

ACCESS INDEMNITY AGREEMENT

THIS ACCESS INDEMNITY AGREEMENT (“Agreement”) is entered into as of May _____, 2013 (“Effective Date”), by and the City of Alameda (“Owner”), and _____ (“Contractor”).

RECITALS

A. Owner is the owner of that certain building located at 1500 Ferry Point, Bldg. 167, Alameda, California, 94501 (the “Premises”).

B. On May 10, 2013, Owner retook legal possession of the Premises from Nelson’s Marine, Inc., a California corporation (“Nelson’s Marine”), the prior tenant under a commercial lease with Owner for the Premises.

C. Contractor has expressed interest in entering the Premises for the purpose of assisting Nelson’s Marine customers in removing their personal property, and more specifically various boats or other property stored by Nelson’s Marine at the Premises (“Personal Property”), from the Premises.

D. Owner and Contractor now desire to enter into this Agreement for the purposes of permitting Contractor to access the Premises for the limited purpose of assisting Nelson’s Marine’s customers’ removal of their Personal Property from the Premises, subject to the conditions hereinafter set forth and in conjunction with the Turnover and Receipt, Waiver and Release and Indemnity Agreement for Removed Property (“Turnover Agreement”) entered into by each of those individual customers regarding removing their Personal Property in which those customers claim an ownership interest and intend to remove from such Personal Property from the Premises.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals and Definitions. The Recitals are hereby incorporated herein by this reference.

2. Term. This Agreement shall expire upon the earlier of the following to occur: (i) thirty (30) days after the Effective Date or (ii) the date on which all of the various customers’ Personal Property has been removed from the Premises, whereupon this Agreement shall be of no further force or effect, except for those terms contained herein which specifically survive such expiration.

3. Access to the Property. Owner hereby permits Contractor and its employees, agents, and contractors (collectively, “Contractor Parties”) the limited right to access the Premises for the limited purpose of assisting Nelson’s Marine customers removal of their

Personal Property in the Premises at Contactor's sole cost and expense and subject to the conditions set forth herein. The right granted here to Contractor to enter onto the Property is limited right with respect to only the removal of the Personal Property, and for no other purpose. In connection with any entry by Contractor or Contractor's Parties onto the Premises, Contractor shall give Owner at least one (1) business day prior written notice of such entry, and shall allow a representative of Owner to be present during all such inspections. Contractor and Contractor's Parties shall conduct any and all activities at the Premises so as to: (i) not cause any damage or destruction at the Premises or any of the personal property remaining at the Premises belonging to other owners; (ii) minimize any interference with the operations of Owner; and (iii) reasonable protect and preserve the Premises and every part thereof. All activities of Contractor shall be reasonably acceptable to Owner. Contractor hereby agrees to pay Owner, within 5 business days of demand therefore, for any damage or destruction to the Premises and/or personal property caused by Contractor or Contractor's Parties. Contractor shall not be permitted to remove anything from the Premises, including but not limited to any portion of the Personal Property remaining at the Premises pursuant to the terms of this Agreement, other than to assist Nelson's Marine customers who have specifically contracted with Contractor to remove that customer's Personal Property pursuant to a fully executed Turnover Agreement specifically identifying the Personal Property for each of those individual customers to be removed. Nothing contained herein shall give Contractor or any other party a right or claim to possession of the Premises or any portion thereof.

4. Indemnification. To the fullest extent permitted by law and in addition to all other indemnities provided for in law or at equity, Contractor shall protect, indemnify, defend and hold the Premises, Owner and Owner's parents, subsidiaries, partners, members, participants, and affiliates, and the officers, directors, shareholders, employers, agents, representatives, contractors, and invitees of all of the foregoing, and the heirs, executors, successors and assigns of all of the foregoing (collectively, "Owner's Parties") harmless from and against any and all damages, demands, claims, losses, liabilities, injuries, penalties, fines, liens, judgments, suits, actions, investigations, proceedings, costs or expenses whatsoever (including, without limitation, reasonable attorneys' and experts' fees and costs and, in the event of any release of hazardous materials caused by Contractor or Contractor's Parties, investigation and remediation costs) arising out of or relating (directly or indirectly) to any physical harm, physical damage or personal injury or death caused by entry on the Premises by Contractor or Contractor's Parties or by Contractor or Contractor's Parties' activities while at the Premises in the course of performing the inventory, inspection, and removal of the Personal Property provided for in this Agreement. The above indemnity shall also protect, indemnify, defend and hold the Premises, Owner and Owner's Parties harmless against any claims of damage to the Personal Property or any other property at the Premises. The foregoing indemnity shall survive the termination of this Agreement.

