

**LONG-TERM SUBLEASE**

**BETWEEN**

**ALAMEDA REUSE AND REDEVELOPMENT  
AUTHORITY**

**AND**

**U.S. DEPARTMENT OF TRANSPORTATION  
MARITIME ADMINISTRATION**

LONG-TERM SUBLEASE  
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ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY  
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MARITIME ADMINISTRATION

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## EXHIBITS

EXHIBIT A	PRIME LEASE
EXHIBIT B	INTERIM LEASE WITH EXHIBITS (INCLUDING CONTRACT NO. DTMA-91-97-C-00004)
EXHIBIT C	BUILDING 168 SUBLEASE
EXHIBIT D	PIER PROPERTY DESCRIPTION
EXHIBIT E	WAREHOUSE PROPERTY DESCRIPTION
EXHIBIT F	NEW WAREHOUSE BUILDING PLANS
EXHIBIT G	PAYMENT SCHEDULES
EXHIBIT H	TECHNICAL REQUIREMENTS/REIMBURSABLE SERVICES

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1           **WHEREAS**, the Parties desire to enter into this Sublease for the long-term lease of the  
2 layberthing facilities and Building 168 from the Sublessor to the Sublessee and have amended  
3 the Interim Lease and Building 168 Sublease to automatically terminate upon the execution of  
4 this Sublease.

### **AGREEMENTS**

5  
6  
7  
8           **NOW THEREFORE**, in consideration of the premises, and the mutual covenants, terms  
9 and conditions set forth herein, the Parties agree as follows:

#### 10 11       1.     **Premises.**

12  
13           a.     **Premises.** Sublessor hereby subleases to Sublessee, and Sublessee hereby  
14 subleases from Sublessor, (i) certain portions of the Piers and associated land as more fully  
15 described in Exhibit "D," attached hereto and made a part hereof, or as may be amended in  
16 accordance with subsection b(i) below ("Pier Property"), and (ii) Building 168 and adjacent land  
17 as more fully described in Exhibit "E," attached hereto and made a part hereof, or such  
18 substituted warehouse and adjacent land as may be provided in accordance with subsection b(iii)  
19 below ("Warehouse Property"). The Pier Property and Warehouse Property, whether or not  
20 amended or substituted, shall collectively be referred to herein as "the Leasehold" or "the  
21 Premises."

22  
23           b.     **Sublessor Optional Changes to Premises.** At any time during the Term of this  
24 Sublease, Sublessor shall have the option to make the following changes to the Premises and  
25 Sublessor's use of the Premises:

#### 26 27                     (i).    **Exclusive Use of Pier 3.**

28  
29                     (A)    As of the effective date of this Lease, Sublessor is not able to offer  
30 Sublessee exclusive use of Pier 3. In the event Sublessor offers exclusive use of Pier 3 to the  
31 Sublessee in accordance with the terms of this Sublease, Sublessee shall have continued  
32 exclusive use of Pier 2 and exclusive use of Pier 3 under this Sublease and any and all rights of  
33 Sublessee under this Sublease to use Pier 1, or any part thereof, shall terminate, unless by  
34 subsequent amendment to this Sublease, the Parties reach some future agreement with regard to  
35 the use of Pier 1. However, the Sublease for Pier 1 shall continue for a reasonable amount of  
36 time to the Sublessee to allow for the movement of its vessels and other property to Piers 2 or 3  
37 in accordance with the terms of paragraph 9.

38  
39                     (B)    As consideration for Sublessee's exclusive use of Pier 3, Sublessee  
40 agrees to pay an increase in rent for the Pier Property (Exclusive Use of Pier 3 Increase) as  
41 described in Section 3.b. of this Sublease. Notwithstanding the foregoing, the schedule for  
42 offering exclusive use of Pier 3 to Sublessee is solely within the discretion of Sublessor, and

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Sublessee understands and agrees that Sublessor is under no obligation to offer the exclusive use of Pier 3 to Sublessee and to provide Sublessee with increased pier space.

(ii). Use and Occupancy of Pier 1.

In the event Sublessor, following the acceptance of exclusive use of Pier 3 by Sublessee, determines in its sole discretion, that space is also available at Pier 1 for layberthing activities, Sublessee shall have the first right to negotiate to occupy such space.

(iii). New Warehouse Building.

(A) In an effort to create a self-contained compound for use by Sublessee under the Sublease ("MARAD Compound"), Sublessor is exploring the possibility of constructing or causing to be constructed a replacement warehouse on or adjacent to the Pier Property ("New Warehouse Building") within such MARAD Compound and relocating Sublessee's use of Warehouse Property from its current location at Building 168 to such New Warehouse Building. If Sublessor elects to construct the New Warehouse Building, Sublessor agrees that such construction will be substantially in accordance with the conceptual plans described and depicted at Exhibit "F," attached hereto and made a part hereof, provided, however, that prior to commencing construction, Sublessor shall obtain Sublessee's written approval of all final construction documents as well as the location of the New Warehouse Building. Sublessee agrees to abandon its use of Building 168 within ninety (90) days after the completion of the following three events (1) receiving notice from Sublessor that the New Warehouse Building is completed in accordance with such approved construction documents, (2) Sublessee is presented with a certificate of occupancy for the New Warehouse Building and (3) acceptance of the New Warehouse Building by Sublessee after completion of a joint inspection. Acceptance by Sublessee shall not be unreasonably withheld or delayed. As consideration for Sublessee abandoning its use of Building 168, Sublessee shall be granted by Sublessor, a one hundred thousand dollar (\$100,000.00) rent credit ("Relocation Rent Credit") to be applied to the next succeeding months Warehouse Rent as such becomes due and payable by Sublessee. Notwithstanding Sublessor creating the MARAD Compound, the Sublessor shall be granted continued access at all times to the Oil Separation Equipment located within such MARAD Compound and Sublessee shall not use such equipment.

(B) As consideration for Sublessor providing the New Warehouse Building for use by Sublessee under this Sublease, and creating the MARAD Compound, Sublessee agrees to pay as rent the rent for the New Warehouse Building as described in Section 3.c. of this Sublease. Notwithstanding the foregoing, the decision to construct the New Warehouse Building and to make it available to Sublessee is solely within the discretion of Sublessor, and Sublessee understands and agrees that Sublessor is under no obligation to construct the New Warehouse Building for use by Sublessee under this Sublease. In the event Sublessor elects not to construct and provide the New Warehouse Building, Sublessee shall continue to occupy Building 168 for the term of the Lease.

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### 2. Term.

The Term of this Sublease shall begin on May 1, 2006 and shall end on April 30, 2026, unless sooner terminated as hereinafter provided.

### 3. Payments.

a. Base Rent. Subject to rent increases as provided in subsections b. and c. below, Sublessee shall pay to Sublessor monthly rent in the amount of \$150,000.00 for certain portions of the Piers and associated land as more fully described in Exhibit "D" ("Pier Rent") and \$38,000.00 for Building 168 and adjacent land as more fully described in Exhibit "E," ("Warehouse Rent") during the Term of this Sublease, as escalated annually by three (3) percent for the Pier Rent starting in the first month of the third year of the lease (Month 25) and as escalated annually by three (3) percent for the Warehouse Rent starting in the first month of the second year (Month 13) and shown in more detail in Exhibit "G," attached and made a part hereof (together Warehouse Rent (whether rent for Building 168 Rent or the New Warehouse) and Pier Rent = "Base Rent"). Base Rent shall be paid monthly in arrears. Sublessor agrees to provide Sublessee with a two part monthly invoice, detailing Pier Rent and Warehouse Rent separately, as shown in more detail in Exhibit "G." Sublessee shall submit the Base Rent on the first day of each month beginning with the first day of the second month of the first year of the lease (Month 2), for the preceding month unless the first day of the month is a Saturday, Sunday or Federal Government holiday, in which case Sublessee shall submit the Base Rent not later than the next business day. See Exhibit "G", Payment Schedule #1.

b. Exclusive Use of Pier 3 Increase. If Sublessor provides Sublessee with the exclusive use of Pier 3 in accordance with the terms of Section 1.b.(i) of this Sublease, the monthly rent associated with the Piers as escalated in accordance with Exhibit "G," Payment Schedule #1, shall be increased by a one-time increase of three and one-half (3½) percent ("Exclusive Use of Pier 3 Increase"), following such exclusive use of Pier 3 by Sublessee, all in accordance with Exhibit "G," Payment Schedule #2. The Exclusive Use of Pier 3 Increase shall be included in the monthly rent beginning on the first day of the month following the utilization of Sublessee of exclusive use of Pier 3 and continue for the remaining Term of the Sublease, provided Sublessee continues to retain exclusive use of Pier 3.

