

•PT POTRERO MARINE TERMINAL LEASE•

BASIC LEASE INFORMATION

Date of Lease: October 1, 2012

Landlord: Surplus Property Authority of the City of Richmond, a public body corporate and politic

Landlord's Address: 1401 Harbour Way South
Richmond, CA 94804

Tenant: Foss Maritime, a Washington Corporation

Tenant's Address: Foss Maritime
1316 Canal Blvd
Richmond, CA 94804

Premises: Finger Pier No. 2: that certain Finger Pier No. 2 and adjacent parking area as shown with hatch marks on Exhibit A, located at the Pt Potrero Marine Terminal, Richmond, California

and

Basin No. 5: that certain Basin No. 5 and appurtenant dock space, including that area under and around Craneway #6, as shown in yellow on Exhibit A, located at the Pt Potrero Marine Terminal, Richmond, California

Commencement Date: October 1, 2012

Rent Commencement Date: October 1, 2012

Expiration Date: Finger Pier No. 2: Sept 30, 2017
Basin No. 5: Sept 30, 2013

Base Rent: Finger Pier No. 2: \$16,424 per month
Basin No. 5: \$10,949 per month

Permitted Use: Tug and barge operations and purposes incidental thereto, including the loading of vessel stores, equipment and other items necessary for the operation of tugs and barges.

THIS LEASE is entered into as of October 1, 2012 between Landlord and Tenant.

**Article 1.
Premises**

1.01. Lease. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises (including any rights and appurtenances in connection therewith that are necessary for the Permitted Use) upon all of the terms, covenants and conditions set forth in this Lease. The Premises is more particularly shown with hatch marks on Exhibit A.

1.02. Acceptance of Premises. Tenant accepts the Premises in its AS IS condition existing as of the Commencement Date, subject to all matters of record and applicable laws, ordinances, rules and regulations. Tenant acknowledges that neither Landlord nor any of Landlord's agents has agreed to undertake any alterations or additions or to perform any maintenance or repair of the Premises whatsoever, except as expressly set forth herein. Tenant shall obtain all necessary permits to use the Premises for the Permitted Use.

1.03 Condition Precedent. Prior to Tenant's use of the Premises for the Permitted Use, Tenant shall perform any and all alterations, additions and improvements in or to the Premises required by the City of Richmond and/or any other governmental authorities to make the Premises compliant in all respect with all laws, ordinances, rules, regulations and orders (state, federal, municipal or promulgated by other agencies or bodies having or claiming jurisdiction) related to the use, condition or occupancy of the Premises now in effect or that may hereafter come into effect including, but not limited to the Americans with Disabilities Act, 42 U.S.C. §§ 1201 et seq. (the "Improvements"). Consent to such Improvements is conditioned upon: (i) Tenant's acquiring all applicable permits required by governmental authorities; (ii) Tenant's furnishing to Landlord copies of such permits, together with copies of the approved plans and specifications, prior to commencement of the work thereon; and (iii) Tenant's compliance with the conditions of all applicable permits and approvals in a prompt and expeditious manner. The Improvements shall be constructed diligently, in a good and workmanlike manner with new, good and sufficient materials. Once the Improvements have been completed, Tenant shall notify Landlord promptly indicating that the condition precedent set forth in this Section 1.03 has been satisfied.

1.04 Reserved Easements. Landlord reserves to itself and the right to grant to others in the future nonexclusive utility easements (including easements for construction, maintenance, repair, replacement and reconstruction of such utility easements) over, under, through, across or on the Premises, provided Landlord shall use reasonable efforts to provide that such work occurring and any easement is located such that it will not unreasonably interfere with Tenant's use and enjoyment of the Premises. Tenant shall not be obligated to maintain or repair any such easement facilities unless the need for repair is caused by Tenant's negligence or other wrongful conduct.

**Article 2.
Term, Use and Rent**

2.01. Term.

(a) The Term shall commence upon the Commencement Date and shall continue in full force for the Term. Tenant's obligation to pay Rent shall commence on the Rent Commencement Date and its other obligations under this Lease shall commence upon the Commencement Date. The Term shall terminate upon the Expiration Date, unless sooner terminated or extended pursuant to the terms of this Lease.

