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5 **AMENDMENT NO. 3**
6 **TO**
7 **LONG-TERM SUBLEASE**
8 **BETWEEN**
9 **CITY OF ALAMEDA, CALIFORNIA, SUCCESSOR IN INTEREST TO**
10 **ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY**
11 **AND**
12 **U.S. DEPARTMENT OF TRANSPORTATION MARITIME ADMINISTRATION**
13
14
15

16 **THIS AMENDMENT NO. 3** (“Amendment No. 3”) to the **LONG-TERM SUBLEASE**
17 (“Sublease”) is made by and between the **CITY OF ALAMEDA, CALIFORNIA,**
18 **SUCCESSOR IN INTEREST TO ALAMEDA REUSE AND REDEVELOPMENT**
19 **AUTHORITY** (“Sublessor”), and the **U.S. MARITIME ADMINISTRATION**, an agency of the
20 U.S. Government (“Sublessee”).
21

22 **RECITALS**
23

24 **WHEREAS**, the **UNITED STATES OF AMERICA**, acting by and through the
25 Department of the Navy (the “Navy”), has previously declared certain facilities surplus at the
26 Naval Air Station, Alameda, California (the “Station”), and
27

28 **WHEREAS**, pursuant to 10 U.S.C. 2667(f), the Navy entered into a lease agreement (the
29 “Prime Lease”) with the Alameda Reuse and Redevelopment Authority, a Joint Powers Authority
30 established by the City of Alameda and the County of Alameda (“ARRA”), by which the Navy
31 leased to ARRA a portion of the Station commonly known as “Alameda Point,” and
32

33 **WHEREAS**, on May 1, 2006, Sublessor and Sublessee entered into that certain Long-
34 Term Sublease (“Sublease”) for, among other things, certain layberthing facilities at the Station
35 for use in layberthing vessels enrolled in the Ready Reserve Force (“RRF”), and
36

37 **WHEREAS**, on October 14, 2007, Sublessor and Sublessee did agree and execute
38 Amendment No. 1 to the Sublease, and
39

40 **WHEREAS**, on February 1, 2012, the City of Alameda did assume all contractual
41 obligations of ARRA, and
42

43 **WHEREAS**, on February 1, 2012, Sublessor and Sublessee did agree and execute
44 Amendment No. 2 to the Sublease, and
45

46 **WHEREAS**, on April 12, 2016, the United States conveyed the fee interest in the real

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property subject to the Sublease to the Sublessor, and pursuant to Article 12 of the Sublease, as of that date the Prime Lease from the United States to the Sublessor ceased to have any force and effect with regard to the Leased Premises, but the Sublease otherwise remains in full force and effect, and

WHEREAS, Sublessor and Sublessee desire to reduce Sublessee's occupancy of certain portions of the premises and revise the Parties' obligations regarding such reduction.

NOW THEREFORE, in consideration of the premises, and the mutual covenants, terms and conditions set forth herein, the Parties hereto agree as follows:

Article 1. Premises:

a. Exhibit D of the Sublease, as it relates to the physical boundaries of the Pier Property portion of the Sublease, and in order to redefine the term "Pier Property" and to depict the boundaries of the now reduced occupancy of what constitutes the Pier Property by Sublessee, is hereby deleted, and substituted instead thereof as a new **Exhibit "D-Amended"** is Exhibit A to this Amendment No. 3, attached hereto;

b. Section 1.b. of the Sublease entitled "Sublessor Optional Changes to Premises," as amended, is deleted in its entirety, and a new Section 1.b. is substituted instead, as follows:

"1.b. Optional Changes to Premises:

"(i) Cooperation Between the Parties.