c. New Warehouse Building Rent (Replaces Rent for Building 168). If Sublessor constructs the New Warehouse Building in accordance with Section 1.b.(iii) of this Sublease, the monthly rent required following Sublessee's abandonment of Building 168 in accordance with Section 1.b.(iii), through the remainder of the term of the Sublease shall be an amount equal to 70 cents (\$.70) times the number of square feet contained within the New Warehouse times a Consumer Price Index Number. The Consumer Price Index number shall be based on a one-time calculation to occur as of the month Sublessee accepts the New Warehouse Building as described in Section 1.b.iii paragraph (A) above. The Consumer Price Index Number will be calculated by dividing the April 2006 Consumer Price Index for all Urban Consumers for San

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1 Francisco-Oakland-San Jose, CA into the Consumer Price Index for all Urban Consumers for  
2 San Francisco-Oakland-San Jose, CA for the month the Sublessee takes possession of the new  
3 Warehouse Building (CPI Month of Acquisition divided by CPI for April 2006), (to access this  
4 information go to <http://www.bls.gov/cpi/home.htm> click "Get Detailed CPI Statistics" then  
5 click the first "All Urban Consumers (Current Series)" then check box for "San Francisco All  
6 Items, etc." and click "Retrieve Data" button). In other words, the Consumer Price Index  
7 Number will be calculated by setting the April 2006 Index as the denominator in a fraction and  
8 the last monthly Index to be recorded as the numerator. Beginning on the first day of the month  
9 following the date on which the New Warehouse Building is deemed acceptable for occupancy  
10 by mutual agreement between Sublessor and Sublessee [using as conditions of acceptance those  
11 described in Section 1.b.iii paragraph (A) above] and continuing monthly for the remaining Term  
12 of the Sublease, the rent payments set forth in this subparagraph shall be deemed the Warehouse  
13 Rent due under this Sublease and replace the Building 168 rent as a part of the Base Rent. This  
14 Warehouse Rent will be escalated annually thereafter by three (3) percent. See Exhibit "G",  
15 Payment Schedule #3. In addition, the Relocation Rent Credit shall be subtracted from the  
16 monthly Warehouse Rent beginning on the first day of the month following the date on which  
17 the New Warehouse Building is deemed acceptable for occupancy by mutual agreement between  
18 Sublessor and Sublessee and continue monthly until such Relocation Rent Credit is exhausted.

19  
20 d. Conflict with Schedules. In the event of an irreconcilable conflict between the  
21 terms of this Sublease and the attached schedules, the terms of this Sublease shall govern.

22  
23 e. Reimbursable Items. Payments for Reimbursable Services, as identified in  
24 Exhibit "H", shall be due to Sublessor on the 30<sup>th</sup> calendar day after the date of Sublessee's  
25 receipt of a complete and proper invoice.

26  
27 f. Audit. Until six years three months after the end of the Term of this Sublease or  
28 any successor lease entered into in accordance with Article 12, Sublessor shall maintain, and  
29 Sublessee or its authorized representative shall have the right to examine and audit at all  
30 reasonable times and places, all records and other evidence sufficient to reflect all costs incurred  
31 for reimbursable items, as well as capital charges sought in accordance with Article 38 in the  
32 event of a termination of this lease by the Sublessee.

### 33 34 4. Sublessor's Covenant to Pay Taxes and Assessments.

35  
36 The Sublessor shall pay all taxes, general or special, all public rates, dues and special  
37 assessments of every kind which shall become due and payable or which are to be assessed  
38 against or levied upon said Premises during the Term of this Sublease.

### 39 40 5. Sublessor's Covenant to Pay Other Expenses.

41  
42 a. Insurance. Sublessor shall pay necessary insurance premiums for the Piers,  
43 fixtures and equipment therein that become part of the real estate for the protection of the same

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1 against loss or damage by fire, lightning or storm. In addition to the insurance requirements  
2 established by the Prime Lease, the Sublessor agrees to maintain the following insurance:

3  
4 (i) Workman's Compensation, State and Federal Statutes, including  
5 Longshoreman's and Harbor Worker's Act in the statutory amount.

6  
7 (ii) Employer's Liability Insurance in the amount of \$5,000,000 per accident,  
8 or occurrence.

9  
10 (iii) Wharfinger's Liability Policy in the amount of \$5,000,000 per vessel, or  
11 occurrence.

12  
13 (iv) General (Public) Liability in the amount of \$5,000,000 combined single  
14 occurrence limit for bodily injury and property damage and \$5,000,000 in the aggregate.

15  
16 (v) Pollution-sudden and accidental in the amount of \$5,000,000 per  
17 occurrence.

18  
19 The Sublessor shall provide a detailed certificate of insurance, cover-note or policy  
20 confirming the above required coverage. Such confirmation shall name the Sublessor and the  
21 Sublessee as assureds and confirm the types of coverage, policy forms, policy periods,  
22 deductibles (if any) and underwriters with their percentage of participation. The policies shall  
23 provide no recourse against the Sublessee for payment of premium.

24  
25 All such insurance shall be subject to the approval of the Director, Office of Insurance  
26 and Shipping Analysis, Maritime Administration, and will contain thirty (30) calendar days  
27 advance notice of cancellation or of any non-renewal which is the option of the insurer, said  
28 notice to be provided to the Director, Office of Insurance and Shipping Analysis (MAR-780),  
29 Maritime Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Room  
30 8117, Washington, D.C. 20590.

31  
32 b. Expenses. In addition, Sublessor shall pay other expenses and charges, which  
33 during any Term of this Sublease shall be levied, assessed or imposed by a governmental  
34 authority upon or with respect to, or incurred in connection with the ownership, possession,  
35 occupation, operation, alteration, maintenance, repair and use of the Premises, except any fines,  
36 penalties, sanctions or other liabilities arising from Sublessee's activities on the Premises; it  
37 being intended that the clauses "Payments" and "Leasehold Improvements" of this Sublease  
38 identify the sums specified as payments from the Sublessee to Sublessor, inclusive of these items  
39 in this section and the technical requirements identified in Exhibit "H". Additional payments  
40 will be made by the Sublessee in accordance with Sections 1 and 3 of this Sublease.

41  
42 c. Taxes. If at any time during the Term of this Sublease under the laws of this state  
43 or any political subdivision thereof in which the Premises are situated, a tax or excise on



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1 payments or other tax, however described, is levied or assessed by said state or political  
2 subdivision against Sublessor or the fixed payment expressly reserved hereunder, in lieu of or as  
3 a substitute in whole or in part for taxes and assessments imposed upon Premises exclusively and  
4 commonly known as real-estate taxes, Sublessor covenants to pay and discharge such tax or  
5 excise on rents or other tax but only to the extent of the amount thereof which is lawfully  
6 assessed or imposed upon Sublessor and which was so assessed or imposed as a direct result of  
7 Sublessor's ownership or interest in the Premises, or of this Sublease or of the rentals accruing  
8 under this Sublease. Nothing contained in this Sublease shall be construed to require the  
9 Sublessee to pay any franchise, estate, inheritance, succession, capital levy, business tax, or  
10 transfer tax, or any other tax or impost charged or levied upon the payments payable by the  
11 Sublessee under this Sublease.

### 12 13 **6. Access, Ingress and Egress.**

14  
15 a. Sublessee Access. Subject to the provisions of this Sublease and the Prime Lease,  
16 Sublessee shall have access to the Premises and the Leasehold 24 hours per day, seven days per  
17 week. The term of this access right (ingress and egress) shall commence upon execution of this  
18 Sublease and shall continue until the expiration of the Sublease Term.

19  
20 b. Access by Sublessor and Navy. In addition to access required under other  
21 provisions of this Sublease, the Navy and Sublessor shall be allowed access to the Premises at all  
22 reasonable times throughout the term of this Sublease, for any reasonable purposes upon prior  
23 written notice to the Sublessee. The Navy and Sublessor will normally give Sublessee a  
24 minimum twenty-four (24) hour prior notice of an intention to enter the Premises, unless the  
25 entry is required on an emergency basis for safety, environmental, operations or security  
26 purposes. Except for an emergency situation, all such entry to the Premises by the Navy and  
27 Sublessor shall be accompanied by a representative of the Sublessee. Sublessee shall ensure that  
28 a telephone roster is maintained at all times for on-call persons representing Sublessee who will  
29 be available on short notice, 24 hours a day, 365 days per year, and possess and have authority to  
30 use all keys necessary to gain access to the Leased Premises, to facilitate entry in time of  
31 emergency. The Sublessee shall ensure that the Sublessor has a current roster of such on-call  
32 personnel and their phone numbers. Sublessee shall have no claim against the Navy or Sublessor  
33 for exercise of their rights of access hereunder.

34  
35 c. Fire Department Access. Subject to the provisions of this Sublease and the Prime  
36 Lease, the Alameda Fire Department shall have access to the Premises and the Leasehold 24  
37 hours per day, seven days per week.

### 38 39 **7. Certain Rights Reserved to Sublessor.**

40  
41 Sublessor reserves the following rights:

42  
43 a. Show Premises. On reasonable prior written notice to Sublessee, no less than 24

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1 hours in advance, Sublessor may show the Premises to prospective sublessees, purchasers,  
2 mortgagees, or assignees of any mortgage or lease on the Premises and to others having a  
3 legitimate interest in the Premises at any time during the Term of the Sublease.

4  
5 b. Inspection, Alteration, Relocation.

6  
7 (i). Subject to the terms of clause (ii) of this paragraph 7.b, at any time in the  
8 event of an emergency, Sublessor may take any and all measures, including making any  
9 inspections, repairs, alterations, additions, and improvements to the Premises, as may be  
10 necessary or desirable for the safety, protection, or preservation of the Premises, or Sublessor's  
11 interests, or as may be necessary or desirable in the operation or improvement of the Premises, or  
12 in order to comply with this Sublease and all laws, orders, and requirements of governmental or  
13 other authorities, using reasonable efforts not to interfere with the use and occupancy of the  
14 Premises by Sublessee. Sublessor shall provide Sublessee with prompt notice of such emergency  
15 in accordance with Article 6.b. and the actions Sublessor proposes to take. Subject further to the  
16 terms of clause (ii) of this paragraph 7.b, Sublessor shall not be in default hereunder nor shall  
17 Sublessee have any right to terminate this Sublease or claim an offset against or reduction in rent  
18 payable hereunder, due to any damage, annoyance or inconvenience resulting from any such  
19 emergency inspections, repairs, alterations, additions, improvements, or relocations, or the  
20 failure of Sublessor to make any such inspections, repairs, alterations, additions, improvements,  
21 or relocations, so long as Sublessee's vessels and personnel are not injured and Sublessee is not  
22 denied access to the Premises and the ability to moor its vessels as contemplated herein, except  
23 that Sublessee's access to Piers 1 and 3 may be limited temporarily to the extent necessary for  
24 Sublessor to relocate the U.S.S. Hornet from Pier 3 to Pier 1. Sublessee shall reasonably  
25 cooperate with Sublessor or Sublessor's agents or contractors in carrying out any such  
26 inspections, repairs, alterations, additions, improvements, or relocations, including temporary  
27 movement of any Government-owned vessels as may be necessary to allow for such inspections,  
28 repairs, additions, improvements, or relocations.

29  
30 (ii). Where an emergency exists that involves the movement of any of  
31 MARAD's vessels, MARAD shall be in sole operational control of the movement of said  
32 vessels. Where the emergency was caused by MARAD or attributable to forces of nature,  
33 MARAD will bear all of the costs of such move to the proportional extent of its responsibility for  
34 the emergency or to the proportional extent the emergency was caused by a force of nature. To  
35 the extent the emergency was attributable to or the responsibility of the Sublessor or third parties  
36 performing work relating to a contractual arrangement with the Sublessor, the Sublessor shall  
37 bear such costs to the proportional extent of its or such third parties' responsibility for the  
38 emergency. Nothing contained herein shall affect any insurance coverage relating to such  
39 emergency or the right of the Sublessee to pay the costs of such move or relocation and seek  
40 reimbursement from the Sublessor.

41  
42 (iii). Subject to clause (ii) above, in the event such measures become necessary  
43 as a result of deficiencies in Sublessee's performance of its obligations under this Sublease, in

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1 addition to all other available remedies, Sublessor may, but shall not be obliged to, enter upon  
2 the Premises and correct Sublessee's deficiencies using Sublessor's forces, equipment and  
3 materials on the Premises suitable for such purposes, or by employing an independent contractor.  
4 Sublessor's costs so incurred, including direct overhead costs, shall be reimbursed to Sublessor  
5 by Sublessee and/or its sureties within thirty (30) days of demand thereof. Such demand shall set  
6 forth said costs and provide documentation supporting same.

7  
8 c. Termination of Prime Lease. Notwithstanding any provision herein to the  
9 contrary, Sublessor retains the right to terminate the Prime Lease pursuant to its terms and, if  
10 Sublessor intends to exercise such right, Sublessor shall provide Sublessee with ninety (90) days  
11 prior written notice. This provision does not apply to a termination of the Prime Lease if title to  
12 the Premises is conveyed to Sublessor. See Article 12, *infra*.

13  
14 d. Master Pier Lease. Sublessor, upon prior written notice to and upon receiving the  
15 consent of the Sublessee, which consent shall not be unreasonably delayed or unreasonably  
16 withheld, shall have the right, but not the obligation, to subordinate and make junior this  
17 Sublease to a lease document entered into by Sublessor and a third party designated by Sublessor  
18 ("Master Pier Lease"). The Master Pier Lease shall, among other provisions, provide that (i) the  
19 third party tenant ("Master Lessee") shall be responsible for complying with all obligations of  
20 Sublessor under this Sublease, (ii) this Sublease would be junior and subordinate to the Prime  
21 Lease and Master Pier Lease, (iii) if the Master Pier Lease were to terminate based on a transfer  
22 of title, Sublessor and Master Lessee would thereafter recognize this Sublease as direct lease  
23 documentation between Sublessee and Sublessor and Master Lessee would comply with all  
24 future obligations of "Sublessor" thereunder (Sublessor would be responsible for any obligations  
25 (or failure thereof) of the Master Lessee under the Master Pier Lease), (iv) the terms and  
26 conditions of the Master Pier Lease shall not alter, modify and/or diminish any of Sublessee's  
27 rights and Sublessor's obligations under this Sublease, and (v) the substance of this clause with  
28 respect to ongoing obligations of Sublessor shall be included in any future Master Lease.

29  
30 e. Assignment of Sublease. This Sublease may not be assigned by Sublessor  
31 without the express written consent of the Sublessee, which consent shall not be unreasonably  
32 denied or conditioned, provided that activities related to Dredging shall not be assigned.

33  
34 f. Sale of Leased Premises. Notwithstanding any sale of the Leased Premises by  
35 Sublessor, this Sublease shall remain in full force and effect between the Sublessee and the  
36 Alameda Reuse and Redevelopment Authority, as Sublessor, unless and until the Sublessee  
37 agrees to the transfer and assignment of this Sublease to the purchaser of the Leased Premises,  
38 which agreement shall not be unreasonably denied or conditioned, provided that activities related  
39 to Dredging shall not be transferred or assigned. Any Sales Agreement executed by the  
40 Sublessor for the Leased Premises shall include a clause giving effect to this paragraph 7.

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### 8. Quiet Possession.

Upon Sublessee's payment of rent and other amounts payable hereunder and observing and performing all of the covenants, conditions and provisions to be observed and performed hereunder, Sublessee shall have quiet possession of the Premises for the entire Term hereof, subject to the provisions of this Sublease.

### 9. Use.

a. Pier Property. Sublessee shall use and occupy the Pier Property as described in this Sublease solely for purposes of berthing and maintaining Government-owned vessels. In the event the Sublessee occupies Pier 3 exclusively and Sublessor does not make space available on Pier 1, the Sublessor shall give adequate notice to the Sublessee such that the Sublessee may remove all vessels, equipment and any other Sublessee-owned property from Pier 1 and to otherwise coordinate the relocation of vessels, equipment and property necessary to provide Sublessee the exclusive use of Piers 2 and 3.

b. Warehouse Property. Sublessee shall use and occupy the Warehouse Property to support the berthing and maintenance of Government-owned vessels.

c. No Other Uses. The Sublessee shall not use the Premises for any other purposes, other than the purposes set forth herein or for the Federal uses set forth in Section 13 of this Sublease, without the prior written approval of the Sublessor, which shall not be unreasonable withheld.

d. Compliance with Federal, State and Local Laws and Regulations. Sublessee shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, with respect to the use, occupation or alteration of the Premises and exercise of the Sublease.

f. Compliance With FOSL and Other Governmental Documents. Any use of the Premises shall comply with all terms and conditions of this Sublease, the Prime Lease and the Finding of Suitability to Lease (FOSL) for the Premises under the Prime Lease, subject to such uses being consistent with the National Environmental Policy Act ("NEPA") Record of Decision ("ROD") for the disposal and reuse of the Station, and all conditions expressed therein as well as other conditions contained in other environmental documents with respect to the uses of the Premises prepared in compliance with NEPA.

g. Sublessor Rules. Notwithstanding any other provision of this Sublease or existing rules, regulations and other provisions applicable to the Premises, Sublessor shall have the right to propose such reasonable rules and regulations as in the judgment of Sublessor may from time to time be necessary for the safety, appearance, care and cleanliness of the Premises and for the preservation of good order therein, provided that such rules do not interfere with Sublessee's

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permitted uses as set forth in this Sublease and Sublessee shall agree to and abide by such proposed reasonable rules and regulations provided they do not interfere with Sublessee's permitted uses of the Premises. The determination regarding whether such proposed rules and regulations interfere with the Sublessee's permitted uses of the Premises is vested exclusively within the discretion of Sublessee

h. Use of Hazardous or Toxic Materials. In accordance with 10 U.S.C. 2692, the Sublessee is prohibited from storing or disposing on the Leased Premises non-Department of Defense ("DoD") approved toxic or hazardous materials, which include materials that are of an explosive, flammable, or pyrotechnic nature, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his or her designee. In the event that Sublessee desires to store or dispose of any such materials, Sublessee shall contact Sublessor and the Navy in writing, and the Parties shall seek Navy approval for such storage or disposal. Upon the conveyance of the Premises to the Sublessor, this clause shall no longer be effective.

### 10. Prime Lease.

a. Continuation of Prime Lease. The Prime Lease is attached hereto as Exhibit "A" and is incorporated in this Sublease by reference. With the exception of the terms of Article 12, notwithstanding anything otherwise stated in this Sublease, the obligation of Sublessor to lease the Premises to Sublessee, and to perform the covenants of Sublessor hereunder, and the obligation of Sublessee to so hire and lease the Premises from Sublessor, and to perform the covenants of Sublessee hereunder, are expressly conditioned upon the continuation, in full force and effect, of the Prime Lease. This Sublease shall be subject to and subordinate to all terms and conditions of the Prime Lease.

Sublessee represents that it received, read and is familiar with the terms of the Prime Lease. Notwithstanding any provision of this Sublease, the Parties hereby agree as follows: (i) Sublessee will not do or permit anything to be done in or on the Premises which will cause the occurrence of a default by Sublessor under the Prime Lease and (ii), subject to the terms of Article 12, if the Prime Lease expires or is terminated for any reason, then this Sublease shall thereupon terminate, without any liability to Sublessor, as if such date were the scheduled expiration date of the Term. Sublessor shall take all necessary actions within Sublessor's control to keep the Prime Lease in full force and effect during the Term of this Sublease.

b. Navy Default of Prime Lease. Sublessor shall have no liability to Sublessee for the Navy's defaults under the Prime Lease. Sublessee agrees that Sublessor shall not be obligated to perform any of the Navy's obligations under the Prime Lease. Sublessee further agrees that neither this Sublease nor any of Sublessee's obligations hereunder shall be affected by Navy's default under the Prime Lease, except to the extent that the Prime Lease is terminated. Sublessor reserves all rights to enforce the Prime Lease, and agrees to make reasonable and diligent efforts to enforce the Navy's obligations to Sublessor under the Prime Lease, to the

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1 extent that Sublessee is a material beneficiary thereof. Sublessor shall not be required to initiate  
2 a legal action against the Navy but agrees to reasonably cooperate with Sublessee to enforce the  
3 Navy's obligations under the Prime Lease. Should Sublessee chose, the Sublessee shall have the  
4 right, but not the obligation, to fully perform Navy's obligations under the Prime Lease and that  
5 full performance shall constitute a cure of such Navy default.

6  
7 c. Prime Lease Controls. In the event of any conflict in the rights of Sublessee  
8 under this Sublease and the rights of Sublessor under the Prime Lease, the terms, conditions and  
9 covenants of the Prime Lease shall control.

### 10 11 11. Duty to Operate.

12  
13 The Parties acknowledge and agree that Sublessee's agreement to sublease the Premises  
14 and conduct operations continuously during the Term of this Sublease is a material inducement  
15 to Sublessor to enter into this Sublease and Sublessee agrees to diligently continue operations on  
16 the Premises during the entire Term of the Sublease.

### 17 18 12. Restatement of Sublease.

19  
20 If title to the Premises is conveyed to the Sublessor or Sublessor's assigns, this Sublease  
21 shall remain in full force and effect and the Parties agree to amend and restate this Sublease as  
22 necessary to ensure that it remains in full force and effect for the full stated term of this Sublease.

### 23 24 13. Assignment and Subletting.

25  
26 a. Sublessee is authorized to enter into and effectuate subleases, permits and  
27 assignments and other Federal agreements with regard to the Premises with other Federal  
28 departments and agencies to accommodate other Federal Government entities.

29  
30 b. Other than subleases, permits and assignments allowed by Section 13, Sublessee  
31 shall not assign or sublease its interest in the Premises or any portion thereof without the express  
32 written approval of Sublessor.

### 33 34 14. Liability

#### 35 36 a. Indemnification By Sublessee of Sublessor.

37  
38 (i) The Sublessee agrees to indemnify Sublessor, its officers, directors,  
39 agents, employees and representatives, for certain liabilities set forth below, (excluding  
40 attorney's fees) not compensated by insurance or otherwise. These liabilities must arise out of,  
41 result from or be predicated in any manner upon the activities of the Sublessee on the Leased  
42 Premises during the Term of this Sublease and must be represented by final judgments or  
43 settlements approved in writing by the Sublessee or its representatives. These liabilities are for—

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(A) Loss of or damage to property; or

(B) Death or bodily injury.

(ii) The Sublessee's liability under paragraph (a) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this Sublease shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(iii) The Sublessor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)—

(A) For which the Sublessor is otherwise responsible under the express terms of any clause specified in the sublease; or

(B) That result from the negligence or misconduct of the Sublessor, its officers, directors, officers, managers, superintendents, or the Navy.

(iv) If any suit or action is filed or any claim is made against the Sublessor, the cost and expense of which may be reimbursable to the Sublessor under this clause, and the risk of which is then uninsured or is insured for less than the amount claimed, the Sublessor shall—

(A) Immediately notify the Sublessee and promptly furnish copies of all pertinent papers received;

(B) If requested by Sublessee, authorize Sublessee's representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(C) Authorize Sublessee's representatives to settle or defend the claim and to represent the Sublessor in or to take charge of any litigation, if required by the Sublessee's, when the liability is not insured or covered by bond. The Sublessor may, at its own expense, be associated with the Sublessee's representatives in any such claim or litigation.

b. Federal Entity and Public Vessels. Sublessee is an agency of the United States Government and its vessels are public vessels of the United States; consequently, any claims against Sublessee for bodily injury and death are subject to the Federal Tort Claims Act, 28 U.S.C. 2671-2680, the Public Vessels Act, the Suits in Admiralty Act, 46 App. U.S.C. §741 *et seq.*, and the Admiralty Extension Act, 46 App. U.S.C. §740, as applicable. Public vessels are not subject to the creation of maritime liens. Nothing contained herein shall constitute a lien on a public vessel. Sublessor looks solely to the credit of the Sublessee for the performance of the obligations of the Sublessee under this agreement.

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1           c.     Sublessee's Contractor's Insurance. With the exception of ship managers and  
2 general agents covered by subparagraph 14.d, Sublessee shall ensure that any agent, contractor or  
3 subcontractor of the Sublessee performing work or using the Premises carries and maintains the  
4 following insurance, which shall name Sublessor and the Navy, and any other party designated  
5 by Sublessor, as an additional insured, and otherwise be upon terms and conditions acceptable to  
6 Sublessor:

7  
8                   (i).     Comprehensive general liability insurance, including, but not limited to,  
9 contractor's liability coverage and contractual liability coverage, of not less than \$500,000 per  
10 occurrence with respect to personal injury or death, and with respect to property damage;

11  
12                   (ii).    Automobile liability coverage of not less than \$500,000 per person and not  
13 less than \$500,000 per occurrence, and not less than \$500,000 per occurrence for property  
14 damage; and

15  
16                   (iii)   Worker's compensation or similar insurance in the form and amounts  
17 required by law.

18  
19           d.     Subparagraph 14.c(i) and (ii) shall not apply to ship managers or general agents of  
20 the Sublessee, but only if such ship managers or general agents constitutes "agents" of the United  
21 States within the meaning of exclusivity provisions of the Suits in Admiralty Act and the Public  
22 Vessels Act as well as "agents" of the United States within the meaning of the Federal Tort  
23 Claims Act. It is the legal assumption of both parties in entering into that this agreement that  
24 insurance for such entities is unnecessary because actions against such agents will lie directly  
25 against the United States under applicable federal law.

### 26 27     15.     Sublessee's Liability Extends to Its Contractors and Sublessees.

28  
29           Sublessee's liability to Sublessor shall extend to damages to the Sublessor by the  
30 performance of work or the use of the Premises by any contractor, assignee, or sublessee of the  
31 Sublessee under this Sublease.

### 32 33     16.     Indemnification by Sublessor.

34  
35           Indemnity. Sublessor is expected to exercise reasonable care and use its best efforts to  
36 prevent accidents, injury or damage to all employees, persons and property and Sublessor shall at  
37 its own expense procure and therefore maintain liability insurance for loss exposure while  
38 Government-owned vessels are being moored or berthed or during the time period when  
39 Government-owned vessels are moored or berthed including departures from moorings or berths.

40  
41           Except as provided elsewhere in this Sublease, Sublessee assumes the risk of physical  
42 loss or damage to the Premises or any part of a vessel, its machinery, equipment, stores, and  
43 other property including cargo if owned by Sublessee except to the extent that such loss or



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1 damage is caused by the negligence, fault, error, act or omission of Sublessor, or Sublessor's  
2 agents, contractors, representatives, and employees. The burden of proving freedom from fault  
3 shall be borne by Sublessor. Sublessor's liability under this Sublease shall not exceed  
4 \$5,000,000 per accident or occurrence per vessel, and shall not exceed in the aggregate per  
5 accident or occurrence the sum of \$5,000,000.

6  
7 As to third parties, including, but not limited to, agents, contractors, representatives, and  
8 employees of Sublessor, Sublessor will defend, indemnify and hold harmless Sublessee, the  
9 vessel, its owners and charterers, from all claims, actions, suits, costs, demands and expense of  
10 all descriptions arising out of disease, illness, personal injury, death or property damage to any  
11 third party in any way related to or arising out of the performance of work by Sublessor under  
12 this Sublease except to the extent caused by the fault, error, act or omission, or negligence of  
13 Sublessee (its agents, contractors, representatives, employees, successors, transferees, assignees,  
14 invitees, and guests). The burden of proving fault of Sublessee, its agencies or employees shall  
15 be borne by Sublessor.

16  
17 As to loss and damage which are the responsibility in whole or in part of Sublessee,  
18 Sublessee shall be subrogated to any claim, demand, or cause of action against third parties  
19 which exists in favor of Sublessor, and Sublessor shall, if required, execute a formal assignment  
20 or transfer of such claim, demand, or cause of action, and shall aid in securing information,  
21 evidence, obtaining of witnesses, and cooperate with Sublessee in all matters which Sublessee  
22 may deem necessary in defense of any claim, suit or appeal from any judgment or in effecting  
23 indemnity, provided, further, that nothing contained in this paragraph shall create or give rise to  
24 any right, privilege or power in any person except Sublessor, nor shall any person (except  
25 Sublessor) be or become entitled thereby to proceed directly against Sublessee, its agencies or  
26 instrumentalities, or to join Sublessee, its agencies or instrumentalities, as a codefendant in any  
27 action against Sublessor brought to determine Sublessor's liability or for any other purpose.

### 28 29 **17. Alterations to Premises.**

30  
31 Sublessee shall make no alterations or additions (collectively "Work") to the Premises (i)  
32 without the prior written approval of Sublessor in each and every instance, which approval shall  
33 not be unreasonably withheld, and (ii) to the extent applicable, the Sublessee shall obtain the  
34 written approval of the Navy pursuant to the Prime Lease, with the understanding that Navy  
35 approval will not be required once fee title to the Premises is transferred to the Sublessor.  
36 Subject to the terms of Article 12, upon termination of this Sublease, Sublessee shall, at the  
37 option of Sublessor, promptly remove or abandon such additions or alterations, provided in  
38 either event all personal property and trade fixtures of Sublessee and any third person may be  
39 removed so long as Sublessee shall repair any damages to the Premises resulting from such  
40 removal.

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1     **18. Utilities.**

2  
3             Sublessee shall be responsible for independently obtaining utility services from utility  
4 providers. Nevertheless, Sublessor shall be reimbursed for any and all fees charged to Sublessor  
5 for utility services provided to the Premises that are properly chargeable to Sublessee including,  
6 without limitation: water consumed, sewage, and all trash removal services, or any other  
7 Reimbursable Service as set forth or described in Exhibit "H".  
8

9     **19. Maintenance and Technical Requirements.**

10  
11            a.       Sublessor, at its own cost and expense, shall make, or cause to be made, any and  
12 all repairs and replacement with regard to the structures and systems (including without  
13 limitation: water, electrical, security and pier maintenance) within or serving the Premises as  
14 may be necessary during the Term of this Sublease to allow Sublessee to use the Premises for the  
15 purposes set forth herein, and shall comply or require its contractors to comply with the  
16 Technical Requirements/Reimbursable Services detailed in Exhibit "H", attached hereto and  
17 made a part hereof. As soon as is practicable following the commencement of the Sublease  
18 Term, the Sublessor will address (i) all Building 168 sprinkler issues in accordance with the  
19 Northern California Fire Protection Services, Inc. Report dated 6/17/2004, and (ii) roof issues as  
20 agreed upon by the Parties. Throughout the term of the Lease, Sublessor agrees to maintain,  
21 repair and replace all properties and appurtenances belonging to, or associated with, the pier and  
22 wharfage structures in accordance with Technical Requirements/Reimbursable Services defined  
23 in Exhibit "H."  
24

25            b.       Sublessee shall keep the Premises in good order during the Term of this Sublease,  
26 and, subject to the terms of Article 12, shall surrender same to Sublessor at the expiration or  
27 earlier termination of this Sublease in as good condition as they were when received (or  
28 subsequently improved or altered), normal wear and tear excepted, provided, however, that  
29 Sublessee shall not be obligated to make repairs to the Piers, their mooring cleats, bollards,  
30 deadmen, or other structures unless such repair is required as a result of the acts of Sublessee.  
31

32            c.       Dredging of Federal Channel: Sublessor and Sublessee agree that maintaining the  
33 depth of the Federal channel that provides access to Alameda Point Piers 1, 2, and 3 to a depth  
34 sufficient to allow unimpeded use of such piers by the Sublessee is in the best interests of the  
35 Parties. Sublessor shall undertake the necessary studies, and from time to time, procure  
36 appropriate permits, and engage qualified contractors to maintain the depth of the Federal  
37 channel that provides access to Alameda Point Piers 1, 2, and 3 ("Dredging Activities") as  
38 follows:  
39

40            i.       Dredging Activities shall include the preparation of a Final Dredging Plan  
41 ("Dredging Plan") by Sublessor satisfactory to Sublessee; the Dredging Plan will require that  
42 water depth shall be maintained to at least 32 feet for the NOAA chart datum for the term of the  
43 Sublease and include a schedule and detailed cost estimates.

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1           ii.     If the performance of Dredging Activities requires temporary movement  
2 of vessels from the subject layberth, the Sublessor shall bear all expenses incurred in moving  
3 such vessel including but not limited to tugs, pilotage and temporary layberth costs. Any  
4 temporary layberth used shall meet all the requirements of this Sublease. Should the Sublessor  
5 be unable to offer an acceptable substitute layberth during such Dredging Activities, the  
6 Sublessee reserves the right to acquire and move the vessel to a temporary layberth of its choice  
7 at the Sublessor's expense or to terminate this Sublease for default.

8  
9           iii.    Upon Sublessee approval of the Dredging Plan, Sublessee agrees to pay  
10 any and all actual expenses incurred by Sublessor in connection with the Dredging Activities and  
11 Dredging Plan not later than the 30<sup>th</sup> calendar day after properly executed invoices are received  
12 by Sublessee, provided the total aggregated amount of such invoices for Dredging Activities is  
13 less than the cost set forth in the approved Dredging Plan.

14  
15           iv.    Sublessor has no obligation to engage in any Dredging Activity unless and  
16 until the Sublessee secures the necessary funds to reimburse the Sublessor.

17  
18           v.     Notwithstanding anything contained in this Sublease to the contrary,  
19 Dredging Activities are considered a local Governmental function and may not be assigned or  
20 transferred by Sublessor to any party or entity as the result of an assignment or transfer of this  
21 Sublease.

22  
23           vi.    The Parties agree that the Sublessor shall continue to undertake the  
24 Dredging Activities described in the March 2005 Dredging Plan reviewed and approved in  
25 writing by the Sublessee on May 20, 2005, all as set forth in Amendment No. 4 to the Interim  
26 Lease.  
27

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### 20. Damage or Destruction by Casualty.

The Sublessee shall have the right to terminate this Sublease upon 30 days written notice to the Sublessor in the event of damage to or destruction of all of the improvements on the Premises or such a substantial portion thereof as to render the Premises incapable of use for the purpose for which it is leased hereunder, provided that if such damage or destruction was occasioned by the negligence of Sublessee, its agents, representatives, contractors, employees, or invitees, or the damage or destruction was caused by the failure or refusal on the part of Sublessee to fully perform its obligations under this Sublease, Sublessee shall be responsible for paying for its proportionate share of the cost of restoring the Premises to the condition that existed prior to such damage or destruction and shall not have the right to terminate this Sublease. However, lease payments due under this Sublease shall be reduced to the extent of the proportionate responsibility of Sublessor, its agents, representatives, contractors, employees or invitees for such damage or destruction. Nothing in this Sublease shall be construed as relieving Sublessor from liability for damage to or destruction of property of the United States of America caused by the willful or negligent act or omission of Sublessor.