5. Restoration of Property. Contractor shall, immediately on completion of the activities authorized by this Agreement, and in any case, no later than June 30, 2013, restore, repair and replace any construction, destruction, alteration or damage to the Premises arising out of or related to the activities conducted under this Agreement as determined by Owner in its sole discretion. Contractor and Contractor parties shall be responsible, at their sole cost and expense,

for any damage to any personal property located at the Premises (meaning the boats or other equipment of other owners).

6. Compliance, Safety and Security. Contractor shall take all reasonable precautions and shall comply with all applicable governmental statutes, ordinances, orders, directives, rules, and regulations in conducting the activities conducted under this Agreement, securing the Premises and in their performance under this Agreement.

7. Insurance. Contractor agrees that Contractor and all of Contractor's Parties entering on the Property shall maintain the following types of insurance with limits no less than the following as set forth below, insuring all activity and conduct of Contractor and all of Contractor's Parties while exercising the right of access provided for in this Agreement.

Commercial General Liability Coverage: Coverage of no less than \$2,000,000.00 in the aggregate and \$2,000,000.00 per occurrence,

Environmental Impairment Liability Coverage: Coverage with limits of not less than \$1,000,000.00,

Automobile Liability Coverage: Coverage for owned, hired, leased and rented vehicles, with limits of not less than \$1,000,000.00 for combined bodily injury and property damage, on a per occurrence basis. Such coverage shall specifically include Contractor's operation of a boat lift and/or any other specialized equipment used to move boats or otherwise assist Nelson's Marine customers transportation of their Personal Property.

Workers Compensation Coverage: As required by law, with Employer's Liability coverage with limits of not less than \$1,000,000.

Such insurance shall be written on an occurrence basis, shall include a contractual liability endorsement that insures Contractor's indemnity obligations hereunder, and shall name Owner (as well as all other persons or entities designated by Owner) as an additional insured (which shall include certificates and endorsements in form acceptable to Owner in its sole discretion). Contractor hereby represents and warrants that it carries the insurance required under this Section 7. Prior to Contractor or any Contractor's Parties entering the Premises, and upon request of Owner, Contractor will provide Owner with written evidence of the insurance required under this Section 7.

8. Release. Contractor and Contractor's Parties hereby, to the maximum extent permitted by laws, release Owner, and its legal representatives, officers, directors, employees, managers, agents, successors and assigns, from any and all claims for damage to any person entering the Premises or involved in the activities conducted under this Agreement or to personal property of Contractor and Contractor's Parties caused by or resulting from the activities conducted under this Agreement. Each insurance policy obtained by Contractor will provide that the insurer waives all right to recovery by way of subrogation against Owner from damage covered by any policy.

9. Covenant Not to Sue. Contractor and Contractor's Parties promise to not sue or proceed in any manner, in agency or other proceedings, whether at law, in equity, by way of administrative hearing, or otherwise, to solicit others to institute any such actions or proceedings, or consent to be a complainant in any criminal action or proceeding, against Owner and its legal representatives, officers, directors, employees, managers, agents, successors and assigns, because of or arising out of: (i) access to the Premises; (ii) any of the activities conducted under this Agreement; (iii) any personal injury to Contractor or Contractor's Parties; and/or (iv) any property damage occurring to the personal property of Contractor or the Contractor Parties.

10. Miscellaneous. Owner shall not be bound by this Agreement until Owner has executed and delivered this Agreement to Contractor, notwithstanding Contractor's execution and delivery of this Agreement to Owner. Time is of the essence in this Agreement and each and all of its respective provisions. If any provision of this Agreement shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect. The parties herein waive any and all applicable laws which provide that this Agreement is to be construed against the draft – instead the parties agree that both parties participated equally in the review, negotiation and drafting of this Agreement. The language in all parts of this Agreement shall be construed according to its normal and usual meaning and not strictly for or against either Owner or Contractor. Headings are for convenience purposes only, and shall not be deemed terms of this Agreement. Each signatory of this Agreement represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting. The terms of this Agreement shall be governed by and construed in accordance with California law. This Agreement may be executed by the parties in identical counterparts. In the event of any action arising from or out of this Agreement, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date:

OWNER:

CONTRACTOR

City of Alameda

By:
Its:
Date:

By:
Its:
Date: