients (e.g. nitrogen and phosphorous). These measures shall pertain to the extent related to AWC's use and occupancy of the Premises, and shall include, but not be limited to, taking all steps reasonably necessary in:

(a) Preventing fuel spills and leaks and reducing the impact to storm water by not topping off fuel tanks; using secondary containment when transferring fuel from tanker trucks to fuel tanks; using absorbent material on small spills and for general cleaning rather than hosing; carrying out all federal, state, regional and local requirements regarding underground storage tanks or installing above ground tanks; fueling mobile equipment at designated fueling areas; and designing fueling areas to prevent the run-on of storm water and the run-off of spills. "Secondary containment" means a back-up system that prevents the spread of pollutants should any spill, leak or otherwise escape.

(b) Preventing the discharge of pollutants to storm water from vehicle, boat and equipment maintenance and repair by containing waste oil under cover with absorbent material under each container; keeping drip pans or container under the areas that might drip pollutants; using a vehicle maintenance area designed to prevent storm water pollution; cleaning storm drain inlets regularly, especially after large storms; not pouring materials down storm drains; dry sweeping instead of hosing down work areas; storing idle equipment under cover, switching to non-toxic chemicals for maintenance when possible; cleaning small spills with rags and larger spills with absorbent materials; and minimizing the use of solvents.

(c) Preventing the discharge of pollutants to storm water from outdoor equipment and operations by reducing the amount of waste created; enclosing or covering all or some of the equipment; and installing secondary containment.

(d) Preventing the discharge of pollutants to storm water from vehicle and equipment washing and steam cleaning by maintaining designated wash areas, preferably covered, to prevent contact with storm water; and not permitting any wash water to enter the storm drains.

(e) Preventing the discharge of pollutants to storm water from outdoor loading/unloading of materials by parking tank trucks or delivery vehicles so that spills or leaks can be contained; covering the loading and unloading docks to reduce exposure of materials to rain; and using drip pans under hoses.

(f) Preventing the discharge of pollutants to storm water from outdoor storage areas by installing appropriate safeguards against accidental release; installing secondary containment where reasonably required; conducting regular inspections.

(g) Protecting materials from rainfall run-on, run-off and wind dispersal by storing materials indoors; complying with specific federal, state, regional and local standards regarding storage of oil and hazardous material; enclosing or covering materials; periodically sweeping parking lots or other surfaces near bulk material storage areas to remove debris blown or washed from storage areas; and installing pellet traps at storm water discharge points where plastic pellets are loaded and unloaded.

(h) Preventing the discharge of pollutants to storm water from waste handling and disposal by tracking waste generation, storage, and disposal; reducing waste generation and disposal through source reductions, reuse and recycling; preventing run-on and run-off from waste management areas; and covering dumpsters and garbage cans during the rainy season.

(i) Preventing the discharge of pollutants to storm water from contaminated or erodible surface areas by leaving as much vegetation on-site as reasonably possible; minimizing soil exposure; stabilizing exposed soils; and preventing storm water run-on and run-off.

(j) Preventing the discharge of pollutants to storm water from buildings and grounds maintenance by washing and cleaning up with as little water as reasonably possible; preventing and cleaning up spills immediately; and keeping debris from entering the storm drains.

(k) Preventing the discharge of pollutants to storm water from building repair, remodeling, and construction by using appropriate containment and erosion controls; and enclosing or covering building material storage areas.

(l) Preventing the discharge of pollutants to storm water and receiving waters from over water activities by minimizing over water maintenance; limiting over water hull surface maintenance to sanding and minor painting; not spray painting vessels while they are on the water; avoid washing down boats with soap and detergent; using phosphate-free and biodegradable detergent for hull washing; keeping organic and inorganic wastes out of the water; and cleaning up spills and wastes immediately. "Over water activities" refers to activities undertaken by AWC on the waters of San Francisco Bay or waters flowing into San Francisco Bay.

(m) Preventing the discharge of pollutants to storm water by using ground cloths when painting boats on land; using tarps, plastic sheeting, or other material to contain spray paint and blasting sand; properly disposing of surface paint chips, used blasting sand, residual paints, and other material; and sweeping any drydocks before flooding them.

Section 11. Lawful Conduct.

11.1 AWC shall obey and observe and shall use due diligence to require all persons entering upon the Premises to obey and observe all terms of this Agreement, all laws of the United States, and all applicable orders, regulations and rules and requirements adopted from time to time by the Maritime Administration, the Department of Homeland Security or by any other department or agency of the government of the United States and all applicable laws, orders, rules, regulations, ordinances and requirements adopted by state, municipal or harbor authorities relating to the use of the Premises (but not the condition thereof unless required by the terms of this Agreement) and appurtenant facilities, including but not limited to, laws, orders, rules, regulations, ordinances and requirements with respect to health, fire, police, environment and pollution. To the extent required by CITY's ordinances, this obligation shall include, without limitation, the duty to abide by all such legal requirements. Additionally, AWC shall and shall cause its contractor and subcontractors to pay prevailing wages in the construction of AWC's Work (as defined in Section 1(c) of the Work Agreement), as those wages are determined pursuant to Labor Code Sections 1720 et seq., and implementing regulations of the Department of Industrial Relations, and the City of Richmond employment requirements, including but not limited to the City's Living Wage Ordinance (Richmond Municipal Code Chapter 2.60), the City's Business Opportunity Ordinance (Richmond Municipal Code Chapter 2.50), and the City's Local Employment Program Ordinance (Richmond Municipal Code Chapter 2.56). AWC shall and shall cause its contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq. Copies of the currently applicable current per diem prevailing wages are available from the California Department of Industrial Relations website, [www.dir.ca.gov](http://www.dir.ca.gov). During the construction of AWC's Work, AWC shall or shall cause its contractor to post at the Premises the applicable prevailing rates of per diem wages. AWC shall indemnify, hold harmless and defend (with counsel reasonably acceptable to CITY) SPA and CITY against any claims for losses, liabilities, damages (direct or consequential), compensation, fines, penalties, causes of action, administrative and judicial proceedings and orders, judgments, remedial action or requirements, enforcement actions of any kind, and all costs and expenses incurred therewith (including but not limited to attorneys' fees and costs) or other amounts arising out of the failure or alleged failure of any person or entity (including AWC, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Section 1720 et seq. and implementing regulation or comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations in connection with construction of any improvements to the Premises or any other work undertaken or in connection with the Premises.

11.2 Except as provided in the Work Agreement or in Sections 11.1 and 11.3, SPA and CITY shall comply with the lawful demands of any and all lawful governmental authorities which may require the making of any alterations, repairs, installations or improvement to the Wharves (including fire systems) and other portions of the Premises, or the investigation or remediation of Materials of Environmental Concern, in order to conform to applicable statutes, codes, ordinances, or regulations having the force of law (collectively "Laws"); provided, however, that the provisions of Section 4(k) of the MAG Agreement with respect to Emergency

Capital Requirements (as defined in the MAG Agreement) are incorporated herein by this reference. AWC may exercise any rights to Cure (as defined in the MAG Agreement) such Emergency Capital Requirement granted to AHM in said Section 4(k), except to the extent inconsistent with the exercise of any such right by AHM pursuant to the MAG Agreement. The provisions of this Section 11.2 shall survive the termination of the MAG Agreement.

11.3 Subject to the terms of the Work Agreement and Section 5.5, in the event of any demands of governmental authorities with respect to buildings pursuant to Laws that are applicable only because of the nature of AWC's specific use, as opposed to laws of general applicability, then AWC rather than SPA or CITY shall be obligated to comply therewith, but only to the extent that the cost of compliance would not exceed the maximum amount in excess of available insurance proceeds which CITY is obligated to pay in connection with the Cure of an Emergency Capital Requirement pursuant to Section 4(k)(C) of the MAG Agreement. If the cost of compliance would exceed such maximum amount, then unless SPA or CITY elects to reimburse AWC the amount of such excess, AWC may at its option elect to raze (after receiving SPA's or CITY's prior written authorization to raze, which authorization shall not be unreasonably withheld) those parts of buildings that fail to comply with Laws or to terminate this Agreement if the razing of the facilities that are affected (or denial by SPA or CITY of written authorization to raze) will have a material and substantial adverse effect upon AWC's business operations.

11.4 AWC shall enter into and comply with, and AWC shall require each of its contractors and subcontractors, to enter into and comply with a first source agreement with CITY for construction of AWC's Work (the "First Source Agreement), provided that the First Source Agreement shall not conflict with existing labor agreements for labor which is to construct AWC's Work.

## Section 12. Accounts and Records.

AWC shall keep full and accurate accounts and records relating to dockage, wharfage, wharf demurrage, processing and/or repairing of vehicles and/or equipment and tariff storage as set forth in the Tariff earned upon the Premises and the Wharves for a period of three (3) years. CITY shall keep full and accurate accounts and records relating to charges, credits and payments to or by CITY under this Agreement and the MAG Agreement (including supporting documentation) for a period of three (3) years. CITY and AWC shall have the right, through its representatives, at all reasonable times and upon prior written notice to the other, to inspect and make copies of such records of the other, and the producing party agrees that all such full and accurate records maintained by it shall be made available to the other at the producing party's offices at the Port of Richmond. Each party, at its own expense, shall be entitled to independent audits of the other's accounts and records to the extent necessary to determine any amounts owed to or by such party under this Agreement or the MAG Agreement. The party being audited agrees to cooperate fully with the other party's representatives performing such audits. The audit shall be limited to the determination of amounts owed to or by a party under this Agreement or the MAG Agreement and shall be conducted during normal business hours at the audited party's

offices at the Port of Richmond. The audited party will cooperate and provide any information reasonably requested to properly perform such audit. Each party shall keep any information gained from the other's accounts, records, inspections or audit confidential and shall not disclose it other than as required by law or to carry out the purposes of this Agreement.

Section 13. Holdover.

If AWC shall hold over the expiration of the Term of this Agreement, or any extension thereof, such tenancy shall be from month to month only and upon all the terms, covenants and conditions hereof (including rates in effect at the end of the Term). If AWC holds over without CITY's consent, CITY's revenue sharing obligations will cease.

Section 14. Alterations; Surrender of Premises.

14.1 AWC may, at AWC's own expense, make alterations, additions, replacements, or improvements to the Premises, including the construction of temporary buildings or security fencing thereon, with CITY's prior written permission, which shall not be unreasonably withheld. Any such alterations or the like shall immediately become part of the Premises and be the sole property of CITY upon expiration or termination of this Agreement. AWC shall have no obligation to remove any such improvements from the Premises, which are placed thereon with the prior written approval of CITY. The foregoing notwithstanding, with regard to any alterations, additions or improvements (other than AWC's Work) proposed by AWC to be made after the Effective Date, CITY may condition its approval upon the removal of such items by AWC at the end of the upon termination or expiration of this Agreement at AWC's expense, within twenty (20) days. Upon removal of such structures, AWC shall restore the Premises to the same condition it was in prior to installation thereof.

14.2 Upon expiration or sooner termination of this Agreement, the Premises shall be returned to CITY in as good condition as when received, excepting ordinary wear and tear and alterations, additions or improvements not required to be removed under Section 14.1. Repair or restoration of damage or destruction by fire or other casualty or by eminent domain shall be governed by Section 22. Nothing herein shall obligate AWC to maintain, repair, reconstruct or rebuild any portion of the Premises except as specifically required of AWC under express provisions of this Agreement.

Section 15. Fire Safety and Equipment.

AWC shall cause all cargo, goods, material and equipment to be stored in such a manner that the fire line, including any fire equipment and controls on the Premises are readily accessible at all times. In the event of a breakage in the fire line, or any other danger or damage to SPA or CITY property caused by fire, earthquake, or like hazard, CITY shall be immediately notified by AWC. CITY agrees to maintain upon the Premises at all times such water lines and high pressure systems, whether or not currently located on the Premises, as may be prescribed from time to time by the Fire Marshal of the City of Richmond, the United States Coast Guard, or other competent authority and shall provide for any periodic inspection and certification as may be

required by same. The cost of any such additional fire equipment and inspections shall be paid either by CITY or by AWC, which shall be determined in accordance with the provisions of Section 5 and subject to the limitations contained therein.

Section 16. Damage to Goods.

Neither SPA nor CITY shall have and liability for any loss of or damage to the cargo, property and equipment of AWC, its agents, employees, lessees, licensees or other third persons, located upon or used in connection with the Premises or the Wharves, other than any such loss or damage caused by the intentional or negligent acts or omissions of SPA or CITY, their agents or employees, and then only to the extent caused by such acts or omissions.

Section 17. Utility Lines and Easements.

CITY reserves and retains for itself and SPA any and all existing rights of way for sewer outfall, gas and other pipe lines for water mains, fire and water hydrants, electrical cables and wires, television cables and wires, closed-circuit television cable and wires, and the right to locate in, upon or across the Premises in a location or locations which will not unduly interfere with AWC's use and enjoyment of the Premises, other such conduits, lines and mains as may be deemed necessary by SPA or CITY for its uses and the uses of other tenants, licensees and/or agents of SPA or CITY in connection with the latter's use and enjoyment in the vicinity of and on the Premises. CITY agrees to provide AWC with advance notice of the installation of any such facilities and shall cooperate with AWC to minimize any interference caused by such installation and operation.

Section 18. Subordination.

18.1 Contemporaneously with the execution and delivery of this Agreement, CITY has executed and delivered documents in connection with bond financing of the costs payable by CITY for the Projects (the "Financing"). The form of the Financing involves two site leases of the Master Lease Premises (collectively, the "Site Lease"), the first by and between SPA (as lessor) and JPFA (as lessee), and the second by and between the City (as lessor) and JPFA (as lessee), and a facilities sublease (the "Facilities Lease") by the JPFA (as lessor) to CITY (as sublessee). Payments by CITY as sublessee under the Facilities Lease will be applied by JPFA to pay debt service on the bonds. AWC further acknowledges and agrees that CITY has assigned certain of its rights to receive payments from AWC hereunder to JPFA or a bond trustee to secure the Financing, and AWC agrees to make such payments directly to such assignee as provided in this Agreement.