(b) Tenant shall have the right to extend the Term of the Lease for Basin No. 5 four (4) additional one (1) year periods commencing when the prior term expires upon prior written notice ("**Tenant's Election Notice**") to Landlord given not later than sixty (60) business days prior to the expiration of the Term or each extended term; provided, however, Landlord shall not be obligated to

extend this Lease if the Port of Richmond has provided written notice of its election to use and occupy the Premises to Tenant's exclusion ("**Port's Use Notice**"), which notice shall be given at least five (5) business days prior to the expiration of the Term or each extended term. Alternatively, the Port in its sole discretion may limit Tenant's right to extend this Lease on a month-to-month basis, which determination shall be stated in the Port's Use Notice. Should the Port so limit Tenant's right to extend this Lease, Tenant shall be obligated to provide Landlord with Tenant's Election Notice not later than five (5) business days prior to the expiration of the then current lease term. During each extended term, the provisions of this Lease, as it may be amended in writing prior to the date of the commencement of such extended term, shall continue in effect except that Tenant shall occupy the Premises in its then AS IS condition and shall pay Base Rent as provided in Section 2.01(c). Notwithstanding the foregoing, Tenant shall not be permitted to extend the term of this Lease beyond September 30, 2017.

(c) Base Rent for Pier Finger No. 2 and for each extension option period for Basin No. 5 shall be increased by two percent (2%) annually. Tenant shall continue paying the current Base Rent until the increased Base Rent has been calculated. Upon such calculation, Landlord shall give notice to Tenant of the amount of the new Base Rent which shall be due and payable effective as of the commencement of the extension option and Tenant shall, upon the giving of such notice, pay Landlord any shortage in Base Rent accruing between the commencement of the extension option and the date of the notice.

(d) Upon the occurrence of the Expiration Date or any earlier termination of this Lease, Landlord and Tenant shall each be released and discharged from any claims or liabilities thereafter arising; provided, however, that nothing herein shall be deemed to release or discharge either party from those obligations that expressly survive the termination of this Lease, including those claims made by a third party for which Landlord has a claim of defense and indemnity against Tenant.

2.02. Permitted Use.

(a) Tenant shall use the Premises solely for the Permitted Use and for no other use or purpose, except as permitted by Landlord pursuant to Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion. Tenant agrees that if it uses, or permits the use of, the Premises for cargo handling, a wharfage fee will be assessed and payable to the Port of Richmond based on the then current published Port of Richmond Tariff, currently FMC No. 3.

(b) The Premises shall be operated and maintained in an efficient, business-like and first class manner.

(c) Tenant shall be permitted to use any fixtures, equipment and signs currently at the Premises that are the property of Landlord; provided that it shall be Tenant's responsibility to maintain and repair such fixtures, equipment and signs.

(d) Tenant shall not engage in activities (including, without limitation, spray painting, sandblasting, blowing of stacks, funnels or exhaust pipes, or other releases of particulate matter) on land or at sea within the jurisdiction of the Port of Richmond that creates a significant risk of injury or damage to the premises or property owned or possessed by any tenant or its customers or which otherwise may materially interfere with the tenant's or customer's operations in the Port of Richmond. Tenant shall conduct its operations in such a manner that it does not create a significant risk of injury or damage to the auto processing facility operated by Auto Warehousing Co. (AWC) at the Pt. Potrero Marine Terminal (Auto Processing Facility) or adversely impact AWC's or AWC's customers' use of the Auto Processing Facility or its operations. This Section 2.02(d) is intended to benefit (and may be enforced by) AWC and AWC's customers.

2.03. Personnel. Tenant shall furnish and supervise sufficient personnel to properly and efficiently operate and maintain the Premises in accordance with the terms of this Lease. Such personnel shall either be employees, volunteers or contractors of Tenant or employees of Operator. All such personnel shall be courteous to customers of the Premises. Further, Tenant shall promptly attend to the reasonable complaints and/or comments of Landlord and the customers of the Premises. As used herein, "**Operator**" shall mean any third-party engaged by Tenant to operate the Premises.