1. Relocation of vessels from Pier 2. Sublessee shall have continued priority use of Pier 2 for layberthing activities under this Sublease. In order to maximize the use of Pier 2, Sublessor may request in writing that the Sublessee relocate vessels outside of the Pier Property to either Pier 1 or Pier 3, or relocate vessels to different locations on the Pier Property, all as designated by the Sublessor.

a. Sublessor shall be liable for all costs associated with Sublessee's relocation of its vessels in response to such a request;

b. Such a request shall state Sublessor's desired relocation date, the reason for the requested relocation, d the desired duration of relocation;

c. Such a request shall be given to Sublessee at least thirty

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1 (30) calendar days in advance of Sublessor's desired
2 relocation date;

3 d. Within ten (10) business days after receiving such a
4 request, Sublessee shall provide Sublessor with a
5 written estimate of the costs associated with relocating
6 Sublessee's vessels as requested;

7 e. If Sublessor is unwilling to bear the estimated costs of
8 the relocation, Sublessor may withdraw its request by
9 written notice to Sublessee;

10 f. Such a relocation shall not in any way interfere with
11 the operational readiness of Sublessee's vessels, any
12 repairs to Sublessee's vessels that are ongoing or
13 already-scheduled at the time of Sublessee's request, or
14 Sublessee's broader national security concerns. If
15 Sublessee believes that such interference will occur,
16 Sublessee shall provide written notice to the Sublessor
17 as to how such request interferes with operational
18 readiness within ten (10) business days of the receipt of
19 the Sublessor's written request to relocate;

20 g. If Sublessee agrees to relocate its vessels in response to
21 Sublessor's request, the terms of such a relocation shall
22 be negotiated and agreed-upon between the Parties.

23
24 2. Sublessor's use of unoccupied portions of the Pier Property.

25 In the event that portions of the Pier Property are not utilized
26 by the Sublessee for layberthing activities, the Sublessor may
27 utilize such portions of the Pier Property for other uses, with
28 no change in the Rent paid by Sublessee, provided that such
29 uses shall not in any way interfere with Sublessee's use of the
30 Pier Property or the operational readiness of Sublessee's
31 vessels, and shall be done in a manner that minimizes any
32 inconvenience to Sublessee.

33
34 a. Before exercising this right, Sublessor shall provide
35 Sublessee with written notice of its intent to exercise
36 this right, with said notice to include details of
37 Sublessor's intended uses, as well as the timing and
38 duration of such uses;

39 b. Such a written notice shall be given to Sublessee at least
40 ten (10) business days in advance of the date upon

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1 *which Sublessor intends to begin utilizing the*
2 *unoccupied portions of the Pier Property*

- 3 c. *If, after Sublessor has exercised this right, Sublessee*
4 *desires to utilize those portions of the Pier Property*
5 *being used by Sublessor, Sublessor shall terminate all*
6 *such uses within ten (10) business days after Sublessee*
7 *provides Sublessor with written notice of its intent to*
8 *reoccupy such portions of the Pier Property.*

9
10 “(ii) Warehouse Property.”

11
12 (A) *In the event the Sublessee terminates the portion of the Sublease*
13 *relating to the lease of the Pier Property, Sublessor may, under Subsection (C)*
14 *below, elect by written notice to the Sublessee to remove the Warehouse Property*
15 *from the Leasehold and terminate that portion of the Sublease relating to the*
16 *Warehouse Property.*

17
18 (B) *If the Sublessor signs a contract with a developer willing to undertake*
19 *the economic development of the Warehouse and contiguous developable*
20 *property, the Sublessor may remove the Warehouse Property from the Leasehold*
21 *and terminate that portion of the Sublease relating to the Warehouse Property.*

22
23 (C) *If Sublessor intends to terminate that portion of the Sublease relating*
24 *to the Warehouse Property under either Subsection (A) or (B) above*
25 *(“Warehouse Property Termination Right”), Sublessor shall provide Sublessee*
26 *with fourteen (14) month prior written notice (“Warehouse Termination*
27 *Notice”), in which event, Sublessee shall quietly and peacefully remove itself and*
28 *its property from the Warehouse Property and surrender the possession thereof*
29 *to Sublessor within such fourteen (14) month period (the “Warehouse Removal*
30 *Period”). If Sublessee vacates the Warehouse Property within the Warehouse*
31 *Removal Period, Sublessor shall provide a credit to Sublessee in the amount of*
32 *four (4) months of Warehouse Rent. If Sublessee fails to vacate the Warehouse*
33 *Property within the Warehouse Removal Period, Sublessee shall pay during the*
34 *hold-over period an amount equal to one hundred fifty percent (150.00%) of the*
35 *Warehouse Rent until Sublessee vacates the Warehouse Property.”*

36
37 d. Exhibit F of the Sublease entitled “New Warehouse Building Plans” is removed in
38 its entirety.