18.2 AWC acknowledges and agrees that this Agreement is a sub-sublease, subordinate and in all respects subject to the provisions of the Site Lease and Facilities Lease, and that if for any reason CITY defaults on the Facilities Lease and, as a result thereof, JPFA or the bond trustee, as assignee of JPFA, elects to terminate the Facilities Lease, then, except as otherwise provided herein, this Agreement will terminate and AWC will have no recourse to SPA, CITY, JPFA or any other party to the Financing; providing that (i) AWC shall retain its

right to recover from CITY any damages caused by CITY's default, and (ii) such right shall remain subordinate to the rights of SPA and JPFA (or any holder of JPFA's note or any trustee or other assignee) under the Site Lease and Facilities Lease. Notwithstanding anything to the contrary, in the event of the termination or expiration of the Site Lease and/or the Facilities Lease prior to the end of the term of this Agreement (as same may have been extended by the terms thereof), and provided that bonds issued in connection with the Financing are no longer outstanding and AWC is not then in default under this Agreement beyond applicable notice and the expiration of cure periods, then, in such event, AWC's peaceful and quiet enjoyment and possession of the Premises shall not be disturbed; nor shall the rights and entitlements of AWC or AWC's customers under this Agreement (including, but not limited to, the preferential rights of AWC and AWC's customers with respect to the Wharves and Port Rail Facility) be affected in any manner; and this Agreement shall continue in full force and effect upon all the same terms and conditions thereof.

Section 19. Utilities.

AWC shall pay for all water, heat, gas, trash collection, electricity, telephone service, cable television service and any other utilities that may be furnished to or used in or upon the Premises by AWC or its agents during the term of this Agreement.

Section 20. Indemnification.

20.1 AWC, and its contractors and subcontractors (each an "Indemnifying Party"), shall hold harmless, defend, protect and indemnify SPA, CITY, their agents, officers and employees (collectively, the "Indemnified Party") from and against any and all claims, damages, liabilities, costs, and expenses arising in connection with personal injury, death, loss of or damage to persons or property on or about the Premises, Port Rail Facility and the Wharves, or from any material misrepresentation or omission in information provided by AWC in connection with the Financing ("Claims"), to the extent resulting from any act or omission of such Indemnifying Party, companies parent of, subsidiary to or affiliated with such Indemnifying Party, or the directors, officers and employees of such companies or of Indemnifying Party, or any tenant, licensee, agent, contractor or subcontractor thereof.

20.2 In Claims against any Indemnified Party by an employee of AWC, a contractor, or subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts one of them may be liable, the indemnification obligation under Section 20.1 above shall not be limited by a limitation on amount or type of damages, compensation of benefits payable under workers' compensation acts, disability benefit acts or other employee benefit acts.

20.3 SPA and CITY and their respective contractors and subcontractors shall hold harmless, defend, protect and indemnify AWC, its agents, officers and employees from and against any and all claims, damages, liabilities, costs, and expenses arising in connection with personal injury, death, loss of or damage to persons or property on or about the Premises, Port Rail Facility and the Wharves ("Claims"), to the extent resulting from any act or omission of SPA or CITY, companies parent of, subsidiary to or affiliated with SPA or CITY, or the

directors, officers and employees of such companies, SPA or CITY, or any tenant, licensee, agent, contractor or subcontractor thereof.

20.4 CITY acknowledges that failure to make payments under Work Agreement as and when lawfully due may result in construction delays and/or the inability of AWC to fulfill its obligations to contractors, subcontractors and suppliers, resulting in substantial damages to AWC. CITY shall indemnify, defend and hold AWC harmless from and against any claims, loss, damage, liability, cost or expense (including but not limited to claims of contractors, subcontractors and suppliers and reasonable attorneys' fees) arising out of CITY's failure to make payments under the Work Agreement when lawfully due; provided, however, that CITY's indemnity obligations hereunder shall not apply to the extent any such claims, loss, damage, liability, cost or expense are attributable to AWC's negligence or willful act or omission.

20.5 In no event shall any indemnity under this Section 20 apply to Claims which are attributable to the sole negligence or willful misconduct of an indemnitee or its agents, servants or independent contractors who are directly responsible to such indemnitee. If the Claims are attributable to any joint or concurrent negligent act (either active or passive) or an omission by an indemnitee, the indemnitor shall indemnify, hold harmless and defend such indemnitee from such Claims only to the extent such Claims arise out of or result from the negligence or willful misconduct of indemnitor, or anyone directly or indirectly employed by such indemnitor, or anyone for whose acts they may be responsible or liable.

20.6 The provisions of this Section 20 shall survive the termination or expiration of this Agreement.

#### Section 21. Insurance.

The parties will provide insurance in accordance with the provisions of Exhibit 7 ("Insurance Requirements").

#### Section 22. Destruction.

22.1 During the Term of this Agreement, if there is any loss, damage to, or destruction of any building, structure or other improvement on the Premises or Port Rail Facility, CITY shall, subject to Section 22.3, cause such improvements to be repaired or replaced, to substantially the same condition as it was in immediately before the damage, loss or destruction. Except as otherwise provided in Section 22.4, any loss, damage to or destruction of such improvements during the Term of this Agreement shall have no effect upon the Term of this Agreement, compensation to be paid to CITY hereunder, or any of CITY's or AWC's obligations hereunder.

22.2 During the Term of this Agreement, if there is any loss, damage to, or destruction of any Wharf, SPA and CITY shall, subject to Section 22.3 hereof, cause the Wharf to be repaired or replaced, to substantially the same condition as it was in immediately before the damage, loss or destruction. Except as otherwise provided in Section 22.4, any loss, damage to or destruction to any Wharf during the Term of this Agreement shall have no effect upon the

Term of this Agreement, compensation to be paid to CITY hereunder, or any of SPA's, CITY's or AWC's obligations hereunder.

22.3 The provisions of Section 4(k) of the MAG Agreement with respect to Casualty Losses (as defined in the MAG Agreement) are incorporated herein by this reference. AWC may exercise any rights to Cure (as defined in the MAG Agreement) such Casualty Loss granted to AHM in said Section 4(k), except to the extent inconsistent with the exercise of any such right by AHM pursuant to the MAG Agreement. The provisions of this Section 22.3 shall survive the termination of the MAG Agreement.

22.4 In the event that the MAG Agreement is terminated in accordance with the provisions of Section 4(k) of the MAG Agreement, then either CITY or AWC may elect to terminate this Agreement by giving written notice to the other within thirty (30) days of the effective date of such termination.

### Section 23. Disputes.

This Agreement is made in Contra Costa County, California, and, except as otherwise provided in the Work Agreement with respect to the arbitration of disputes concerning any provision of the Work Agreement, any action relating to this Agreement shall be instituted and prosecuted in the courts of Contra Costa County, California. If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party(ies) will have the right to recover its reasonable attorneys' fees and costs of suit from the other party(ies).

### Section 24. Sublease and Assignment.

24.1 AWC shall not assign any rights or obligations under this Agreement or sublet all or any portion of the Premises without SPA's and CITY's prior written consent, which consent may not be unreasonably withhold. Upon thirty (30) days prior notice to SPA and CITY, AWC may transfer or assign any or all of its interest, rights, and obligations under this Agreement to any partnership, joint venture or corporate entity which is and continues to be controlled by AWC (for purposes hereof, "control" shall mean the ownership of more than fifty percent (50%) of such entity) provided that AWC delivers to SPA and CITY a written confirmation, along with the notice provided for herein, that such entity has financial and managerial capability to competently operate the business then being conducted on the Premises. It is understood and agreed that, without limitation, SPA's or CITY's refusal to consent shall be considered reasonable in the event (a) CITY would receive substantially less Tariff Revenue as a result of any such proposed assignment or sublease, or (b) any bonds issued to finance the construction of the Projects are outstanding and bond counsel is of the opinion that the proposed assignment or sublease would impair the tax-exempt status of the bonds.

24.2 Except as hereinabove provided in Section 24.1, neither this Agreement nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment or execution against AWC or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against AWC or by any process of law, and that possession of the

whole or any part of the Premises shall not be divested from AWC in such proceedings or by any process of law without the prior written consent of SPA and CITY. Any petition in bankruptcy or insolvency which is filed against AWC and which is not dismissed within sixty (60) days shall cause this Agreement to terminate at the option of SPA or CITY upon thirty (30) days prior written notice to AWC.

Section 25. No Liens or Encumbrances.

AWC shall keep the Premises free and clear of any lien of any kind whatsoever created by AWC's acts or omissions. AWC shall have the right to contest any lien in good faith provided AWC shall pay any judgment rendered prior to execution thereon.

Section 26. Default and Termination.

26.1 The occurrence of any of the following shall constitute a default by AWC ("Event of Default"):

(a) Nonpayment of any sums due CITY hereunder as and when the same shall become due and payable if the failure continues for ten (10) days after written notice has been given to AWC.

(b) Nonpayment of any taxes (subject to AWC's right to contest same), charges, or any other sum of money required to be paid under this Agreement prior to delinquency if the failure continues for ten (10) days after written notice has been given to AWC.

(c) Failure to perform any other provision of this Agreement if the failure to perform is not cured within thirty (30) days after written notice has been given to AWC. If the default cannot reasonably be cured within thirty (30) days, AWC shall not be in default of this Agreement if AWC commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default.

(d) Any failure to carry any of the insurance required to be carried by AWC under the terms of this Agreement after ten (10) days' written notice.

26.2 Notices given under this Section 26 shall be in writing and specify (i) the alleged default and (ii) the applicable Agreement provisions, and (iii) shall demand that AWC perform the provisions of this Agreement or pay the compensation that is in arrears, as the case may be, within the applicable period of time.

26.3 Upon the occurrence of an Event of Default, CITY shall have, in addition to all other remedies at law or equity, the right to terminate this Agreement and to seek monetary damages pursuant to California Civil Code Section 1951.2; provided that CITY shall not terminate this Agreement during the Term of the MAG Agreement without providing to AHM the same notice and opportunity to cure as provided in this Section 26 with respect to AWC.

26.4 If either party (the "non-performing party") fails to perform or to commence and diligently continue with performance of any of its obligations hereunder, the other party (the "performing party") may at any time after thirty (30) days' written notice to the non-performing party to perform its said obligation, pay any sum or do any act required to be performed by the non-performing party and all costs incurred by the performing party in performing the non-performing party's said obligation shall be due and payable immediately from the non-performing party to the performing party at the time any sum is paid by the performing party and if paid at a later date shall bear interest from the date the sum is paid by the performing party until the performing party is paid by the non-performing party at the rate of eight percent (8%) per annum. Written notices given under this Section shall specify (i) the alleged failure to perform, (ii) the applicable Agreement provision, and (iii) shall demand performance within thirty (30) days or such applicable longer or shorter period if any. Notwithstanding the foregoing, the performing party is under no obligation to pay any sum or do any act required by the non-performing party.

Section 27. Relocation; No Relocation Benefits.

27.1 The San Francisco Bay Conservation and Development Commission has identified the future need to expand container capacity at the Port of Richmond in its 2020 Seaport Plan. To address any inconsistency with the Seaport Plan, if any portion of the Premises is required for such expansion development during the term of AHM's operations (including AWC's operations for AHM) at the Port of Richmond, then, on the mutual agreement of CITY, AWC and AHM, CITY will relocate such portion of the facilities at CITY's sole cost and expense so that the resulting Premises provide an equally efficient site for such operations. AWC and AHM shall be entitled to an equitable reduction of their respective MAG obligations to the extent the relocation interferes with their ability to fulfill those MAG obligations.

27.2 As further and additional consideration for leasing the subject Premises, except as otherwise provided in Section 27.1, AWC does hereby voluntarily and knowingly release and forever discharge CITY, SPA and/or the Richmond Redevelopment Agency, their successors and assigns, from any and all claims or demands for relocation assistance benefits which may arise by reason of Article 9 of Chapter 4 of Division 24 of the Health and Safety Code of the State of California, or by reason of Chapter 16 of Division 7 of Title I of the Government Code of the State of California, or by reason of the federal act entitled "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" (Public Law 91-646), as amended, or by reason of any law or regulation of the United States of America, the State of California, or other authority, except in the event of direct condemnation of AWC's property interest by CITY.

Section 28. Signs.

No signs or placards of an advertising or promotional nature, other than those which comply with all applicable City ordinances and reasonably identify the facility, shall be painted, inscribed or placed in or on the Premises or any building or structure located thereon without the prior written consent of the Port Director, which consent will not be withheld unreasonably.

Upon the termination or expiration of the Term of this Agreement, AWC, at its own expense, shall remove promptly any and all signs and placards placed by or on behalf of AWC upon the Premises, including any property subsequently added to the Premises, if any.

Section 29. Inspection of Premises.

SPA, CITY or their duly authorized representative(s), or agents and other persons for it, may at reasonable times and upon reasonable notice (except in case of emergency) enter upon the Premises at any and all reasonable times during the Term of this Agreement, and without unreasonable interference with the business being conducted on the Premises, for the purpose of determining whether or not AWC is complying with the terms and conditions hereof or for any other purpose incidental to rights of SPA and CITY. SPA and CITY shall be liable to AWC and AWC's subtenants, if any, for all damages for any injury to AWC's or AWC's subtenants' businesses in the event that such entry is conducted by the SPA or CITY, respectively, in a negligent manner.

Section 30. Waivers; Remedies Cumulative.

30.1 No waiver by CITY at any time of any of the terms, conditions, covenants or agreements of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by AWC.

30.2 No delay, failure or omission of CITY to re-enter the Premises, or to exercise any right, power, privilege or option arising from any default, nor subsequent acceptance of rent or compensation then or thereafter accrued, shall impair any such right, power, privilege or option, or be construed to be a waiver of any such default or relinquishment thereof or acquiescence therein.

30.3 No notice by CITY shall be required to restore or revive time as of the essence hereof after waiver by CITY or default in one or more instances. No option, right, power, remedy or privilege of CITY shall be construed as being exhausted or discharged by the exercise thereof in one or more instances.

30.4 It is agreed that each and all of the rights, powers, options or remedies given to CITY by this Agreement are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option or remedy by CITY shall not impair its rights to any other right, power, option or remedy.

Section 31. Nondiscrimination.

31.1 AWC herein covenants by and for itself, its agents, employees and officers and all persons claiming under or through it that this Agreement is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, sex, creed, national origin, or ancestry, in

the leasing, subleasing, contracting, subcontracting, transferring, use, occupancy, tenure, or enjoyment of the Premises herein leased and assigned; nor shall AWC itself, nor any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, users or vendors in the Premises herein leased and assigned and AWC agrees to observe the provisions of Section 2.28.030 of the Municipal Code of the City of Richmond, obligating every entity entering into a contract with CITY for public work or for goods or for services to refrain from discriminatory employment or subcontracting practices on the basis of race, color, sex, sexual orientation, religious creed, national origin or ancestry of any employees, any applicant for employment for any potential subcontractor. Said Section 2.28.030 is, by this reference, made a part of this Agreement.

31.2 AWC agrees to comply with all provisions of City of Richmond's Business Opportunity Ordinance (Richmond Municipal Code Chapter 2.50) and Local Employment Program Ordinance (Richmond Municipal Code Chapter 2.56), which Ordinances are incorporated into this Agreement by this reference.

Section 32. Force Majeure.

In the event that CITY or AWC is delayed, directly or indirectly, from the performance of any act or thing required under the terms hereof by a force majeure event, including but not limited to acts of God, accident, fire, flood, inclement weather, governmental action, restrictions, priorities or allocations of any kind and all kind, strikes or labor difficulties of any and all kinds, shortages of or delay in the delivery of material, act of war, riot, and civil commotion, or by any similar or dissimilar cause (other than financial) beyond the reasonable control of AWC or CITY, as the case may be, except for governmental restrictions on the importation of motor vehicles into the United States, such failure shall not be deemed to be a breach of this Agreement or a violation of any such covenants and the time within which AWC or CITY must perform any such act shall be extended by a period of time equal to the period of delay arising from any said causes. With respect to the AWC MAG and the AHM MAG, the Force Majeure provisions of the MAG Agreement and of Section 6.2 of this Agreement shall control, and not the provisions of this section.

Section 33. Terms Binding on Successors.

All the terms, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. The provisions of this Section shall not be deemed as a waiver of any of the conditions against assignment or subletting hereinabove set forth.

Section 34. Time of Essence.

Time is expressly declared to be of the essence of this Agreement. CITY acknowledges that failure to make progress payments as and when agreed in the Work Agreement (Exhibit 3 to this Agreement) will likely result in construction delays and/or the inability of AWC to fulfill its

obligations to contractors, subcontractors and suppliers, resulting in claims and other substantial damages to AWC.

Section 35. Exhibits.

All exhibits referred to in this Agreement are incorporated by reference. The Exhibits include the following:

- Exhibit 1.1. – Legal Description of SPA Property
- Exhibit 1.2 – Legal Description of City Property
- Exhibit 2 – Map of Premises, Wharves and Port Rail Facility
- Exhibit 3 – Work Agreement
- Exhibit 4 – Disclosure Statement
- Exhibit 5 – List of Remediation and Other Equipment
- Exhibit 6 – Maintenance Matrix
- Exhibit 7 – Insurance Requirements

Section 36. Notices.

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To CITY:  
and/or SPA

City of Richmond  
City Hall  
450 Civic Center Plaza  
Richmond, California 94804  
Attention: Port Director

With a copy to:

City Attorney  
City Hall  
450 Civic Center Plaza  
Civic Center Plaza  
Richmond, California 94804

To AWC:

Auto Warehousing Co.  
2810 Marshall Ave., #B  
Tacoma, WA 98421  
Attention: Steve Seher

With a copy to: Dennis A. Ostgard  
Schwabe, Williamson & Wyatt, P.C.  
U.S. Bank Centre, Suite 3010  
1420 Fifth Avenue  
Seattle, WA 98101

Either party may change its address by notifying the other party in writing as provided herein of the change of address.

Section 37. Cooperation.

37.1 SPA and CITY agree to cooperate with AWC's attempts to gain approval of all permits, approvals and consents required by any governmental agency or quasi governmental agency for the use of the Premises and to execute any and all documents or join in any and all applications and actions that may be required to obtain such approval.

37.2 During the Term of this Agreement SPA, CITY and AWC agree to make good faith efforts to attract Tariff Revenue producing customers to the Premises and CITY and AWC will hold quarterly meetings for the purpose of co-marketing the Port facilities and business opportunities. In this regard, SPA and CITY agree not to compete with AWC for automobile accounts within the City of Richmond. However, in the event any single manufacturer account insists on dealing directly with SPA or CITY to handle their account within the City of Richmond, SPA or CITY may contract to handle such manufacturer's account without violating the provisions of this Section 37.2.

37.3 AWC agrees to cooperate with SPA, CITY and national park officials by providing an enthusiastic single point-of-contact for all planned park activities and support such efforts to the maximum extent practical.

Section 38. Recitals.

The Recitals contained in this Agreement are incorporated by reference.

Section 39. Construction.

39.1 This Agreement embodies the entire agreement between CITY and AWC and supersedes all prior proposals, agreements and negotiations, whether written or oral. This Agreement cannot be modified except in writing signed by all parties.

39.2 This Agreement shall be interpreted according to California law. The parties acknowledge that each party and its counsel have reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. This Agreement shall be construed as a whole.

Section 40. Memorandum of Agreement.

This Agreement shall not be recorded. However, a memorandum of this Agreement shall be executed, in recordable form acceptable to CITY and AWC, by both parties concurrently herewith and recorded by AWC, at AWC's expense, with the official charged with recordation duties for the county in which the Premises are located, with directions that it be returned to AWC. Such memorandum of this Agreement shall expressly describe the sub-sublease and subordination provisions contained in Section 18. AWC shall provide a copy of the recorded memorandum of this Agreement to CITY within thirty (30) days of recordation of the same.

Section 41. Further Assurances and Documentation.

Each party agrees to cooperate, take such further actions and execute such further documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement. Without limiting the generality of the foregoing, AWC agrees to execute and deliver any and all certificates, consents, estoppels, subordinations, attornments, or other documents reasonably requested by CITY, JPFA or SPA to fully carry out the intent and purpose of the Financing; provided, however, that AWC shall not be obligated to undertake or assume any liability or obligation (such as a guaranty, letter of credit, or other security for the Financing) beyond the obligations of AWC contained in this Agreement.

Section 42. Counterparts; Facsimile.

This Agreement may be executed in one or more counterparts, or by the parties executing separate counterpart signature pages, including facsimiles transmitted by telecopier, all of which shall be deemed to be original counterparts of this Agreement. Any party who transmits a facsimile of a signature page by telecopier shall provide to the other party an executed original of such signature page within forty-eight hours of the execution thereof by such party.

Section 43. No Third Party Beneficiaries.

The City's bond trustee and any credit enhancer of CITY's bonds issued to finance the Facility are third party beneficiaries of this Agreement. AHM is a third party beneficiary of Section 26.3 of this Agreement and of CITY's insurance requirements set forth in Exhibit 7. Except for CITY's bond trustee, any credit enhancers and AHM, this Agreement is not intended to benefit any person or entity who is not a party to this Agreement.

Section 44. Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 45. Amendments.

This Agreement may not be modified, supplemented, or amended, or any of its provisions waived, except in writing by the party against whom such modification, supplementation, amendment, or waiver is sought. Any modification, supplementation, amendment, or waiver that would materially affect the rights of both parties must be signed by both parties.

Section 46. Consent by SPA and JPFA.

SPA and JPFA hereby consent to this Agreement and to all of the provisions hereof. Each of SPA and JPFA acknowledges that no other consent is required from it in connection with this Agreement. SPA and JPFA represent that true and complete copies of the Site Lease and Facilities Lease have been delivered to AWC and that the same have not been amended nor has any right of CITY thereunder been waived. SPA and JPFA further represents that the Site Lease and Facilities Lease are in full force and effect, are free from default by any party thereto, and no event or circumstance has occurred which with the giving of notice or passage of time would constitute a default under the Site Lease or Facilities Lease. Each of SPA and JPFA shall promptly deliver to AWC a copy of any notice given or received by it regarding the Site Lease or Facilities Lease. If CITY should ever be in default beyond applicable notice and cure periods, if any, under the Site Lease or Facilities Lease, and the Site Lease or Facilities Lease shall be in jeopardy due to CITY's failure to timely cure such default, and provided CITY is not diligently contesting such default in good faith, then AWC shall have the right (but not the obligation) to cure the default on behalf of CITY and at CITY's cost and account to the extent not caused by any breach by AWC of its obligations set forth in this Agreement. JPFA and SPA agree to be bound by the provisions of Section 18.2 of this Agreement. SPA agrees to be bound by (a) the following provisions of this Agreement: Sections 2.2, 3.1, 3.2, 3.3, 11.2, 20.3, 22, 23, 32, 33, 36, 37, 40, 41 and 46; and (b) the following provisions of Exhibit 7 (Insurance Requirements): Sections 3(d) and 4.

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

CITY OF RICHMOND, a California municipal  
corporation

ATTEST:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

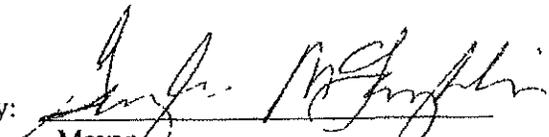
constitute a default under the Site Lease or Facilities Lease. Each of SPA and JPFA shall promptly deliver to AWC a copy of any notice given or received by it regarding the Site Lease or Facilities Lease. If CITY should ever be in default beyond applicable notice and cure periods, if any, under the Site Lease or Facilities Lease, and the Site Lease or Facilities Lease shall be in jeopardy due to CITY's failure to timely cure such default, and provided CITY is not diligently contesting such default in good faith, then AWC shall have the right (but not the obligation) to cure the default on behalf of CITY and at CITY's cost and account to the extent not caused by any breach by AWC of its obligations set forth in this Agreement. JPFA and SPA agree to be bound by the provisions of Section 18.2 of this Agreement. SPA agrees to be bound by (a) the following provisions of this Agreement: Sections 2.2, 3.1, 3.2, 3.3, 11.2, 20.3, 22, 23, 32, 33, 36, 37, 40, 41 and 46; and (b) the following provisions of Exhibit 7 (Insurance Requirements): Sections 3(d) and 4.

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

CITY OF RICHMOND, a California municipal corporation

ATTEST:

  
City Clerk

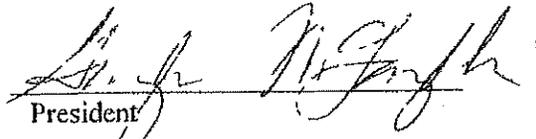
By:   
Mayor

Only as to Section 46 and the provisions referenced therein:

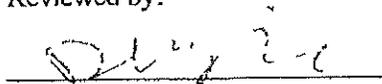
SURPLUS PROPERTY AUTHORITY OF THE CITY OF RICHMOND, acting by and through its Board

ATTEST:

  
Clerk

By:   
President

Reviewed by:

  
City Attorney,

As to Section 46 and Section 18.2 only:

RICHMOND JOINT POWERS FINANCING  
AUTHORITY

By:   
President

[ATTACH ACKNOWLEDGMENTS]

AUTO WAREHOUSING COMPANY, a  
Washington corporation

ATTEST:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Stephen L. Seher, President

[ATTACH ACKNOWLEDGMENT]

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa

On May 14, 2009 before me, Pamela R. Christian - Notary  
Date Here Insert Name and Title of the Officer

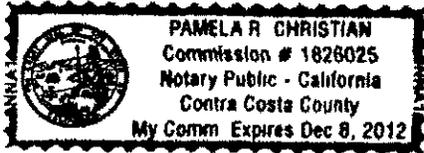
personally appeared Gayle McLaughlin  
Name(s) of Signer(s)

who 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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal

Signature Pamela R. Christian  
Signature of Notary Public



Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document*

### Description of Attached Document

Title or Type of Document Second Amended & Restated Lease Agreement

Document Date 5/14/09 Number of Pages 69

Signer(s) Other Than Named Above \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name \_\_\_\_\_

- Individual
- Corporate Officer — Title(s) \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other \_\_\_\_\_

Signer Is Representing \_\_\_\_\_



Signer's Name \_\_\_\_\_

- Individual
- Corporate Officer — Title(s) \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other \_\_\_\_\_

Signer Is Representing \_\_\_\_\_



As to Section 46 and Section 18.2 only:

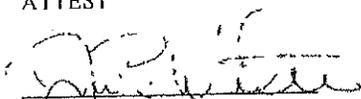
RICHMOND JOINT POWERS FINANCING  
AUTHORITY

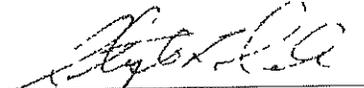
By: \_\_\_\_\_  
President

[ATTACH ACKNOWLEDGMENTS]

AUTO WAREHOUSING CO.,  
a Washington corporation

ATTEST

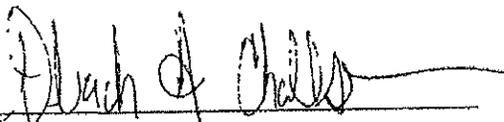
  
\_\_\_\_\_  
Secretary

By:   
\_\_\_\_\_  
Stephen L. Seher, President

STATE OF WASHINGTON     )  
  ) ss  
COUNTY OF PIERCE        )

I certify that I know or have satisfactory evidence that Stephen L. Seher is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of AUTO WAREHOUSING CO. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument

Dated: May 19, 2009

  
\_\_\_\_\_  
(Signature)  
Deborah A. Chalstrom  
\_\_\_\_\_  
(Name legibly printed or stamped)

Notary Public in and for the State of Washington  
residing at 7418 Castellan Lane #B - Gig Harbor, WA 98325  
My appointment expires 7/19/09

**EXHIBIT 1.1**

**Legal Description of SPA Property**

See attached.