### 21. Liens Against the Premises.

Sublessee shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by Sublessee.

### 22. Environmental Matters.

Sublessee represents, warrants, and covenants to Sublessor throughout the Term to remain, in compliance with all applicable federal, state and local laws relating to protection of the public health, welfare, and environment ("Environmental Laws") with respect to Sublessee's agents, representatives, contractors, employees, and any other persons occupying or present on the Premises at Sublessee's request or consent ("Occupants") and shall comply with all Environmental Laws applicable to their activities in and around the Premises.

### 23. Americans with Disabilities Act.

Any other provision of this Sublease notwithstanding, the Parties hereby agree that the Premises may be subject to the terms and conditions of the Americans with Disabilities Act of 1990 ("ADA") or the Rehabilitation Act, as applicable. The parties further agree and acknowledge that it shall be the sole responsibility of Sublessee to comply with any and all provisions of the ADA and Rehabilitation Act, as such compliance may be required to operate the Pier Property and Sublessor authorizes Sublessee to make such alterations in the Pier Property as the Sublessee deems necessary to comply with the ADA and Rehabilitation Act, as applicable.

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1     **24. Governing Law.**  
2

3             Sublessor shall comply with all Federal, state and local laws applicable to Sublessor as  
4 owner or lessor, or both, of the Premises, including, without limitation, laws applicable to the  
5 construction, ownership, alteration or operation of both or either thereof, and will obtain all  
6 necessary permits, licenses and similar items at Sublessor's expense. Sublessee will comply with  
7 all Federal, state and local laws applicable to and enforceable against it as a tenant under this  
8 Sublease; provided that nothing in this Sublease shall be construed as a waiver of any sovereign  
9 immunity of the Federal Government. This Sublease shall be governed by Federal law.

10  
11     **25. Nature and Extent of Agreement.**  
12

13             This Sublease, including the exhibits attached hereto, contains the complete agreement  
14 between the Parties regarding the terms and conditions of the lease of the Premises, and there are  
15 no oral or written conditions, terms, warranties, understandings or other agreements pertaining  
16 thereto which have not been incorporated herein. This Sublease may be modified only by  
17 written instrument duly executed by both Parties or their respective successors in interest.

18  
19     **26. Holding Over.**  
20

21             Subject to the provisions of Article 12, it is expressly understood by the Parties that  
22 Sublessee shall not be permitted to hold over at the end of the Sublease term. Unless Article 12  
23 applies, it is further understood by the Parties that failure to extend this Sublease or otherwise  
24 enter into a new lease agreement before the expiration of this Sublease constitutes termination of  
25 this Sublease at the end of the Sublease period, and Sublessee understands that it shall vacate the  
26 Premises on or before the end of the Sublease Term. If Article 12 does not apply and Sublessee  
27 fails to vacate the Premises at the exact end of the Sublease, Sublessee shall pay during the hold-  
28 over period an amount equal to one hundred fifty percent (150.00%) of the rent paid for the last  
29 month of the Term hereof until Sublessee vacates the Leased Premises and in addition shall pay  
30 all damages sustained by Sublessor by reason of Sublessee's holding over.

31  
32     **27. Surrender.**  
33

34             Unless Article 12 applies, upon the expiration of the Term of this Sublease or its  
35 termination by Sublessor or Sublessee, the Sublessee shall quietly and peacefully remove itself  
36 and its property from the Leased Premises and surrender the possession thereof to the Sublessor  
37 on the expiration date, or the date of prior termination; provided, in the event that Sublessor  
38 terminates this Sublease for a breach of this Sublease by Sublessee, or because of a termination  
39 of the Prime Lease not caused by Sublessor, the Sublessee shall be allowed a reasonable period  
40 of time, as determined by the Sublessor ("Grace Period"), in which to remove all of its property  
41 from and terminate its operations on the Leased Premises. During such Grace Period, all  
42 obligations assumed by the Sublessee under this Sublease shall remain in full force and effect.  
43 The Sublessor may, in its discretion, following thirty (30) days notice to Sublessee after the

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Sublessee surrenders the Premises, declare any property which has not been removed from the Leased Premises as abandoned property.

### 28. **Non-Easement.**

It is understood and agreed that this Sublease does not grant any rights to light and air over property adjoining the land on which the Leased Premises are situated.

### 29. **Sublease Supersedes the Interim Pier Lease and Building 168 Sublease**

This Sublease supersedes and subsumes the Interim Lease and Building 168 Sublease and the Interim Lease and Building 168 Sublease shall automatically terminate upon the execution of this Sublease.

### 30. **Notices.**

Any notice permitted or required to be given pursuant to this Sublease shall be deemed to have been given if in writing and sent by overnight Mail, Return Receipt Requested, and addressed as follows (or to such other persons or addresses as either party may direct by like notice):

If to Sublessee: U.S. Maritime Administration  
MAR 310, Room 7301  
400 Seventh Street, SW  
Washington, D.C. 20590  
ATTN: Facilities Manager

If to Sublessor: Alameda Reuse and Redevelopment Authority  
Alameda City Hall  
2263 Santa Clara Avenue  
Alameda, CA 94501-4456  
ATTN: Executive Director

with a copy to: George R. Schlossberg, Esq.  
Kutak Rock LLP  
1101 Connecticut Ave., N.W., Suite 1000  
Washington, D.C. 20036-4374

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If to Navy: United States Department of the Navy  
Southwest Division  
Engineering Field Division  
Naval Facilities Engineering Command  
1220 Pacific Highway  
San Diego, CA 92132-5189  
ATTN: Commanding Officer

31. **Amendment.**

This Sublease may be amended only by an instrument in writing executed and delivered by each Party.

32. **Title.**

Sublessor gives no warranty as to the state of title.

33. **General.**

- a. **Time of the Essence.** It is understood and agreed between the Parties that time is of the essence in all of the terms and provisions of this Sublease.
- b. **Captions and Titles.** The captions and titles appearing within this Sublease are for reference only and shall not be considered a part of this Sublease or in any way modify, amend or affect the provisions thereof.
- c. **Grammatical Changes.** The proper grammatical changes shall be understood and apply where necessary to designate the plural rather than the singular and the masculine or feminine gender.
- d. **Recordation and Documentary Stamps Taxes.** This Sublease shall not be recorded, but a short form referring to this Sublease, describing the Premises and setting forth the Term thereof may be recorded by the Parties.
- e. **No Partnership.** Sublessor does not, in any way or for any purpose, become a partner of Sublessee in the conduct of its business, or otherwise, or a joint venture or a member of a joint enterprise with Sublessee.
- f. **Binding Agreement.** The conditions, covenants and agreements contained in this Sublease shall be binding upon and inure to the benefit of the Parties and their respective successors, heirs, executors, and administrators. No rights, however, shall inure to the benefit of any assignee of Sublessee.

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1     **34. Severability.**

2  
3           No determination by any court, governmental body or otherwise that any provision of this  
4     Sublease or any amendment hereof is invalid or unenforceable in any instance shall affect the  
5     validity or enforceability of any other such provision, or such provision in any circumstances not  
6     controlled by such determination. Each provision shall be valid and enforceable to the fullest  
7     extent allowed by, and shall be construed wherever possible as being consistent with, applicable  
8     law.

9  
10    **35. Certain Retained Rights.**

11  
12           Notwithstanding any provision herein to the contrary, Sublessor retains the rights to  
13     terminate the Prime Lease pursuant to its terms.

14  
15    **36. Construction.**

16  
17           Inasmuch as this Sublease has been negotiated and each party has thoroughly read this  
18     Sublease and understands its provision, the presumption that any ambiguity in this Sublease shall  
19     be construed against the drafter is hereby rebutted and said presumption shall not be used to  
20     interpret this Sublease.

21  
22    **37. Disputes.**

23  
24           This Sublease is a contract that is subject to the Contract Disputes Act of 1978 ("the  
25     Act"), as amended (41 USC §§ 601-613). Except as provided in the Act, all disputes arising  
26     under or relating to this Sublease shall be resolved under this clause. "Claim," as used in this  
27     clause, means a written demand or written assertion by one of the contracting parties seeking, as  
28     a matter of right, the payment of money in a sum certain, the adjustment or interpretation of  
29     Sublease terms, or other relief arising under or relating to this Sublease. A claim arising under a  
30     contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract  
31     clause that provides for the relief sought by the claimant. However, a written demand or written  
32     assertion by Sublessor seeking the payment of money exceeding \$100,000 is not a claim under  
33     the Act until certified as required by this clause. A voucher, invoice or other routine request for  
34     payment that is not in dispute when submitted is not a claim under the Act. The submission may  
35     be converted to a claim under the Act by complying with the submission and certification  
36     requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in  
37     a reasonable time.