39
40 e. In order to conform to the new Pier Property boundaries, the Sublessor may relocate

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or remove, the existing fence installed by Sublessor originally to establish a Sublessee compound, provided that the Sublessor must still comply with the security requirements set forth in Exhibit H to the Sublease.

Article 2. Amended Term of the Sublease:

a. Section 2 of the Sublease is amended to delete the following language of such section:

“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.”

and insert in lieu thereof, the following replacement language:

“2. Term. As of the date of this Amendment No. 3 to the Sublease, the Term of this Sublease now differs, as follows:

A. The Amended Term of the Sublease shall begin retroactively on October 1, 2017, and shall end September 30, 2018, unless sooner terminated as provided in the Sublease.

B. The Sublessee may extend the term of the Sublease with respect to the Pier Property, or the Warehouse Property, or both the Pier Property and the Warehouse Property, for a period of one (1) year, by written notice to the Sublessor within thirty (30) days before the expiration of the Sublease. The Sublessee shall endeavor to give the Sublessor a preliminary written notice of its intent to extend at least sixty (60) days before the Sublease expires. The preliminary notice does not commit the Sublessee to an extension.

1. If the Sublessee exercises this option with respect only to the Pier Property, then the Warehouse Property shall be removed from the Leasehold, but the Sublease shall remain otherwise unchanged.

2. If the Sublessee exercises this option with respect only to the Warehouse Property, then the Pier Property shall be removed from the Leasehold, but the Sublease shall remain otherwise unchanged, with the understanding that the Sublessor may terminate the Leasehold with regard to the Warehouse Property, in the manner set forth in Section 1.b.(ii)(A) of the Sublease, as amended by this Amendment No. 3.

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3. *If the Sublessee exercises this option with respect to both the Pier Property and the Warehouse Property, then the Leasehold and the Sublease shall remain otherwise unchanged.*

4. *Sublessee is entitled to exercise its option eight (8) times, for a total duration of the Amended Term, provided that in no circumstances may the Amended Term of the Sublease extend beyond May 31, 2026.*

Article 3. Payments:

a. In order to address the reduction in the Pier Property, the Parties hereby agree to amend the Base Rent as calculated in Section 3.a. of the Sublease, and as further detailed in Exhibit G of the Sublease.

b. Exhibit G of the Sublease is hereby deleted, and substituted instead thereof are new Exhibits **“G1 – Amended Pier Rent”** and **“G2 – Amended Warehouse Rent,”** which are attached to this Amendment No. 3 as Exhibit B hereto. Exhibit G1 shall be effective retroactively on October 1, 2017. Exhibit G2 shall be effective retroactively on October 1, 2017, with its payment schedule remaining unchanged from its initial implementation in accordance with Amendment No. 2 to the Sublease.

c. Subsection 3.a. of the Sublease, as amended by Amendment No. 1 and Amendment No. 2, is deleted in its entirety, and replaced with the following language:

“3.a. Amended Base Rent. Subject to rent increases as provided in subsections b. and c. below, during the Term of this Sublease, Sublessee shall pay to Sublessor a monthly rent hereinafter termed the “Amended Base Rent.” This Amended Base Rent shall be the sum of the Amended Pier Rent and Amended Warehouse Rent, which are calculated as follows:

1. Amended Pier Rent. The Amended Pier Rent is defined as the rent due by Sublessee for its use and occupancy of the Pier Property, as depicted in Exhibit “D-Amended” (which is Exhibit A to this Amendment No. 3, attached hereto), and shall be calculated on a per-assigned-vessel-per-day cost of \$715.00 per-assigned-vessel-per-day, with a minimum of three (3) assigned vessels per day for a minimum daily rate of \$2,145.00. The Amended Pier Rent shall be escalated annually by three (3) percent

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commencing effective October 1, 2017, as shown in Exhibit
G1 – Amended Pier Rent.