**LEGAL DESCRIPTION**

Real property in the City of Richmond, County of Contra Costa, State of California, described as follows:

THAT CERTAIN PARCEL SHOWN ON THE RECORD OF SURVEY FILED 12 DECEMBER 1966 IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, CALIFORNIA, IN BOOK 46 OF LICENSED SURVEYOR'S MAPS AT PAGES 4 AND 5.

EXCEPTING THEREFROM:

THAT PORTION CONVEYED FROM THE SURPLUS PROPERTY AUTHORITY OF THE CITY OF RICHMOND, TO WILLIAM BOTTOM, IN DEED RECORDED MARCH 7, 1991, IN BOOK 16439 OF OFFICIAL RECORDS, PAGE 493 AND DESCRIBED AS FOLLOWS:

A PORTION OF THAT CERTAIN 201.926 ACRE, MORE OR LESS, PARCEL SHOWN ON THE RECORD OF SURVEY, FILED DECEMBER 12, 1966, IN BOOK 46 OF LICENSED SURVEYORS MAPS, PAGE 4, CONTRA COSTA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOTS 1 AND 2 IN SECTION 26 TOWNSHIP 1 NORTH, RANGE 5 WEST, MOUNT DIABLO BASE AND MERIDIAN, AS SHOWN ON "MAP NO. 1 OF THE SALT MARSH AND TITLE LANDS", FILED JUNE 11, 1917, CONTRA COSTA COUNTY RECORDS, FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF PARCEL "D" AS SHOWN ON THE PARCEL MAP, FILED FOR RECORD IN BOOK 100 OF PARCEL MAPS, AT PAGE 23, ON APRIL 1, 1982, CONTRA COSTA COUNTY RECORDS, DISTANT NORTH 1° 08' 43" EAST, 575.00 FEET ALONG SAID EASTERLY LINE FROM THE SOUTHEAST CORNER OF SAID PARCEL "D";

THENCE LEAVING SAID EASTERLY LINE SOUTH 85° 20' 00" EAST, 150 FEET;

THENCE SOUTH 63° 30' 00" EAST, 154.00 FEET;

THENCE SOUTH 34° 40' 00" EAST, 55.00 FEET;

THENCE SOUTH 85° 46' 00" EAST, 79.05 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT 400 FEET MEASURED AT RIGHT ANGLES FROM SAID EASTERLY LINE OF SAID PARCEL "D";

THENCE ALONG SAID PARCEL PARALLEL LINE NORTH 1° 08' 43" EAST, 869.02 FEET TO A POINT ON THE EXTERIOR LINE OF PARCEL "C", AS SHOWN ON SAID MAP (100 P.M. 23); THENCE ALONG THE EXTERIOR LINE OF SAID PARCEL "C", AS FOLLOWS: NORTH 88° 51' 17" WEST, 200.00 FEET, SOUTH 1° 08' 43" WEST, 30.00 FEET, NORTH 88° 51' 17" WEST, 200.00 FEET AND SOUTH 1° 08' 43" WEST, 246.91 FEET TO THE NORTHEAST CORNER OF SAID PARCEL "D"; THENCE SOUTH 1° 08' 43" WEST, ALONG THE EAST LINE OF SAID PARCEL "D", 468.09 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:

THAT PORTION CONVEYED FROM THE SURPLUS PROPERTY AUTHORITY OF THE CITY OF RICHMOND, TO WILLIAM BOTTOMS, IN DEED RECORDED MARCH 7, 1991, IN BOOK 16439 OF

OFFICIAL RECORDS, PAGE 498 AND DESCRIBED AS FOLLOWS:

A PORTION OF THAT CERTAIN 201.926 ACRE, MORE OR LESS, PARCEL SHOWN ON THE RECORD OF SURVEY FILED DECEMBER 12, 1966, IN BOOK 46, OF LICENSED SURVEYORS MAPS, PAGE 4, CONTRA COSTA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOTS 1, 2, 15, AND 16 IN SECTION 26, TOWNSHIP 1 NORTH, RANGE 5 WEST, MOUNT DIABLO BASE AND MERIDIAN, AS SHOWN ON "MAP NO. 1 OF THE SALT MARSH AND TIDE LANDS", FILED JUNE 11, 1917, CONTRA COSTA COUNTY RECORDS, FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF PARCEL "D" AS SHOWN ON THE PARCEL MAP, FILED FOR RECORD IN BOOK 100 OF PARCEL MAPS, AT PAGE 23, ON APRIL 1, 1982, CONTRA COSTA COUNTY RECORDS, DISTANT NORTH 1° 08' 43" EAST, 575.00 FEET ALONG SAID EASTERLY LINE FROM THE SOUTHEAST CORNER OF SAID PARCEL "D";

THENCE LEAVING SAID EASTERLY LINE SOUTH 85° 20' 00" EAST, 150.00 FEET;

THENCE SOUTH 63° 30' 00" EAST, 154.00 FEET;

THENCE SOUTH 34° 40' 00" EAST, 55.00 FEET;

THENCE SOUTH 85° 46' 00" EAST, 79.05 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT 400 FEET MEASURED AT RIGHT ANGLES FROM SAID EASTERLY LINE OF SAID PARCEL "D";

THENCE ALONG SAID PARALLEL LINE SOUTH 1° 08' 43" WEST, 363.82 FEET;

THENCE LEAVING SAID PARALLEL LINE SOUTH 56° 41' 00" WEST, 154.03 FEET TO A POINT ON THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SAID PARCEL "D";

THENCE ALONG SAID PROLONGATION NORTH 88° 51' 17" WEST, 273.00 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL "D";

THENCE ALONG THE EASTERLY LINE OF SAID PARCEL "D" NORTH 1° 08' 43" EAST, 575.00 FEET TO THE POINT OF BEGINNING.

APN: 560-320-017-0 and 560-320-016-2-01

**EXHIBIT 1.2**

**Legal Description of City Property**

**LEGAL DESCRIPTION**

Real property in the City of Richmond, County of Contra Costa, State of California, described as follows:

THAT PORTION OF "PARCEL NO. 1" IN THE "HARBOR TRACT" AS SHOWN ON A MAP FILED FEBRUARY 28, 1935 IN MAP BOOK 21 AT PAGE 619 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

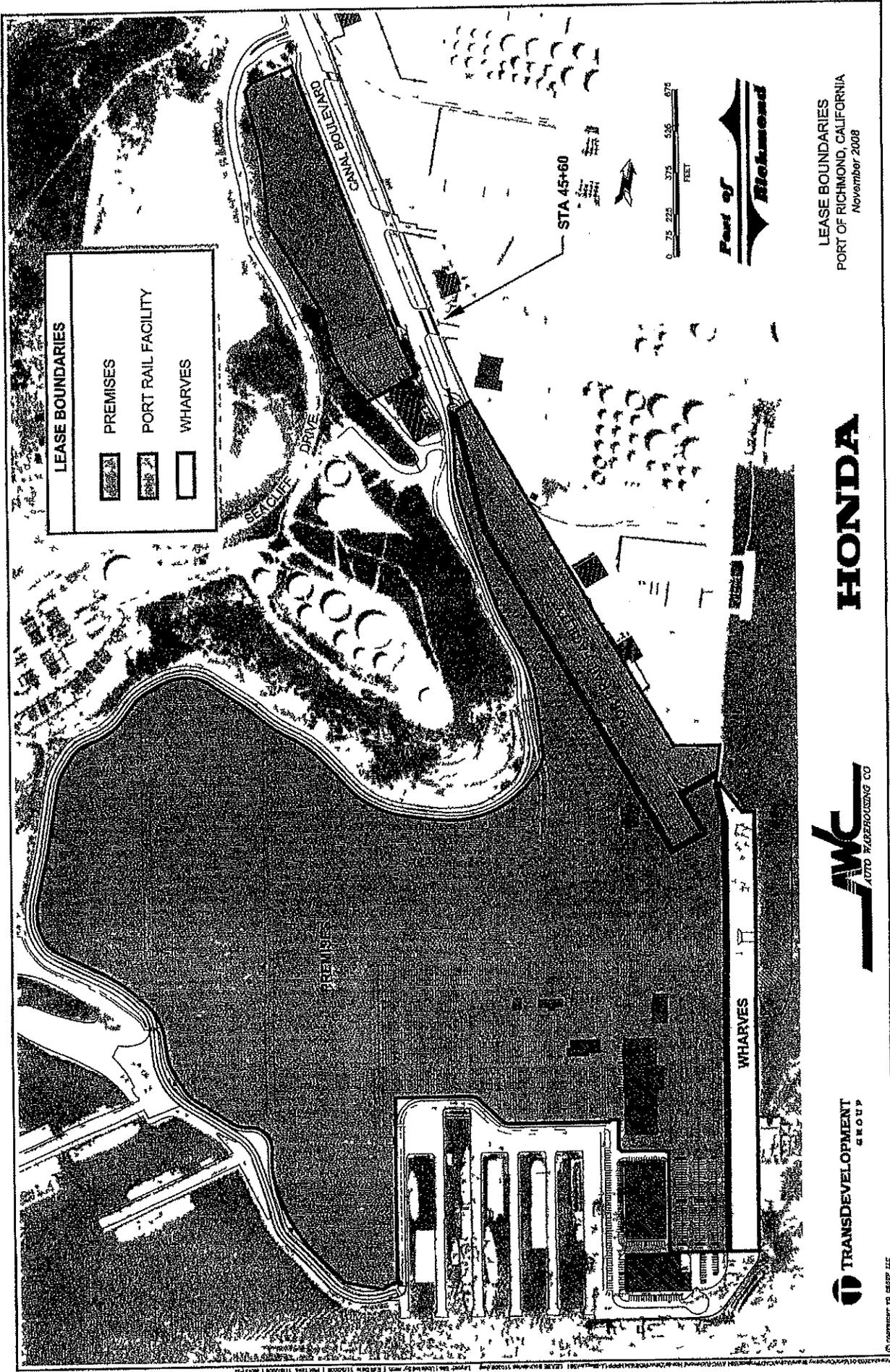
BEGINNING AT THE EASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO PACIFIC GAS AND ELECTRIC COMPANY RECORDED AS DOCUMENT NO. 15325 OF APRIL 3, 1950 IN BOOK 1532 AT PAGE 160 OF OFFICIAL RECORDS OF SAID COUNTY, WHICH CORNER LIES IN A SOUTHWESTERLY CURVED LINE OF CANAL BOULEVARD (100 FEET IN WIDTH) DESCRIBED IN THE DEED TO THE UNITED STATES OF AMERICA RECORDED JULY 25, 1944 IN BOOK 662 AT PAGE 489 OF SAID OFFICIAL RECORDS WHICH LINE IS A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 491.31 FEET (A RADIAL TO SAID POINT BEARS NORTH 34° 42' 44" EAST); THENCE FROM SAID POINT OF BEGINNING SOUTHEASTERLY ALONG SAID SOUTHWESTERLY CURVED STREET LINE A DISTANCE OF 205.20 FEET TO TANGENCY WITH A SOUTHWESTERLY LINE OF SAID STREET; THENCE SOUTH 31° 21' 26" EAST THEREON 1,279.65 FEET TO ITS INTERSECTION WITH THE NORTHERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL 4 IN THE FINAL JUDGMENT OF CASE NO. 22127-R RECORDED AS DOCUMENT NO. 42850 OF AUGUST 22, 1950 IN BOOK 1620 AT PAGE 8 OF SAID OFFICIAL RECORDS, WHICH NORTHERLY LINE IS DESCRIBED THEREIN AS HAVING A BEARING OF EAST AND A LENGTH OF 925.78 FEET; THENCE WESTERLY THEREON A DISTANCE OF 316.77 FEET TO ITS INTERSECTION WITH A SOUTHWESTERLY LINE OF SAID "PARCEL NO. 1" SHOWN ON SAID TRACT MAP AS HAVING A BEARING OF NORTH 37° 55' 13" WEST AND A LENGTH OF 488.180 FEET, WHICH SOUTHWESTERLY PARCEL LINE IS ALSO A NORTHEASTERLY LINE OF RICHMOND AVENUE AS DESCRIBED IN THE DEED TO THE CITY OF RICHMOND RECORDED JULY 1, 1910 IN BOOK 152 AT PAGE 568 OF DEEDS IN THE OFFICE OF SAID COUNTY RECORDER; THENCE ALONG SAID SOUTHWESTERLY PARCEL LINE AND ALONG SAID NORTHEASTERLY STREET LINE NORTH 37° 55' 13" WEST 192.80 FEET TO THE BEGINNING OF A TANGENT CURVE THEREIN CONCAVE NORTHEASTERLY HAVING A RADIUS OF 855.366 FEET; THENCE NORTHWESTERLY ALONG SAID LAST-MENTIONED SOUTHWESTERLY, CURVED PARCEL LINE A DISTANCE OF 206.073 FEET TO TANGENCY WITH A SOUTHWESTERLY LINE OF SAID "PARCEL NO. 1"; THENCE NORTH 24° 07' 00" WEST THEREON 200.00 FEET TO THE BEGINNING OF A TANGENT CURVE THEREIN CONCAVE EASTERLY HAVING A RADIUS OF 259.265 FEET; THENCE NORTHERLY ALONG SAID LAST MENTIONED WESTERLY CURVED PARCEL LINE A DISTANCE OF 169.764 FEET TO TANGENCY WITH A WESTERLY LINE OF SAID "PARCEL NO. 1", THENCE NORTH 13° 24' 00" EAST THEREON 88.000 FEET TO THE BEGINNING OF A TANGENT CURVE THEREIN CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 387.928 FEET AND A LENGTH OF 738.017 FEET; THENCE NORTHWESTERLY ALONG SAID LAST MENTIONED SOUTHWESTERLY CURVED PARCEL LINE A DISTANCE OF 525.29 FEET TO THE SOUTHERLY CORNER OF SAID AFOREMENTIONED PACIFIC GAS AND ELECTRIC PARCEL (A RADIAL TO SAID POINT BEARS NORTH 25° 49' 09" EAST); THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PACIFIC GAS AND ELECTRIC PARCEL NORTH 27° 53' 19" EAST 44.57 FEET TO THE POINT OF BEGINNING.