38  
39           A claim by Sublessor against Sublessee shall be made in writing and, unless otherwise  
40     stated in this Sublease, submitted within six years after accrual of the claim to Sublessee's  
41     Contracting Officer for a written decision. A claim by Sublessee against Sublessor shall be  
42     subject to a written decision by Sublessee's Contracting Officer.



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1 For a Sublessor claim against Sublessee exceeding \$100,000, Sublessor shall provide the  
2 following certification with its written demand or written assertion of the claim: "I certify that  
3 the claim is made in good faith; that the supporting data are accurate and complete to the best of  
4 my knowledge and belief; that the amount requested accurately reflects the contract adjustment  
5 for which Sublessor believes Sublessee is liable; and that I am duly authorized to certify this  
6 claim on behalf of Sublessor." The certification may be executed by any person duly authorized  
7 to bind Sublessor with respect to the claim.

8  
9 For Sublessor claims of \$100,000 or less, Sublessee's Contracting Officer must, if  
10 requested in writing by Sublessor, render a decision within 60 days of the request. For  
11 Sublessor-certified claims over \$100,000, Sublessee's Contracting Officer must, within 60 days,  
12 decide the claim or notify Sublessor of the date by which a decision will be made. The decision  
13 by Sublessee's Contracting Officer shall be final unless Sublessor appeals or files a suit as  
14 provided in the Act.

15  
16 If the claim by Sublessor is presented to Sublessee's Contracting Officer or a claim by  
17 Sublessee is presented to Sublessor, the parties, by mutual consent, may agree to use alternative  
18 dispute resolution ("ADR"). If Sublessor refuses an offer for ADR, Sublessor shall inform  
19 Sublessee's Contracting Officer, in writing, of Sublessor's specific reasons for rejecting the  
20 offer.

21  
22 Sublessee shall pay interest on the amount found due and unpaid from (1) the date that  
23 Sublessee's Contracting Officer receives the written claim (certified if required); or (2) the date  
24 that payment otherwise would be due, if that date is later, until the date of payment. With regard  
25 to claims having defective certifications, as defined in 48 CFR § 33.201, interest shall be paid  
26 from the date that Sublessee's Contracting Officer initially received the claim. Simple interest  
27 on claims shall be paid at the rate fixed by the Secretary of the Treasury as provided in the Act,  
28 which is applicable to the period during which Sublessee's Contracting Officer receives the  
29 claim and then at the rate applicable for each six-month period as fixed by the Treasury Secretary  
30 during the pendency of the claim.

31  
32 Sublessor shall proceed diligently with performance of this Sublease, pending final  
33 resolution of any request for relief, claim, appeal, or action arising under this Sublease, and  
34 comply with any decision of Sublessee's Contracting Officer.

### 35 36 38. Termination for Convenience by Sublessee

37  
38 a. Sublessee reserves the right to terminate this Sublease, at any time, without cause,  
39 if Sublessee, at its sole discretion, determines that such termination is in the best interests of the  
40 Government. If Sublessee elects to terminate this Lease in accordance with the rights set out in  
41 this clause, Sublessee shall provide 60 days written notice to Sublessor of such election.

42  
43 b. In the event Sublessee terminates this Sublease for convenience, Damages for

## ARRA/MARAD LONG-TERM SUBLEASE AT ALAMEDA POINT

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such termination under this section shall be the unamortized cost of any capital improvements placed on the Premises by Sublessor for the benefit of Sublessee, including but not limited to the costs associated with offering exclusive use of Pier 3, constructing the New Warehouse to replace Building 168, creating a compound for the exclusive use of Sublessee, and for any pier or utility upgrades to the Premises. Sublessor shall provide Sublessee with written notice of an estimate of the cost of such capital improvements and their period(s) of amortization before such costs are incurred and the actual costs of such capital improvements and period(s) of amortization, once such costs have been incurred.

### 39. Default by Sublessee

It shall constitute an event of default ("Event of Default") under this Sublease if:

a. Sublessee fails to pay in full when due any amount of rent and such failure continues for a period of sixty (60) days after written notice to Sublessee from Sublessor;

b. Sublessee fails to perform or observe any of its other obligations, covenants, or agreements hereunder within sixty (60) days after written notice of any such failure has been given by or on behalf of Sublessor, provided that if such breach is incapable of cure within sixty (60) days, shall not constitute a default hereunder if Sublessee informs Sublessor in writing within such sixty (60) day period of Sublessee's intended action to cure the breach and the estimated time required to cure, and Sublessee diligently pursues such cure and completes such cure within a reasonable time, but not more than one hundred twenty (120) days after receiving notice of the breach from Sublessor, or within such period of time as may otherwise be required under this Sublease;

c. Sublessee assigns or sublets, or purports to assign or sublet, the Premises or any part thereof other than in the manner and upon the conditions set forth herein; or

d. Sublessee fails to vacate the Premises on the expiration date unless this Sublease is otherwise renewed or extended or the provisions of Article 12 apply.

40. Sublessor's Remedies. If an Event of Default by Sublessee, Sublessor may, at its option, exercise any one or more of the following remedies:

a. Termination of Sublease. Sublessor may terminate this Sublease, by transmission of written termination notice by overnight mail to Sublessee, without any right by Sublessee to reinstate its rights by payment of the rent due or other performance of the terms and conditions hereof. In the event of such termination, Sublessee shall surrender possession of the Premises to Sublessor within sixty (60) days of receipt of such termination notice, and Sublessor shall immediately become entitled to receive from Sublessee an amount equal to the value of the amount of rent due at the time of the Premises are surrendered by the Sublessee.

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1           b.     Reletting. With or without terminating this Sublease, as Sublessor may elect,  
2 Sublessor may re-enter and repossess the Premises, or any part thereof, and lease them to any  
3 other person upon such terms as Sublessor shall deem reasonable, for a term within or beyond  
4 the Term; provided, that any such reletting prior to termination shall be for the account of  
5 Sublessee, and Sublessee shall remain liable for (i) all rent and other sums which would be  
6 payable under this Sublease by Sublessee in the absence of such expiration, termination or  
7 repossession, less (ii) the net proceeds, if any, of any reletting effected for the account of  
8 Sublessee after deducting from such proceeds all of Sublessor's expenses, reasonable attorneys'  
9 fees and expenses, employees' expenses, alteration costs, expenses of preparation for such  
10 reletting and all costs and expenses, direct or indirect, incurred as a result of Sublessee's breach  
11 of this Sublease. If the Premises are, at the time of default, sublet or leased by Sublessee to  
12 others, Sublessor may, as Sublessee's agent, collect rent due from any Sublessee or other  
13 Sublessee and apply such rent to the rent and other amounts due hereunder without in any way  
14 affecting Sublessee's obligation to Sublessor hereunder. Such agency, being given for security,  
15 is hereby declared to be irrevocable.

16  
17           c.     Rent and Fair Market Value of Premises. Sublessor may declare immediately due  
18 and payable from the Sublessee, in addition to any damages or other amounts becoming due  
19 from Sublessee under any other provisions of this Sublease, an amount equal to the loss suffered  
20 by the Sublessor due to the difference between the rent reserved in this Sublease from the date of  
21 default to the end of the Term and the fair market rent for the same period.

22  
23           d.     Removal of Contents by Sublessor. With respect to any portion of the Premises  
24 which is vacant or which is physically unoccupied by Sublessee, Sublessor may remove all  
25 persons and property therefrom, and store such property in a public warehouse or elsewhere at  
26 the cost of and for the account of Sublessee, without service of notice or resort to legal process  
27 (all of which Sublessee expressly waives) and without being deemed guilty of trespass or  
28 becoming liable for any loss or damage which may be occasioned thereby.

29  
30           e.     Rights and Remedies Not Exclusive Right. No right or remedy herein conferred  
31 upon or reserved to Sublessor is intended to be exclusive of any other right or remedy herein or  
32 by law provided, but each shall be cumulative and in addition to every other right or remedy  
33 given herein or now or hereafter existing at law or in equity or by statute.

### 34 35     41.     Default by Sublessor During the Term.

36  
37           Each of the following shall constitute a default by Sublessor under this Sublease: (1)  
38 failure to maintain, repair, operate or service the Premises as and when specified in this Sublease,  
39 or failure to perform any other requirement of this Sublease as and when required provided any  
40 such failure shall remain uncured for a period of sixty (60) days next following Sublessor's  
41 receipt of notice from Sublessee's Contracting Officer or an authorized representative; and (2)  
42 repeated and unexcused failure by Sublessor to comply with one or more requirements of this  
43 Sublease shall constitute a default notwithstanding that one or all such failures shall have been

## ARRA/MARAD LONG-TERM SUBLEASE AT ALAMEDA POINT

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1 timely cured pursuant to this clause. If a default occurs, Sublessee may by notice to Sublessor,  
2 terminate this Sublease for default.