- i. Sublessee shall provide Sublessor with a written list of the vessels assigned to the Pier Property as of October 1, 2017.
- ii. Sublessee shall provide Sublessor with prompt written notice of any changes in the vessels assigned to the Pier Property so that the Amended Pier Rent can be accurately calculated.

2. Amended Warehouse Rent. The Amended Warehouse Rent is defined as the rent due by Sublessee for its use and occupancy of the Warehouse Property, as amended in Amendment No. 2 to the Sublease. Commencing on February 1, 2011, the monthly Warehouse Rent shall be set at \$31,539.00 as it may be escalated annually by three (3) percent commencing effective February 1, 2012, as shown in Exhibit G2 – Amended Warehouse Rent.

The Amended Base Rent shall be paid monthly in arrears. Sublessor agrees to provide Sublessee with a two-part monthly invoice on the first of each month for the previous month's Amended Base Rent, detailing the Amended Pier Rent and the Amended Warehouse Rent separately, as shown in more detail in "Exhibit G1 – Amended Pier Rent" and "Exhibit G2 – Amended Warehouse Rent." Sublessee agrees to pay such amount thirty (30) days after receipt of such invoice. If the date for submission of the invoice or payment of the invoice is a Saturday, Sunday or Federal Government holiday, the submission of the invoice or payment, by the Sublessor or Sublessee, as appropriate, shall be not later than the next business day."

Article 4. Notices:

The addresses in Section 30 of the Sublease for all notices permitted or required to be given pursuant to the Sublease are hereby updated as follows:

If to Sublessee:	U.S. Maritime Administration
	MAR 310, Room 7301
	400 Seventh Street, S.W.
	Washington, DC 20590

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1 ATTN: Facilities Manager

2
3 If to Sublessor: City of Alameda
4 Alameda City hall
5 2263 Santa Clara Avenue
6 Alameda, California 94501
7 ATTN: City Manager

8
9 With a copy to: George R. Schlossberg, Esq.
10 Kutak Rock LLP
11 1625 “Eye” Street, N.W.
12 Washington, D.C. 20006
13 202-828-2418
14 george.schlossberg@kutakrock.com
15

16 **Article 5. Dredging:**

17
18 Notwithstanding the obligations of the Parties with regard to bearing the costs of dredging
19 the Federal channel that provides access to Alameda Point Piers 1, 2, and 3, as set forth in Section
20 19.c. of the Sublease, the Sublessor made the unilateral offer to bear some of the actual expenses
21 in connection with Dredging Activities, which offer was not accepted by the Sublessee. In the
22 event that the Sublessee and Sublessor decide to engage in future Dredging Activities such that
23 the Sublessee desires to expand the footprint of the reduced Pier Property as described in Exhibit
24 D-Amended, the Parties shall reestablish the original terms and conditions of the Pier Property
25 portion of the Sublease.
26

27 **Article 6. Effective Date and Conflict Clause:**

28
29 All Articles of this Amendment No. 3 shall be effective retroactively on the First day of
30 October 2017. All other terms and conditions of the Sublease shall remain effective as written. In
31 the event of a conflict between the terms of this Amendment No. 3 and the Sublease, the terms of
32 this Amendment No. 3 shall govern.
33
34

35 **[Signature Page Follows]**
36

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IN WITNESS WHEREOF, the parties hereto have entered into this Amendment No. 3 as
of the date of the last signature hereto.

SUBLESSEE

**UNITED STATES MARITIME
ADMINISTRATION**, an agency of the
U.S. Government

By: _____
Office of Management and
Information Services

Dated: _____

SUBLESSOR

CITY OF ALAMEDA, CALIFORNIA

By: _____
Jill Keimach
City Manager

Dated: _____

Approved as to form:

By: _____
Janet Kern, Esq.
City Attorney

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Exhibit A

(New Exhibit D-Amended)

[Reduced Physical Boundaries of Pier Property portion of Sublease]



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1 Exhibit B

2

3 (New Exhibit G1 – Amended Pier Rent and Exhibit G2 – Amended Warehouse Rent)

4

5 [Payment Schedule to Reflect Reduced Pier & Warehouse Occupancy]

Exhibit G1 - Amended Pier Rent
Revised Payment Schedule: Reduced Pier usage
Amended Lease Period: 1 OCT 2017 - 30 SEP 2018 (with option years)