APN: 560-320-002-2

**EXHIBIT 2**

Map of Premises, Wharves and Port Rail Facility

See attached.



**LEASE BOUNDARIES**

-  PREMISES
-  PORT RAIL FACILITY
-  WHARVES



LEASE BOUNDARIES  
 PORT OF RICHMOND, CALIFORNIA  
 November 2008

**HONDA**



**TRANSEVELOPMENT GROUP**

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### EXHIBIT 3

#### Work Agreement (AWC's Work and CITY's Work)

#### Section 1 Definitions

- (a) "Additional Contractor" shall mean a subcontractor to a Prime Contractor.
- (b) "Approved Budget" shall mean the budget for the Cost of AWC's Work and of CITY's Work, of which a summary is attached to this Work Agreement as Schedule 2, including the contingencies specified therein, as amended in accordance with the provisions this Work Agreement.
- (c) "AWC's Work" shall mean improvements AWC shall cause to be performed on public and private property as more fully identified in the Scope of Work.
- (d) "BNSF Lease" shall mean the lease agreement between Burlington Northern Santa Fe Railway, as lessor, and AWC, as lessee, permitting the construction of the Private Improvements.
- (e) "Changed Conditions" shall mean conditions in connection with AWC's Work that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the approved plans and specifications, or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in AWC's Work at locations similar to where such work is to be performed.
- (f) "CITY's Work" shall refer to those improvements to be performed by or on behalf of CITY as more fully identified in the Scope of Work.
- (g) "Construction Manager" shall mean a professional project manager selected by AWC, subject to the reasonable approval by CITY, to manage the performance of AWC's Work.
- (h) "Contract" shall mean any contract for the performance of AWC's Work or any portion thereof.
- (i) "Cost of AWC's Work" shall mean the cost incurred in implementing and performing AWC's Work, inclusive, without limitation, of planning, budgeting, design, contractor(s) selection, construction, materials, supplies, equipment, incidental accommodations to third party property owners affected by construction, and administration.

(j) "Force Majeure Event," as used in this Work Agreement, shall have the meaning set forth in Section 6 of this Work Agreement.

(k) "Permits" shall mean all permits and approvals required to be obtained from CITY or other governmental entities for AWC's Work.

(l) "Prime Contractor" shall mean any prime or specialty construction contractor with whom AWC has entered into a Contract to perform AWC's Work or any portion thereof and approved by CITY, and shall in no event include contracts for project planning, design, administration or other professional services.

(m) "Private Improvements" means that portion of AWC's Work to be performed on private property or railroad right-of-way, including but not limited to the Rail Corridor and the Rail Support Yard depicted on Schedule 4.

(n) "Project Financing" shall mean bond or other financing to be obtained by CITY to finance the payment by CITY to AWC for AWC's Work in accordance with Section 3 of this Work Agreement.

(o) "Public Improvements" means that portion of AWC's Work to be performed on public property, including but not limited to the Premises and the Port Rail Facility depicted on Schedule 4.

(p) "Schedule of Performance" shall mean the schedule of performance attached to this Work Agreement as Schedule 3, as amended in accordance with the provisions of this Work Agreement.

(q) "Scope of Work" shall mean the scope of work attached to this Work Agreement as Schedule 1. The Scope of Work will be implemented according to plans developed by AWC and subject to the reasonable approval of SPA and CITY.

## Section 2 Implementation of CITY's Work and AWC's Work

(a) CITY shall, at the sole cost and expense of CITY, commence the implementation of CITY's Work and diligently pursue the same to completion substantially in accordance with the Scope of Work any approved plans and specifications and in compliance with all applicable regulation and code requirements.

(b) AWC shall commence the construction of AWC's Work, and diligently pursue the same to completion, substantially in accordance with the Scope of Work, Schedule of Performance, approved plans and specifications and in compliance with all applicable regulation and code requirements.

(c) Except for contracts for project planning, design, administration, or professional services, AWC shall cause Contracts for the performance of AWC's Work exceeding \$100,000 to be in accordance with contract form(s) subject to the prior review and approval by CITY, which approval shall not be unreasonably withheld. AWC shall cause its Prime Contractor(s) with Contracts in excess of \$25,000 to furnish to AWC, and file with the City Clerk, a corporate surety bond to guaranty the faithful performance of their contracted portion of AWC's Work and a separate bond to secure payment of the claims of laborers, mechanics, and material suppliers employed under this Work Agreement in the construction of AWC's Work. The performance bond and payment bond shall each be in an amount equal to one hundred percent (100%) of the total amount of each of AWC's Prime Contracts. The bonds shall contain all provisions required by law to be included in such bond forms, including the requirements of Civil Code Sections 3247 – 3252. All bonds shall be issued by a corporate surety admitted in the State of California. All costs incurred by AWC directly related to obtaining performance and/or payment bonds shall be deemed to be a component of the Cost of AWC's Work.

(d) Subject to the occurrence of any Changed Condition or Force Majeure Event, AWC shall accomplish AWC's Work in compliance with the terms and conditions of this Agreement, within the time periods provided by the Schedule of Performance and the Scope of Work, and, subject to the provisions of Section 4(c) regarding "Shared Costs," within the budgetary framework established in a budget submitted to, and approved by, CITY (the "Approved Budget"). In connection with accomplishing AWC's Work, AWC will do the following:

(i) AWC shall administer and perform, or cause the performance of, the Contracts. All Contracts shall be subject to and in compliance with the municipal code of CITY.

(ii) AWC shall coordinate scheduled activities and responsibilities of the Prime Contractor(s) and the Additional Contractors to endeavor to manage AWC's Work in accordance with the Contracts, the Approved Budget, the Scope of Work and the Schedule of Performance.

(iii) AWC, its Project Manager, and, as appropriate, Prime Contractor(s), shall schedule and conduct meetings as appropriate, to discuss such matters as procedures, progress, scheduling and, as between AWC and CITY, implications relating to the Approved Budget. CITY shall attend each such meeting, through the presence of its designated representative, the Port Administrator or the Port Maintenance Manager. In the event it becomes necessary to change the designation of CITY's representative, the City shall appoint a representative with equivalent authority. AWC shall prepare and promptly distribute minutes to CITY, and, if the AWC deems appropriate, the Prime Contractor(s) and the Additional Contractors.

(iv) Utilizing the construction schedules provided by the Prime Contractor(s) and the Additional Contractors, AWC shall from time to time update the Schedule of Performance with CITY's consent, which shall not be unreasonably withheld. If a contractor indicates that the Schedule of Performance may not be met, AWC shall propose corrective action to CITY for its approval, and AWC and CITY shall cooperate to resolve such scheduling problems.

(v) AWC shall record the Cost of AWC's Work and shall submit reports from time to time to CITY concerning any variances from the Approved Budget.

(vi) AWC shall record the progress of AWC's Work and shall submit written progress reports monthly to CITY in detail reasonably satisfactory to CITY.

(vii) AWC shall provide for the maintenance at the Premises of one record copy of all Permits, Contracts, specifications, addenda, change orders and other modifications, in good order and marked currently to record changes and selections made during construction. AWC shall make all such records available to CITY and upon completion of AWC's Work shall deliver them to CITY.

(viii) AWC shall service accounts related to, and keep books and accounting for, the Contracts and AWC's Work.

(ix) AWC shall retain a Construction Manager reasonably acceptable to CITY.

(x) AWC shall not cause any workmen's or materialmen's liens to be placed upon the Premises and agrees to indemnify and hold CITY harmless against any such liens including but not limited to the payment of attorneys' fees.

(e) CITY hereby grants (and shall cause SPA to grant) to AWC and its Prime Contractor(s) and the Additional Contractors, and their agents and permitted assigns a license to enter such portions of CITY's (and SPA's) property as may be needed for the performance of AWC's Work, provided, however, that prior to the commencement of AWC's Work, AWC shall have secured all applicable Permits necessary up to that point in order to conduct AWC's Work.

(f) Representatives of CITY shall have the right to inspect and monitor AWC's Work under the Contracts at all reasonable times.

(g) The Building Official for CITY of Richmond Planning and Building Services Department shall certify in writing to CITY and AWC the date that the capital improvements in the Port Rail Facility, Rail Corridor and Rail Support Yard are substantially completed and available for operation.

Section 3 Payment for AWC's Work

(a) AWC agrees to cause AWC's Work to be performed, and CITY agrees to make timely payment for the Cost of AWC's Work on the terms and conditions set forth in this Section 3.

(b) CITY agrees to pay to AWC the Cost of AWC's Work incurred in implementing and performing AWC's Work, as set forth in the Approved Budget.

(c) CITY shall pay the Cost of AWC's Work in progress payments as follows:

(i) AWC will pay for work done under the Contracts that is approved by CITY in accordance with this section. AWC shall prepare and submit to CITY monthly Draw Requests (defined below) for reimbursement for the Cost of AWC's Work, based on invoices it receives under the Contracts, certified by AWC's Construction Manager as due and owing for completed work, and accompanied by contractors' invoices, partial lien releases, work progress tracking reports, and other documentation reasonably required by CITY and specified by it sufficiently in advance of presentation of a Draw Request so as to prevent delay (each draw request and such supporting paperwork a "Draw Request", and the date each Draw Request is received by CITY is a "Submission Date"). CITY shall promptly examine each Draw Request using its reasonable discretion, and within fifteen (15) business days of each Submission Date CITY shall either approve such Draw Request, in whole or in part, or shall provide a written explanation of the reasons for such disapproval and request specific additional information or documentation from AWC. AWC shall respond within five (5) business days, and CITY shall have five (5) business days after receipt to approve the Draw Request in its reasonable discretion. If CITY does not approve the Draw Request at that time, the parties shall meet and confer to determine a course of action. If the parties cannot agree on a course of action within three (3) business days, CITY shall approve the Draw Request for such amount, if any, for which there is agreement and the disputed portion of the Draw Request shall be referred to construction arbitration which shall be governed by the procedures set forth in Section 8 hereof.

(ii) Within ten (10) business days after the approval of a Draw Request, or portion thereof, CITY shall pay or cause payment to be made to AWC or the applicable Prime Contractor(s) or Additional Contractors. A failure to approve or disapprove a Draw Request or to pay or cause to be paid approved amounts with respect thereto within the times set forth in this Section 3(c) will allow AWC (A) to stop all or any portion of AWC's Work upon written notice to CITY ("Stop Work Notice") until such payment by CITY is made, and (B) if such condition is

not fully cured within sixty (60) days after the date CITY receives a Stop Work Notice, to terminate this Agreement by written notice to CITY.

(iii) CITY shall have the right to audit AWC's books, records and accounts relating to the performance of AWC's Work upon at least three (3) business days' prior written notice, provided that all such information shall be kept as confidential by CITY in accordance with the provisions of this Agreement except as otherwise required by law.

(d) Subject to the provisions of this Section 3, the final progress payment is to be made by CITY within thirty (30) business days after AWC's Construction Manager certifies in writing that AWC's Work is completed.

(e) Upon receipt of the final progress payment from CITY, AWC shall assign to CITY and/or to any other person or entity designated by CITY all of AWC's right, title and interest in and to the Public Improvements, free of any liens or encumbrances created by, through or under AWC (except this Agreement and any other exceptions mutually agreed by AWC and CITY in writing). CITY shall pay the documentary transfer tax, if any, resulting from or arising in connection with such assignment, and recording of such assignment will be done or made by CITY. CITY shall indemnify, defend and hold harmless AWC from any liability, cost or expense (including attorney's fees) in connection with any documentary transfer tax. Disposition of the Private Improvements shall be governed by the provisions of the BNSF Lease.

(f) Upon receipt of the final progress payment from CITY, AWC shall assign (without warranty and to the extent assignable) to CITY all warranties, if any, received by AWC from the Prime Contractor(s), Additional Contractors, contractors, subcontractors, suppliers, manufacturers, and for material for construction of the Public Improvements, except to the extent of any portions thereof which are AWC's maintenance responsibility. Warranties with respect to the Private Improvements shall be governed by the provisions of the BNSF Lease.

(g) Any improvements made by CITY or AWC to the Premises shall be part of the Premises leased to AWC and shall be subject to the rights and obligations of the parties under this Agreement. The preceding sentence does not apply to rail infrastructure improvements to the Port Rail Facility, the Rail Corridor or the Rail Support Yard, which are located outside the Premises.

(h) In the event this Work Agreement is terminated prior to completion of AWC's Work, and subject to the provisions of this Section 3 and the cure of any defaults by AWC, CITY shall pay all outstanding amounts due under the Contracts for work completed under such Contracts prior to or resulting from such termination.

Section 4 Approved Budget and Schedule of Performance

(a) Performance of AWC's Work, and payment by CITY, shall be in accordance with the Approved Budget of which a summary is attached hereto as Schedule 2. AWC and CITY acknowledge that the breakdown of the Approved Budget into subcategories is for convenience only, for purposes of estimating and overall project management. Overages in one or more categories shall not be deemed to exceed the Approved Budget so long as ultimately offset by underages in other categories, or covered by amounts set aside as contingencies. Savings and contingencies in the sub-budgets of the Approved Budget shall be available to be re-allocated to overages on any other sub-budgets for the performance of AWC's Work.

(b) In the event AWC encounters Changed Conditions, Materials of Environmental Concern, or a Force Majeure Event which causes an increase in the time required for performance of any part of AWC's Work, AWC shall be entitled to an amendment to the Schedule of Performance. Within a reasonable time of becoming aware of such a Changed Condition, Materials of Environmental Concern or Force Majeure Event, AWC shall notify CITY, and submit request for amendment to the Schedule of Performance supported by such information as is reasonably available to AWC. The CITY shall approve the request in accordance with the time periods and procedures set forth in Section 3(c) for monthly draw requests. In the event CITY disapproves the request in whole or in part, CITY shall approve the request for such additional time, if any, for which there is agreement, and the disputed portion of the request shall be referred to arbitration, which shall be governed by the procedures set forth in Section 8 hereof. Any additional or increased costs (including costs of shut-down, delay and start-up) resulting from Changed Conditions, Materials of Environmental Concern, or Force Majeure Events shall be addressed within the Approved Budget in accordance with Section 4(a), or as "Shared Costs" in accordance with Section 4(c), of this Work Agreement.

(c) If Project Financing is terminated or becomes inadequate to fully fund the Cost of AWC's Work (other than Shared Costs that are the responsibility of AWC or AHM), AWC may suspend the performance of AWC's Work under this Work Agreement upon notice to CITY pending restoration of adequate Project Financing. In such event the time for performance shall be extended appropriately in accordance with Section 4(b).

(d) Notwithstanding any provision of this Work Agreement to the contrary, the provisions of the MAG Agreement (and not this Work Agreement) shall govern responsibility for any "Shared Costs" as defined in the MAG Agreement.

Section 5 Materials of Environmental Concern.

If AWC is notified by its Prime Contractor or otherwise receives notification that Materials of Environmental Concern have been encountered in connection with AWC's Work, AWC shall immediately stop work in the affected area and report the condition to CITY in writing. Upon receipt of AWC's written notice, CITY shall obtain the services of a licensed

laboratory to verify the presence or absence of the Materials of Environmental Concern and, in the event such materials are found to be present, to cause them to be rendered harmless. When the Materials of Environmental Concern have been rendered harmless, AWC's Work in the affected area shall resume upon written agreement of AWC and CITY. With respect to Materials of Environmental Concern encountered on private property in connection with AWC's Work, the right or obligation to stop or resume work shall be governed by the provisions of the BNSF Lease. The time for performance shall be extended appropriately in accordance with Section 4(b).

#### Section 6      Force Majeure

In the event that CITY or AWC is delayed, directly or indirectly, from the performance of any act or thing required under the terms of this Work Agreement by a force majeure event, including but not limited to acts of God, accident, fire, flood, inclement weather, governmental action, restrictions, priorities or allocations of any kind and all kind, strikes or labor difficulties of any and all kinds, shortages of or delay in the delivery of material, act of war, riot, and civil commotion, termination of any right of access, Changed Conditions, Materials of Environmental Concern, or by any similar or dissimilar cause (other than financial) beyond the reasonable control of AWC or CITY, as the case may be ("Force Majeure Event"), such failure shall not be deemed to be a breach of this Agreement or a violation of any such covenants and the time within which AWC or CITY must perform any such act shall be extended by a period of time equal to the period of delay arising from any said causes. The provisions of this Section 6 shall apply only to the performance of acts or things required under this Work Agreement. With respect to the performance of acts or things required under the Agreement or the MAG Agreement, but which are not required under this Work Agreement, the relevant provisions of the Agreement or MAG Agreement shall control.

#### Section 7      Termination for Cause

AWC may terminate this Work Agreement if AWC's Work is stopped or suspended for a period of sixty (60) consecutive days through no act or fault of AWC, unless it is likely that AWC's Work can be resumed within a reasonable time with financing sufficient to fully fund the Cost of AWC's Work, including any additional or increased costs resulting from the stoppage or suspension of AWC's Work, for any of the following reasons: (a) issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; (b) an act of government, such as a declaration of national emergency that requires all Work to be stopped; or (c) stoppage or suspension of the Work pursuant to Section 4, 5 or 6 of this Work Agreement. If one of the reasons described this Section 7 exists, the AWC may, upon seven (7) days' written notice to CITY, terminate this Work Agreement and recover from CITY payment for the Cost of AWC's Work executed, including reasonable overhead (but excluding profit), costs incurred by reason of such termination, and liability and damages.

Section 8     Arbitration

(a) Any dispute between the parties concerning any provision of this Work Agreement (other than disputes governed by the MAG Agreement as referenced in Section 4(c) hereof) shall be submitted by the parties to binding arbitration. For a period of ten (10) days following the date of demand for arbitration, the parties shall seek to agree in writing upon a single arbitrator to determine the matter in dispute. If they shall so agree, such single arbitrator shall proceed to assemble all necessary information as to the matter in dispute and shall make a conclusive determination with respect thereto. If the parties fail to agree upon a single arbitrator within said ten (10) days period, then upon written demand of any of the parties, at any time thereafter, each party shall within ten (10) days after such demand appoint in writing an arbitrator and the two arbitrators so appointed shall thereafter select and appoint a third arbitrator within ten (10) days after the date of appointment of the second of said arbitrators. In the event either of the parties fails to provide the other with the name of an arbitrator selected within the ten (10) day period, the matter shall be decided by the sole appointed arbitrator. If the arbitrators appointed by the parties are unable to agree upon a third arbitrator within ten (10) days of their appointment, on application by either party the third arbitrator shall be promptly appointed by the then-presiding judge of the Superior Court of Contra Costa County.

(b) The three arbitrators thus selected shall proceed to arbitrate the dispute as quickly as is reasonably possible, and a decision of the arbitrators or a majority of them upon any issue shall be final, conclusive and binding upon each of the parties. If no two arbitrators can agree upon an issue, then the determination of the third arbitrator (who was selected by the two arbitrators appointed by the respective parties or appointed by the presiding judge) shall be the sole arbitrator as to such issue and such arbitrator's decision shall be final, conclusive and binding upon each of the parties. A final judgment on such arbitrator(s) decision may be entered in any court having jurisdiction over the same. Arbitration shall be conducted under the California Arbitration Act, Code of Civil Procedure Sections 1280, et seq. Hearing shall be held in Contra Costa County, California. Other than as provided herein, the arbitration shall be conducted in accordance with the Commercial Arbitration Rules (but not the jurisdiction) of the American Arbitration Association.

(c) Each party shall pay the fees and expenses of its own arbitrator and shall equally share the fees and expenses of the third arbitrator or the sole arbitrator, as the case may be, and any other costs of the arbitration, except as otherwise provided by the terms of the arbitrator's award.

(d) If either party commences arbitration against the other to enforce any provision of this Work Agreement, the prevailing party shall be entitled to such attorney's fees and costs of arbitration as the arbitrators may deem reasonable.

(e) This Section 8 applies only to disputes concerning the provisions of this Work Agreement (other than disputes governed by the MAG Agreement as referenced in Section 4(c)

hereof). Other disputes arising under or relating to the Agreement shall be governed by Section 23 of the Agreement.

Section 9. Provisions Supplemental and Non-Exclusive.

The provisions of this Work Agreement supplement the Agreement and shall be read in a manner consistent with the terms and conditions thereof. Without limiting the generality of the foregoing, the indemnification and other provisions of the Agreement apply to the construction or implementation of AWC's Work and CITY's Work to the extent not inconsistent with the provisions of this Work Agreement.

Section 10. Schedules

The following schedules are attached to and made a part of this Work Agreement:

- Schedule 1 – Scope of Work
- Schedule 2 – Summary of Approved Budget
- Schedule 3 – Schedule of Performance
- Schedule 4 – Construction Boundaries

## **Honda Richmond Automotive Project Development Scope of Work**

### **Development Overview**

The proposed Honda Port of Entry development project begins at the BNSF's auto facility located at the intersection of Canal and Cutting, extending onto the industrial rail corridor southerly along Canal, and onto the Port of Richmond, Point Potrero terminal facilities. At each of these locations, the project will construct improvements related to expansion and rehabilitation of the rail infrastructure. The scope of the proposed construction is further described as follows:

### **BNSF Support Yard Improvements**

The project will construct six, double-ended ladder tracks between the existing tracks running diagonally through the site, and the BNSF right-of-way adjacent to Canal Boulevard. In addition to the new trackwork, the construction scope will incorporate, grading, paving, electrical, fencing, wetland mitigation and landscaping.

### **Rail Corridor Improvements**

The project will rehabilitate and upgrade the industrial rail lead extending from Wharf Street, southerly along Canal Boulevard to the Port of Richmond. These improvements will incorporate dedicated lead tracks for the adjacent industries and the Port automotive operations. The rail switches and tracks which extend into the adjacent industries will be improved, along with each of the at-grade driveway crossings. The construction scope will incorporate new trackwork, minor grading, paved and panelized grade crossings, and pavement tie-ins at each driveway. Minor gate and fence modifications will be required at several locations, and all driveways will include new safety signage and pavement markings, per BNSF standards.

### **Port Rail Improvements**

The project will construct seven, stub-ended ladder tracks at the Port of Richmond, Point Potrero facilities, along with a series of related construction improvements as follows:

- Site removals and grading
- Stormwater drainage modifications
- Port roadway relocation
- Guardhouse and access control
- BP access drive and entrance, pipeline protection, rail grade crossing and cul-de-sac
- Ship berth bollard, bull-rail, and non-structural deck repairs.
- Perimeter security, fencing and gates
- Site electrical modifications (site lighting excluded)
- EBMUD water line adjustments
- Sanitary sewer adjustments
- Employee and visitor parking
- Asphalt pavements, and pavement striping
- Truck loading facilities and relocated guard house location
- Rail loading facilities: ladder tracks and loading equipment
- Landscaping and site aesthetics

## SCOPE OF WORK

A multiple step development process is presented herein, and consists of the following phases, with detailed scopes of work for each phase of the development process outlined below.

- Phase I:       Development Planning**  
**Phase II:       Detailed Design and Engineering**  
**Phase III:      Construction Management**

The following scope of work reflects the planning and detailed design and construction implementation management for the Honda Project, and encompasses each of the development areas described above.

### Phase 1: Development Planning

1. Evaluate key operational assumptions along with projected traffic volumes to determine facility size, general layout and flow, and any other pertinent aspects of the site development, processing and distribution operations. Determine facility capacities for vehicle baying, multilevel and haulaway loading areas, support tracks and administration areas.
2. Prepare preliminary site development concepts depicting operational layouts incorporating ship berthing, FPR access routes and marshalling areas, existing GLOVIS processing facilities, vehicle storage, in/outbound rail and truck operating facilities and rail support (set-out/storage) infrastructure.
3. Delineate planning and development permit requirements encompassing layouts, buildings, road access, marine, rail and any other required infrastructure. Identify and coordinate planning processes, hearings, applications and submissions required by local regulatory agencies for obtaining site development permits, including compliance with California Environmental Quality Act (CEQA), Bay Conservation and Development District (BCDC), and other relevant or applicable jurisdictions or agencies.
4. Assemble and review existing site data and technical information related to the subject property, and prepare project descriptions and other pre-development documentation, drawings and graphics to support the CEQA and EIR process. Coordinate with the Richmond Planning Department and any consultants for the City on issues related to local land use, CEQA and any other local permits and approvals.
5. Provide on-going technical and planning support throughout the CEQA process, including coordination and scoping with EIR consultants, review of EIR-based technical materials, attendance and participation in public hearings and meetings, and coordination of any required involvement from project stakeholders.
6. Provide required technical studies including topographic and boundary surveys, rail evaluations, title reports, preliminary engineering layouts, geotechnical and pipe-line due diligence to support project due diligence and feasibility evaluation, and completion of the preliminary designs.

7. Prepare pre-development concepts for the site civil elements of the project, including site layouts and operational flows with provisions for rail and vehicular access, administration and operations buildings, rail and haulway operations and vehicle bayging. Conceptual planning to be in conjunction with distribution and throughput data and design elements incorporating preliminary concepts for zoned paving areas, stormwater management facilities, perimeter fencing and security, site lighting, ship discharge and jurisdictional areas.
8. Manage the full scope of planning, entitlement, design, construction phasing and facility commissioning. Provide project team with a program management tool for tracking progress, changes and overall decision-making and coordination for successful project completion.
9. Prepare a project budget which reflects detailed assumptions related to project construction, materials, and equipment as well as costs associated with required technical studies, incorporation of existing or ongoing studies, data, design and construction, as well as design, engineering and construction management of new site and facility improvements.
10. Throughout the pre-development process provide presentation-grade collateral materials including graphics and other planning and marketing-oriented elements depicting facility designs, operations, budget, schedule and other related project components.

## Phase II: Detailed Design and Engineering

The work in this phase incorporates all detailed design and engineering for the project.

1. Prepare detailed design documents consisting of drawings, plans, calculations, specifications and cost estimates setting forth in detail the requirements for the construction of the project. Detailed designs will be in conjunction with the performance and operational requirements of the project stakeholders. Performance specifications and vendor engineered work elements will be evaluated for specific areas of the work.
2. Evaluate and incorporate into the detailed designs, the IT and communications systems, site security, access controls, and other related infrastructure features to provide a fully operational facility.
3. In conjunction with the City of Richmond's project development approvals, evaluate and incorporate into the detailed designs, the project elements associated with any CEQA-based mitigations or additional approval requirements.
4. Conduct regular meetings with key stakeholders and other interested parties throughout the design development and City approval process for the project.
5. The *site civil design* will follow the approved yard layouts, which incorporate the operational flows and horizontal control for all site improvement areas. Site/civil design integration will include planning and coordination within the following areas:
  - a) Site removals and grading
  - b) Stormwater drainage, C-3
  - c) Roadway relocations
  - d) Guardhouse and access control
  - e) Industry access drives, pipeline protection, rail grade crossings and related improvements.
  - f) Ship berth repairs
  - g) General arrangement/ horizontal control: vehicle baying layout and operational flows.
  - h) Perimeter security, fencing and gates
  - i) Site electrical modifications
  - j) EBMUD water line
  - k) Sanitary sewer adjustments
  - l) Employee and vendor parking
  - m) Pavements
  - n) Driveways, roadways and vehicular circulation
  - o) Truck loading facilities: access control, zoned pavements, load make-up areas, truck loading configurations and dispatch/ drivers support facilities
  - p) Rail loading facilities: ladder track, vehicle loading equipment, switching, pre-trip operations and vehicle marshalling
  - q) Landscaping and site aesthetics
6. Detailed design for the *site electrical* requirements will be focused on minor modifications to the electrical system related to existing pole relocations at BNSF and relocation of the Port guard house and site access control systems. The site electrical design will also integrate the following elements:

- a) Control systems and load centers
  - b) Underground conduit networks
  - c) Communications and security infrastructure
7. The *buildings and structures* associated with the processing operations will incorporate a value engineering approach to the layouts and building systems (e.g.: vendor-engineered/ supplied structural components). Architecture of the building and structural packages will integrate a variety of operational components, including:

#### ***Existing Operations Buildings***

- a) Roof condition and water leak repairs.
- b) Office areas and staffing requirements
- c) Data/ communication extensions
- d) Green initiatives and low impact environmental

#### ***Historic Structures***

- a) CEQA-based impacts at Historic structures
  - b) Landscaping and aesthetics
  - c) Integration with Bay Trail projects
8. *Rail design and engineering* will incorporate the ladder tracks and modifications to the BP rail access, commencing at the property line with Conoco Phillips and extending into the Port facilities. The final rail engineering drawings will reflect the operational basis identified during the planning phase. The rail design will also integrate the following engineering elements:
- a) BP industry grade crossing, industry spur and turn-out replacement
  - b) Inbound/ outbound multilevel operations
  - c) Paved-in trackage at loading pads only
  - d) Paved prep and shag roadways
  - e) Bridge plate racks
  - f) Mobile loading ramps

#### **Phase III: Construction Management**

1. Prepare for **AWC** and Port review and approval, a Construction Management Plan including the following: construction schedule, project budget, scope of bid and proposal packages, model contracts and specifications, and contractor management procedures. Review and revise the Construction Management Plan as required throughout the term of this agreement.
2. Key stakeholders may have certain equipment requirements that will either be provided as an "owner purchased, contractor installed" or on a "contractor purchased and installed" basis. Management of these responsibilities in accordance with relevant agreements, lease options and stakeholder preferences.

3. Conduct inquiries and solicit bids or proposals from prime contractors, vendors or other parties as the Construction Management Plan may require. Review bid proposals and award contracts and in accordance with the following guidelines:
  - a) Select, coordinate, and schedule all contractors for the project.
  - b) Prepare a proposed list of prime contractors and vendors pre-qualified to bid each of the various contracts on the project.
  - c) Enter into construction contracts for execution of all or parts of the work to be performed. Contractors to be responsible for the construction means, methods, techniques, sequences and procedures employed by those contractors in the performance of their contracts and to be responsible to perform in accordance with the approved plans and specifications.
  - d) Construction contract prices to not exceed the estimates for the work established in the project budget. In the event that the contractor's price exceeds the estimates for the work, prepare a bid summary and recommendation for selection or re-bid.
  - e) Negotiation and execution of change orders.
4. Submission of monthly construction progress reports including schedule and budget updates.
5. Provide for review of shop drawings and contractor submittals for compliance with plans and specifications.
6. Provide qualified on-site representatives to manage performance and adherence to the contracts as well as coordination of other on-site activities.
7. Conduct on-site observations of work during construction, provide for coordination of prime contractors, and maintain completion schedules that include the following specific duties:
  - a) Maintain on-site observation of work and materials for contract compliance. Prepare an on-going diary of contractors' activities and work progress in a form suitable as a permanent, authentic history of the project's progress.
  - b) Conduct regular job meetings at the site with contractors, subcontractors, testing companies and other interested parties. Prepare minutes of these meetings.
  - c) Prepare regular reports on the contractors' work progress.
  - d) Evaluate, compile and maintain record of inspections, testing and survey results.
  - e) Review and approve the contractors' requests for payments or forward, with recommendation, contractors' requests for approval. Negotiate appropriate adjustments to payment requests with contractors.
  - f) Investigate and promptly evaluate contractor requests for contract document clarification, changes, modifications, claims and disputes.
  - g) In the case of unit price bids, monitor production quantities in relation to "as bid" quantities and advise of anticipated overruns. Work with contractors to determine efficient and cost effective methods when "as bid" items are changed.

- h) Monitor contractors' preparation of as-built data during construction for preparation of "drawings of record."
- i) Prepare a final site representative's report on project close-out condition, pending disputes or unresolved contractor issues, and additional material needed to supplement the records of the project.

8. Manage rail construction implementation including:

- a) Rail materials procurement and delivery management.
- b) Comprehensive trackwork inspections: subgrade prep, ballast, ties, rail, switches
- c) Connectivity with site stormwater systems
- d) Coordination of paved portions within trackage
- e) Maintenance of existing rail operations

9. Manage site civil implementation including:

- a) Demolition and removals
- b) Earthwork/grading, subgrade preparation, compaction quality control
- c) Crushed base, asphalt and concrete sections
- d) Stormwater facilities
- e) Fire protection
- f) Pipeline protection
- g) Driveway and industry entrance modifications
- h) Fencing and gates
- i) Site services and utilities
- j) Driveways and curb cuts
- k) Security systems
- l) Employee parking areas
- m) Facility signage

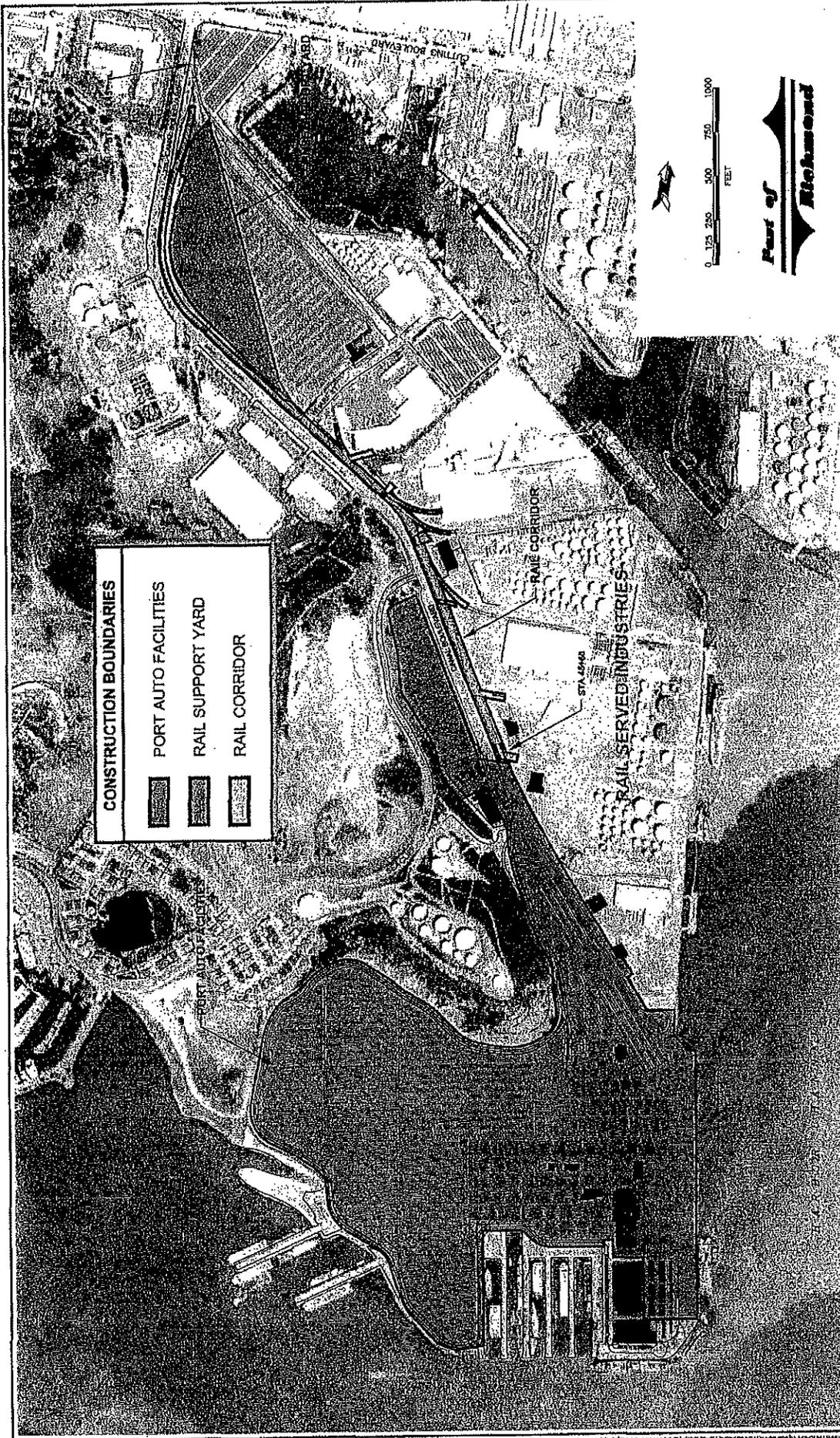
PORT OF RICHMOND  
 AWC/Honda Development - Combined Areas Budget Recap  
 Summary of Approved Construction Budget  
 Schedule 3

BUDGET SUMMARY DESCRIPTIONS	AWC Work			City Work
	PORT AUTO FACILITY	RAIL SUPPORT YARD	RAIL CORRIDOR	R/D TRACK & MITIGATIONS
000 - PLANNING/ENGINEERING/GC's	\$ 4,531,100	\$ 1,082,500	\$ 797,500	
050 - CLEAN AIR & QZ MITIGATIONS				\$ 1,100,000
100-SITE PREPARATION	\$ 1,375,000	\$ 1,049,000	\$ 485,000	
200-SITE WORK	\$ 5,900,000	\$ 207,000	\$ 435,000	
300-TRACK WORK	\$ 4,285,000	\$ 3,450,000	\$ 2,165,000	\$ 2,400,000
400-BUILDINGS	\$ 375,000	\$ -	\$ -	
500-SITE LIGHTING/ELECTRICAL	\$ 100,000	\$ 175,000	\$ -	
600-UTILITIES	\$ 1,029,000	\$ -	\$ 100,000	
700-FENCING/STRIPING/SECURITY	\$ 740,000	\$ 266,500	\$ 42,500	
800-LANDSCAPING	\$ 545,000	\$ 145,000	\$ 50,000	
900-EQUIPMENT	\$ 950,000	\$ -	\$ -	
COST ESTIMATE SUBTOTALS	\$ 19,830,100	\$ 6,375,000	\$ 4,075,000	\$ 3,500,000
Project Contingencies	\$ 2,800,000	\$ 845,000	\$ 535,000	
<b>PROJECT BUDGET TOTALS</b>	<b>\$ 22,630,100</b>	<b>\$ 7,220,000</b>	<b>\$ 4,610,000</b>	<b>\$ 3,500,000</b>
<b>Total Project Funding</b>	<b>\$ 37,960,100</b>			









**HONDA**



**TRANSDEVELOPMENT GROUP**

## EXHIBIT 4

### Disclosure Statement

IT Corporation, 8/23/88, Report Levin Metal Area, Sample/Analysis (S/A), July, 1988  
IT Corporation, 2/26/88, Report of Field Sampling, Shipyard No. 3 (SY3) Drum Storage Areas  
IT Corporation, 5/5/88, Report of Sampling/Analysis, SY3 Residual Levels  
Reidel Environmental Services, Inc., 10/2/90 Report of Remedial Investigation (RI),  
Point Potrero Marine Terminal (PPMT), Vol. I & II  
Reidel Environmental Services, Inc., 8/28/89, Draft Report of Findings, Scoping Study, PPMT  
Hart Crowser, Inc., 5/28/92, Remedial Investigation/Feasibility Study (RI/FS) Work Plan and  
Sampling Analysis (S/A) Plan for Former Shipyard No. 3 Scrap Area Site

Hart Crowser, Inc., 8/21/92, Proposed Surface Soil Sampling Locations, Port of Richmond  
Shipyard No. 3 Scrap Area

Hart Crowser, Inc., 10/15/92 Bi-Monthly Summary Report, August, September 1992, Port of  
Richmond Shipyard No. 3 RI/FS  
Hart Crowser, Inc., 10/12/92 Surface Soil Sampling Results, Port of Richmond Shipyard No. 3  
Scrap Area Site

Hart Crowser, Inc., 4/9/93, Bi-Monthly Summary Report, Feb/Mar 1993

Hart Crowser, Inc., 12/15/92, Draft RI Volume I Report  
Hart Crowser, Inc., 3/11/93, Response to Comments of DTSC/RWQCB on Draft RI  
Hart Crowser, Inc., 6/4/93, Final RI Report Vol. I & II Port of Richmond Shipyard No. 3  
Scrap Area Site

Hart Crowser, Inc., 9/22/93, Report of Well W-5 Area and Supplemental RI  
Hart Crowser, Inc., 12/20/93, Bi-Monthly Summary Report, Oct/Nov 1993  
Hart Crowser, Inc., 2/23/94, Bi-Monthly Summary Report, Dec/Jan 1994  
Hart Crowser, Inc., 10/11/93, Final Draft Feasibility Study  
Hart Crowser, Inc., 8/12/93, Bi-Monthly Summary Report, June/July 93  
Hart Crowser, Inc., 9/15/94, Remedial Action Plan (RAP) - Operating Unit (OU) -1