### 42. Termination by Sublessee for Other Than Default.

6 Sublessor shall not have grounds to challenge Sublessee's termination for reasons other  
7 than a default by Sublessor if such termination is based on any of the following events:

- 9 a. An action by the United States Congress that results in a cancellation of  
10 appropriations for this Sublease so long as such cancellation is not the result of  
11 any act or failure to act by Sublessee including a direct or indirect request for such  
12 cancellation or a failure to support the continuation of the Sublease.
- 13 b. Any direction by the Department of Defense ("DoD") to Sublessee to reduce the  
14 number of vessels assigned to the Ready Reserve Force, of which Sublessee's  
15 vessels are a part, such that the Premises is excess to Sublessee's needs so long as  
16 such direction by DoD is not the result of an act or failure to act by Sublessee  
17 including a direct or indirect request for such direction or a failure to support the  
18 continuation of the Sublease. If only a portion of the Premises is excess to  
19 Sublessee's needs as a result of such direction, Sublessee's right to terminate  
20 under this subsection b. shall only extend to such portions and this Sublease shall  
21 remain in full force and effect as to the remaining portions of the Premises.
- 22 c. Unavailability of utilities (electricity, water, waste or refuse disposal, telephone  
23 service) provided such unavailability arises from causes beyond the control and  
24 without the fault or negligence of Sublessee.
- 25 d. Termination of the Sublease for Convenience under Article 38 of this Sublease.

### 43. Breach by Sublessee.

31 Termination of this Sublease or any portion thereof by Sublessee without a default by  
32 Sublessor under Section 41 or the occurrence of any of the events listed in Section 42 shall  
33 constitute a breach of this Sublease by Sublessee and Sublessor shall be entitled to pursue all  
34 available remedies at law or in equity for such breach including the right to be placed in as good  
35 a position as it would have been had Sublessee completed the Term of this Sublease.

### 44. Termination by Navy of the Prime Lease for Breach.

39 The Navy has the right to terminate the Prime Lease on account of a breach by Sublessor,  
40 the Lessee thereof, of any of the terms and conditions of the Prime Lease. In the event of a  
41 breach involving the performance of any obligation under the Prime Lease, the Prime Lease  
42 provides that Sublessor, as the Lessee thereunder, shall be afforded thirty (30) days from the  
43

## ARRA/MARAD LONG-TERM SUBLEASE AT ALAMEDA POINT

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1 receipt of the Navy's notice of intent to terminate, unless a longer period is agreed upon by the  
2 Parties, to cure the subject breach and avoid termination of the Prime Lease. Sublessor agrees to  
3 immediately, and in any event within 24 hours after Sublessor's receipt, except when it arrives  
4 on a weekend or holiday, in which event it shall be delivered by the next business day, provide a  
5 copy of any such notice to Sublessee. In the event that any such notice is delivered to Sublessor  
6 as the Lessee under the Prime Lease, for any such breach occasioned or caused by the action,  
7 negligence or inaction of Sublessee, or any party acting on behalf of or through Sublessee, for an  
8 obligation, covenant or undertaking of Sublessee under this Sublease, then Sublessee shall either  
9 commence action to complete the performance of the obligation or otherwise cure the subject  
10 breach and avoid termination of this Sublease and the Prime Lease, which action to cure is to be  
11 completed within the said thirty (30) day period, unless a longer period is agreed upon by the  
12 Parties. If Sublessee should fail to cure within the said thirty (30) day or longer period, and the  
13 Navy does not waive the default under the provisions of the Prime Lease, then Sublessor shall  
14 have the option to terminate this Sublease, without the necessity of providing further notice or  
15 rights of cure to Sublessee.

16  
17 If the Navy shall elect to terminate the Prime Lease on account of the breach by the  
18 Sublessee of any of the terms and conditions hereof or of the Prime Lease to be performed by  
19 Sublessee, the Sublessee shall be liable to Sublessor, its agents, representatives, contractors and  
20 employees, against any claims the Navy may have against Sublessor for any of the following  
21 under the Prime Lease:

22  
23 a. The costs incurred by the Navy and claimed from Sublessor in connection with  
24 resuming possession of the Premises.

25  
26 b. The costs incurred by the Navy and claimed from Sublessor in performing any of  
27 Sublessee's obligations under this Sublease.

28  
29 c. To the extent of Sublessor's losses, an amount equal to the aggregate of any  
30 obligations and charges assumed hereunder and not paid or satisfied, which amounts shall be due  
31 and payable at the time when such obligations, and charges would have accrued or become due  
32 and payable under this Sublease.

### 33 34 45. **Termination by Navy for Other Than Breach.**

35  
36 In addition to the right to terminate the Prime Lease for breach, the Navy is entitled to  
37 terminate the Prime Lease under the following terms and conditions:

38  
39 a. **Incompatibility with NEPA ROD.** Upon reasonable determination that the uses of  
40 the Sublessor under the Prime Lease or the uses of the Sublessee under this Sublease are  
41 incompatible with the NEPA Record of Decision for the Station and such incompatibility is not  
42 reconcilable under the Prime Lease or for the period of time remaining on the Term of the  
43 Sublease.

## ARRA/MARAD LONG-TERM SUBLEASE AT ALAMEDA POINT

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1           b.     National Emergency. In the event of a National Emergency as declared by the  
2 President or the Congress of the United States and the Navy makes a reasonable determination  
3 that such National Emergency requires the use by the United States of America of the Premises,  
4 or such National Emergency otherwise necessitates the use of the Station and such use will  
5 materially interfere with the Lessee's use under the Prime Lease or any Sublessee's use of the  
6 Premises.

7  
8           c.     Vacating the Premises. In the event of a termination for a National Emergency,  
9 the Sublessor, as Lessee under the Prime Lease, shall immediately provide Sublessee with a copy  
10 of any notification it receives from the Navy relative to such termination. The Sublessor shall  
11 meet and confer with the Sublessee and the government to determine what is a reasonable time  
12 for the Sublessee to vacate the Premises, considering the factors of the nature of the existing uses  
13 of the Sublessee, the consequences which would be affected if such termination is required and  
14 the losses and penalties which would be engendered if such termination is required. Sublessor  
15 shall provide Sublessee with as long and reasonable a time as is under the facts and  
16 circumstances acceptable to the Navy relative to such termination. In the event of such  
17 termination, Sublessee and Sublessor as Lessee under the Prime Lease shall have only such  
18 remedies as are otherwise available under the law with respect to compensation from the Navy  
19 for such termination. Sublessee shall not seek and shall not have any claim against Sublessor for  
20 any such termination by the Navy, except to the extent that Sublessor obtains recovery therefore  
21 from the Navy on behalf of Sublessee.

22  
23           If the Sublease is terminated in accordance with this Section 44, Sublessee's obligations  
24 to pay rent under Section 3 of this Sublease shall cease upon Sublessee's vacation of the  
25 Premises; provided Sublessee shall pay to Sublessor any rent that has accrued or is attributable to  
26 the period prior to such vacation.

### 27 28     46.     Availability of Funds.

29  
30           Sublessee's obligations under this Sublease are contingent upon the availability of  
31 appropriated funds from which payment can be made. No legal liability on the part of Sublessee,  
32 or the United States for any payment, or on the part of Sublessor for the failure to perform its  
33 obligations under this Sublease, may arise until funds are made available to Sublessee's  
34 Contracting Officer for this Sublease and until Sublessor receives notice of such availability, to  
35 be confirmed in writing by Sublessee's Contracting Officer.

36  
37  
38  
39  
40                                   **[Signature Page Follows]**  
41

**ARRA/MARAD LONG-TERM SUBLEASE AT ALAMEDA POINT**

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1           **IN WITNESS WHEREOF**, the parties have hereunto set their hands on the dates  
2 written below with an effective date of May 1, 2006.  
3  
4

5                           **SUBLESSOR:**

6  
7                           **Alameda Reuse and Redevelopment Authority**  
8  
9

10  
11 Dated: \_\_\_\_\_

12 By: \_\_\_\_\_  
13                           **Executive Director**  
14

15                           **SUBLESSEE:**

16  
17                           **U.S. Maritime Administration**  
18  
19

20  
21 Dated: 3/21/2006  
22  
23

24 By: *RAW Learner*  
25                           **Director, Office of Management Services**

Approved as to form:

By: \_\_\_\_\_  
Leslie A. Little  
Development Services Director

By: \_\_\_\_\_  
Teresa Highsmith, Esq.  
Assistant General Counsel