2.04. Base Rent. Commencing on the Rent Commencement Date and throughout the remainder of the Term of this Lease, Tenant shall pay the Base Rent to Landlord in accordance with the schedule set forth on the Basic Lease Information and in the manner described below. Base Rent shall be payable in monthly installments on or before the first day of each calendar month during the Term commencing on the Rent Commencement Date, in advance without demand and without any reduction, abatement, counterclaim or setoff, in lawful money of the United States, at Landlord's address specified on the Basic Lease Information sheet or at such other address as may be designated by Landlord in the manner provided for giving notice under Section 7.11 hereof.

2.05. Payment of Certain Expenses by Tenant. Tenant shall pay, prior to delinquency, all expenses and costs of every kind and nature that are necessary or prudent in connection with the management, maintenance, repair, preservation and operation of the Premises including, but not limited to, the following: (1) wages, salaries and related expenses, payroll taxes, insurance and other benefits of all on-site and off-site employees and personnel engaged in the operation, maintenance, repair and security for the Premises; (2) all supplies, materials, equipment and equipment rental used in the operation, maintenance, repair and security for the Premises; (3) all fees and charges due to any Operator hired by Tenant to operate the Premises; (4) utilities, including water and power for the Premises; (5) all maintenance, janitorial and service agreements for the Premises and the equipment thereon, including, without limitation, any alarm and/or security service; (6) all operating permits and licenses and all personal property taxes, possessory interest taxes, parking, sales or use taxes, assessments or fees, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, or charges of any kind that are assessed, levied, charged, confirmed or imposed by any public authority upon the operation of the Premises (or any portion or component thereof) or this Lease; (7) all insurance required under Article 6 below; (8) all data processing, accounting and legal fees for the operation of the Premises; and (9) telephone charges. Should Landlord separately invoice Tenant for any of the above expenses, Tenant shall pay such expenses as additional rent within ten (10) days of receipt of such invoices.

Landlord shall be entitled to install, at Tenant's expense, utility meters in the Premises to facilitate the separate billing of Tenant for the expenses hereinabove described. Utility costs and expenses for any partial month shall be prorated based upon a thirty (30)-day month.

2.06. Payment of Certain Taxes by Tenant. Tenant shall be liable for all taxes levied against personal property and trade fixtures placed by Tenant in the Premises, which taxes shall be paid when due and before any delinquency. If any such taxes are levied against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of personal property and trade fixtures placed by Tenant in the Premises and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is primarily liable hereunder.

Article 3. Landlord's Covenants

3.01. Basic Services. Landlord does not provide any utility or water service to the Premises. Landlord shall not be liable for damages to either person or property, nor shall Landlord be deemed to have evicted Tenant, nor shall there be any abatement of Rent, nor shall Tenant be relieved from performance of any covenant on its part to be performed under this Lease by reason of any (i) deficiency in the provision of electricity, gas or water; (ii) breakdown of equipment or machinery utilized in supplying services; or (iii) curtailment or cessation of services due to causes or circumstances beyond the reasonable control of Landlord or by the making of necessary repairs or improvements, unless such

deficiency, breakdown, curtailment or cessation is due to the sole active negligence or willful misconduct of Landlord.

3.02. Graphics and Signage. All new signs, notices, advertisements and graphics of every kind or character, displayed in the Premises or visible from the exterior of the Premises shall be subject to Landlord's prior written approval, at Landlord's sole discretion, and shall be constructed and installed at Tenant's sole expense, subject to all applicable laws.