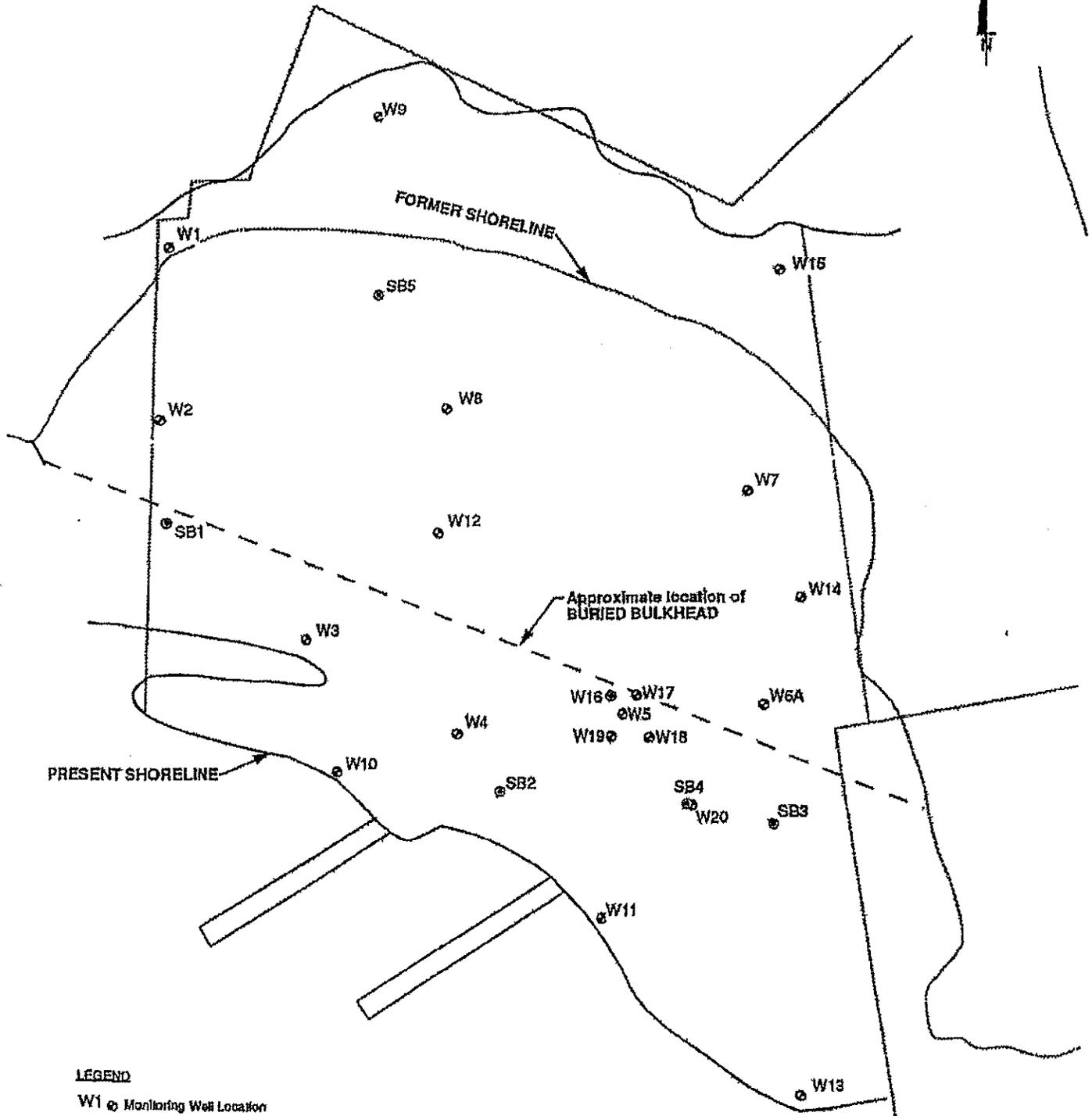
**EXHIBIT 5**

**List of Remediation and Other Equipment**

See attached.

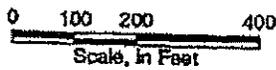
# Soil Boring and Monitoring Well Locations

Port of Richmond Shipyard #3 Scrap Area, Richmond, California



**LEGEND**

- W1 ● Monitoring Well Location
- SB1 ● Soil Boring Location



**EXHIBIT 6**  
**Maintenance Matrix**

Except as otherwise indicated, the following items shall be maintained in good, useable, safe and sanitary condition, and in the same state of repair as exists upon the Effective Date (or as subsequently improved), except for ordinary wear and tear or damage or destruction by fire, earthquake, flood or other casualty or by eminent domain.

Description	CITY	AWC	Comments
Exterior lighting, including changing bulbs on lights in "Yard Area" as shown on attached Exhibit A)		X	Buildings and storage lot AWC will replace the bulbs and conduct minor repairs.
Cleaning and sweeping of Yard Area		X	
Minor repairs to paving or pavement sealing		X	
Replacement and major paving repairs or pavement sealing	X		
Yard pavement striping in conjunction with any new paving or pavement sealing	X		
Striping during Lease Term not associated with new pavement or pavement seal		X	
Maintenance and repair of fencing around perimeter of Premises		X	
Replacement of worn fencing	X		
Underground utilities including water, sewer and electrical	X		
Utilities within Building		X	

**EXHIBIT 6**  
**Maintenance Matrix**

Except as otherwise indicated, the following items shall be maintained in good, useable, safe and sanitary condition, and in the same state of repair as exists upon the Effective Date (or as subsequently improved), except for ordinary wear and tear or damage or destruction by fire, earthquake, flood or other casualty or by eminent domain.

Description	CITY	AWC	Comments
Structural condition of Building	X		
Exterior roof, exterior walls, gutters, drains, siding	X		
All interior work including interior doors, windows, locks, door operators, ceilings, walls, floor coverings, light fixtures and bulb changes, furniture, HVAC and plumbing, including sinks, toilets, fountains, hot/cold water supply piping, hot water heater, etc.		X	
Custodial service, windows (inside and out), carpets, restrooms, walls, ceilings, floors, trash removal		X	
Provide proper containers for trash and garbage; trash and garbage removal		X	
Building fire suppression	X		
Fire Extinguishers & Alarm detection system including maintenance and testing		X	
Keep roadways and parking areas within Premises clean and free of snow, ice, debris and obstructions; maintain landscaping within the Premises		X	
Signage		X	

**EXHIBIT 6**  
**Maintenance Matrix**

Except as otherwise indicated, the following items shall be maintained in good, useable, safe and sanitary condition, and in the same state of repair as exists upon the Effective Date (or as subsequently improved), except for ordinary wear and tear or damage or destruction by fire, earthquake, flood or other casualty or by eminent domain.

Description	CITY	AWC	Comments
Reasonable security within the Premises related to Lessee's use of the Premises		X	CITY and AWC will mutually agree upon commercially reasonable allocation of responsibility for any enhanced security measures required by Homeland Security, U.S. Coast Guard or other governmental authorities.
Cleaning and debris removal of Port Rail Facility		X	
Rail spurs, tracks and switches	X		
Wharves (as defined in Section 3.2)	X		The Wharves include the supporting pier structure, deck surface and berth areas

## EXHIBIT 7

### Insurance Requirements

1 AWC shall procure and maintain in force (or cause to be procured and maintained in force), at its sole cost throughout the Term of this Agreement the following insurance:

(a) Commercial General Liability Insurance, at least as broad as ISO CG 0001 1001 or successor form, which shall provide protection against claims arising from property damage and personal and bodily injury, including death resulting therefrom, occurring in the Premises. In addition, AWC's Commercial General Liability Insurance shall:

(i) be written on an occurrence basis (if available) with a minimum combined single limit of not less than five million dollars (\$5,000,000.00);

(ii) include coverage for products and completed operations;

(iii) include contractual liability coverage for liabilities assumed under this Agreement for claims insured under the policy arising out of personal injury, as well as bodily injury and property damage;

(iv) include an endorsement naming both CITY and the SPA, their officers, directors, as additional insureds on ISO form CG 2011.

(b) Property Insurance on Tenant's Improvements and Betterments made by or specifically for AWC at each building on the Premises for use primarily by AWC. Such property insurance shall be written on an All-Risk basis excluding earthquake and flood coverage and such policy shall be written on an ISO Special Form, or its functional equivalent, for the full replacement cost to then current ordinances and laws.

(c) Workers' Compensation Insurance as required by applicable law. In the event AWC is self-insured for Workers' Compensation Insurance, AWC shall furnish a current Certificate of Permission to Self-Insure signed by the Department of Insurance, Division of Worker's Compensation. Employer's Liability Insurance with policy limits of not less than five million dollars (\$5,000,000.00 per occurrence for bodily injury by accident or disease.

(d) Commercial Auto Liability Insurance with the following limits:

(i) a combined limit of not less than five million dollars (\$5,000,000.00) for bodily injury and property damage per accident, covering liability arising out of any auto (including owned, hired and non-owned autos); and

(ii) garagekeeper's legal liability coverage in an amount not less than \$1,000,000 on the property in AWC's care, custody and control.

(e) Course of Construction/Builder's Risk Insurance with limits equal to the full insurable value of the improvements included in AWC's Work, including consequential loss coverage, earthquake and flood coverage, and with no coinsurance penalty provisions. CITY shall be named as a loss payee. A copy of the executed policy shall be provided to CITY at its request. Upon request by AWC, CITY shall approve the terms, conditions and limits of coverage (including any exclusions) and upon approval shall be deemed conclusively to comply with the requirements of this section. The cost of insurance under this Section 1(e) shall be included in the Approved Budget for AWC's Work.

2 CITY shall procure and maintain in force (or cause to be procured and maintained in force) at its sole cost and expense throughout the Term of this Agreement property insurance on the Wharves (including but not limited to the supporting pier or structure and deck surface) and buildings on the Premises (other than Tenant's Improvements and Betterments) for use primarily by AWC. Such property insurance shall be written on an All-Risk basis excluding earthquake and flood coverage, and such policy shall be written on an ISO Special Form, or its functional equivalent, for the full replacement cost to then current ordinances and laws. AWC, and AHM so long as the MAG Agreement is in effect, shall be insured under CITY's property insurance as their respective interests may appear. AWC shall be responsible for payment of any deductibles under such property insurance, up to a maximum of \$20,000 in the aggregate over the Term of this Agreement, with respect to claims of physical damage to buildings for use primarily by AWC.

3 The policies described in Sections 1 and 2 of these Insurance Requirements shall all comply with the following general requirements:

(a) All required coverage shall be issued by insurance companies with minimum A.M. Best ratings of A- and VIII and shall be under forms of policies reasonably satisfactory in all respects to CITY's counsel.

(b) The liability policy described in Section 1(a) shall provide that coverage shall be primary with respect to AWC's indemnification obligations under Section 20 of the Agreement; and CITY's liability insurance coverage shall be primary with respect to CITY's indemnification obligations under Section 20 of the Agreement. No insurance maintained by either party shall be called upon to contribute with insurance coverage under the liability policy of the other with respect to liability for which such insurance coverage is primary. The liability policy described in Section 1(a) shall provide that coverage shall not be canceled or materially changed without at least thirty (30) days written notice to CITY.

(c) All required policies shall provide, or shall be endorsed to provide that the carrier waives its rights of subrogation against CITY, SPA and AWC;

(d) Any deductibles or self-insurance retentions of more than \$50,000 must, in advance, be declared to and approved in writing by counsel for CITY and AWC, whose approval shall not be unreasonably withheld; provided however, CITY may increase its general liability program self-insurance retention upon notice to AWC to an amount not exceeding \$500,000 so long as the Port of Richmond maintains fully funded reserves in the amount of such self-insurance that are dedicated and available to CITY with respect to claims for which CITY's liability insurance coverage is primary. If approval of CITY's counsel is reasonably withheld, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY and SPA, their officials, employees, agents and volunteers, or AWC shall provide a financial guarantee satisfactory to CITY guaranteeing payment of the deductible or self-insured portion of losses and related investigations, claim administration and defense expenses under AWC's liability insurance with respect to claims for which AWC's liability insurance coverage is primary.

(e) Each party shall deliver to the other, immediately prior to this Agreement going into effect, and thereafter within thirty (30) days of expiration of each such policy required hereunder, certificates of insurance evidencing the coverages required to be provided by such party under this Agreement clearly and fully showing insurance in full compliance with such party's obligations hereunder, together with satisfactory evidence of the payment of the premiums therefor. Each party shall also direct all of its present and future insurance brokers and insurance providers to cooperate with and promptly provide each other party with all information necessary to document full compliance with the terms of Section 1 of these Insurance Requirements and to provide such documentation in such a manner as to be binding upon the insurers.

(f) Each party shall pay the premiums for maintaining the insurance required to be provided by it when due. If such party fails to obtain such insurance or to pay the premiums therefor, any other party may, (but shall not be obligated to) if necessary to avoid a lapse in coverage, make such payment, or carry such policy. The amount of premium paid therefore, plus interest at the rate of eight percent (8%) per annum, shall forthwith be reimbursed to the party making such payment by the party responsible for maintaining the insurance.

(g) On the fifth anniversary of the Effective Date, and thereafter not more frequently than every five years during the Term of this Agreement, if in the opinion of any party, the insurance coverage carried by the other party (or stipulated value of improvements insured under any property policy) at that time is not adequate, taking into consideration the standard for commercial operations of a similar nature, such other party shall notify the other party of its concern for alternate insurance requirements. Each party shall meet to discuss such concerns and if changes are mutually agreed upon, such agreement shall be placed in writing as an amendment to this Agreement.

(h) Any failure by a party to maintain the required insurance will constitute an event of default under this Agreement.

(i) If any party fails to procure and maintain any of the insurance required of it by this Agreement, such party shall indemnify the other parties to the extent such other party suffers or incurs loss, damage, liability or expense which would not have been suffered or incurred except for such failure.

4 SPA and CITY hereby release AWC, any parent or subsidiary corporation of AWC, and their officers, directors, agents, and employees from any and all liability and waive SPA's and CITY's rights of recovery against AWC, any parent or subsidiary corporation of AWC, subtenant, and their respective officers, directors, agents and employees, for any loss or damage to SPA's and/or CITY's property resulting from any hazard insurable under the form of insurance policy which SPA and/or CITY agrees to carry under this Agreement and/or actually carries and SPA and CITY hereby waives the subrogation rights of their insurance carriers (including "self-insurance") under any policies of insurance providing coverage against loss or damage to the property of SPA and CITY on or about the Premises. CITY shall take such steps as are necessary to inform its insurance carriers of this provision and to have endorsements, if necessary, placed on said insurance policies to carry into effect the provisions of this paragraph.

5 AWC hereby releases SPA, CITY, any parent or subsidiary corporation of SPA, CITY, and their officers, directors, agents, and employees from any and all liability and waives AWC's right of recovery against SPA or CITY, any parent or subsidiary corporation of SPA or CITY, and their officers, directors, agents and employees, for any loss or damage to AWC's property resulting from any hazard insurable under the form of insurance policy which AWC agrees to carry under this Agreement, and AWC hereby waives the subrogation rights of its insurance carriers (including "self-insurance") under any policies of insurance providing coverage against loss or damage to the property of AWC on or about the Premises. AWC shall take such steps as are necessary to inform its insurance carriers of this provision and to have endorsements, if necessary, placed on said insurance policies to carry into effect the provisions of this paragraph.