Effective Date	Daily Per-Assigned-Vessel rate	Minimum Daily Rate
Oct-17	\$715.00	\$2,145.00
Nov-17	\$715.00	\$2,145.00
Dec-17	\$715.00	\$2,145.00
Jan-18	\$715.00	\$2,145.00
Feb-18	\$715.00	\$2,145.00
Mar-18	\$715.00	\$2,145.00
Apr-18	\$715.00	\$2,145.00
May-18	\$715.00	\$2,145.00
Jun-18	\$715.00	\$2,145.00
Jul-18	\$715.00	\$2,145.00
Aug-18	\$715.00	\$2,145.00
Sep-18	\$715.00	\$2,145.00
10/1/2018 - 9/30/2019 Option Year 1	\$736.45	\$2,209.35
10/1/2019 - 9/30/2020 Option Year 2	\$758.54	\$2,275.63
10/1/2020 - 9/30/2021 Option Year 3	\$781.30	\$2,343.90
10/1/2021 - 9/30/2022 Option Year 4	\$804.74	\$2,414.22
10/1/2022 - 9/30/2023 Option Year 5	\$828.88	\$2,486.64
10/1/2023 - 9/30/2024 Option Year 6	\$853.75	\$2,561.24
10/1/2024 - 9/30/2025 Option Year 7	\$879.36	\$2,638.08
10/1/2025 - 9/30/2026 Option Year 8	\$905.74	\$2,717.22

Exhibit G2 - Amended Warehouse Rent

Amended Lease Period: 1 OCT 2017 - 30 SEP 2018 (with option years)

Effective Date		Monthly Warehouse Rent	Monthly Electricity & Water/Sewer Charges
Oct-17		\$37,659.22	\$1,500.00
Nov-17		\$37,659.22	\$1,500.00
Dec-17		\$37,659.22	\$1,500.00
Jan-18		\$37,659.22	\$1,500.00
Feb-18		\$37,659.22	\$1,500.00
Mar-18		\$37,659.22	\$1,500.00
Apr-18		\$37,659.22	\$1,500.00
May-18		\$37,659.22	\$1,500.00
Jun-18		\$37,659.22	\$1,500.00
Jul-18		\$37,659.22	\$1,500.00
Aug-18		\$37,659.22	\$1,500.00
Sep-18		\$37,659.22	\$1,500.00
10/1/2018 - 9/30/2019	Option Year 1	\$38,789.00	\$1,500.00
10/1/2019 - 9/30/2020	Option Year 2	\$39,952.67	\$1,500.00
10/1/2020 - 9/30/2021	Option Year 3	\$41,151.25	\$1,500.00
10/1/2021 - 9/30/2022	Option Year 4	\$42,385.78	\$1,500.00
10/1/2022 - 9/30/2023	Option Year 5	\$43,657.36	\$1,500.00
10/1/2023 - 9/30/2024	Option Year 6	\$44,967.08	\$1,500.00
10/1/2024 - 9/30/2025	Option Year 7	\$46,316.09	\$1,500.00
10/1/2025 - 9/30/2026	Option Year 8	\$47,705.57	\$1,500.00

Total Monthly Warehouse Payment	Annual Warehouse Payment
\$39,159.22	\$469,910.64
\$39,159.22	\$469,910.64
\$39,159.22	\$469,910.64
\$39,159.22	\$469,910.64
\$39,159.22	\$469,910.64
\$39,159.22	\$469,910.64
\$39,159.22	\$469,910.64
\$39,159.22	\$469,910.64
\$39,159.22	\$469,910.64
\$39,159.22	\$469,910.64
\$39,159.22	\$469,910.64
\$39,159.22	\$469,910.64
\$39,159.22	\$469,910.64
\$39,159.22	\$469,910.64
\$40,289.00	\$483,467.96
\$41,452.67	\$497,432.00
\$42,651.25	\$511,814.96
\$43,885.78	\$526,629.41
\$45,157.36	\$541,888.29
\$46,467.08	\$557,604.94
\$47,816.09	\$573,793.09
\$49,205.57	\$590,466.88