3.03. Repair Obligation. Except as specifically set forth in this Lease, Landlord shall have no obligation whatsoever to maintain or repair the Premises. Landlord shall have the right, but not the obligation, to undertake work or repair that Tenant is required to perform under this Lease and that Tenant fails or refuses to perform in a timely and efficient manner. Tenant shall reimburse Landlord upon demand, as additional rent, for all costs reasonably incurred by Landlord in performing any such work or repair for the account of Tenant. The parties intend that the terms of this Lease govern their respective maintenance and repair obligations. Tenant expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease with respect to such obligations or affords Tenant the right to make repairs at the expense of Landlord or to terminate this Lease by reason of the condition of the Premises or any needed repairs.

3.04. Real Property Taxes and Debt Service. Subject to Section 2.06 above, Landlord shall pay any and all real property taxes, assessments and fees, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind that are assessed, levied, charged, confirmed or imposed by any public authority upon the Premises (or any portion or component thereof) or upon the Rent due hereunder. Landlord shall pay all debt service, ground lease rental, or similar payments due with respect to the Premises, if any.

3.05. Peaceful Enjoyment. Landlord covenants with Tenant that upon Tenant paying the Rent and all other charges required under this Lease and performing all of Tenant's covenants and agreements herein contained, Tenant shall peacefully have, hold and enjoy the Premises subject to all of the terms of this Lease. This covenant and the other covenants of Landlord contained in this Lease shall be binding upon Landlord and its successors only with respect to breaches occurring during its or their respective ownerships of Landlord's interest hereunder.

Article 4. Tenant's Covenants

4.01. Payments by Tenant. Tenant shall pay Base Rent at the times and in the manner provided in this Lease. All obligations of Tenant hereunder to make payments to Landlord shall constitute rent and failure to pay the same when due shall give rise to the rights and remedies provided for in Section 6.07(b). If there is more than one Tenant, the obligations imposed under this Lease upon Tenant shall be joint and several.

4.02. Repairs by Tenant. Tenant shall be obligated to maintain and repair the Premises, to keep the same at all times in good order, condition and repair, and, upon expiration of the Term, to surrender the same to Landlord in the same condition as on the Commencement Date, reasonable wear and tear and taking by condemnation excepted. Tenant's obligations shall include, without limitation, the obligation to repair all damage caused by Tenant, its agents, employees, contractors, invitees and others using the Premises with Tenant's express or implied permission. Tenant shall further be responsible for regular cleaning of the Premises and its driveways and entrance/exit areas. Tenant shall give Landlord prompt notice of any damage to or defective condition in any part of the Premises.

4.03. Waste. Tenant shall not commit or allow any waste or damage to be committed in any portion of the Premises. Tenant shall keep the Premises free of trash and refuse at all times.

4.04. Assignment or Sublease. Tenant shall not voluntarily or by operation of law assign, transfer or encumber (collectively, "Assign") or sublet all or any part of Tenant's interest in this Lease or in the Premises. Notwithstanding the foregoing, Tenant shall be permitted from time to time during the

Term to engage an Operator to operate the Premises on Tenant's behalf. Tenant's selection of an Operator shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

4.05. Alterations, Additions and Improvements.

(a) Other than the Improvements, Tenant shall not make or allow to be made any alterations or additions in or to the Premises without first obtaining the written consent of Landlord. Landlord's consent will not be unreasonably withheld or delayed with respect to proposed alterations and additions that: (i) comply with all applicable laws, ordinances, rules and regulations; (ii) will not interfere with the Port of Richmond future use of the Premises; and (iii) will not trigger any additional costs to Landlord (other than those for which Tenant is obligated to reimburse Landlord pursuant to the terms of this Lease).

(b) Any consent given by Landlord under this Section 4.05 shall be deemed conditioned upon: (i) Tenant's acquiring all applicable permits required by governmental authorities; (ii) Tenant's furnishing to Landlord copies of such permits, together with copies of the approved plans and specifications, prior to commencement of the work thereon; and (iii) Tenant's compliance with the conditions of all applicable permits and approvals in a prompt and expeditious manner.

(c) Tenant shall provide Landlord with not less than ten (10) days prior written notice of commencement of the work so as to enable Landlord to post and record appropriate notices of non-responsibility. All alterations and additions permitted hereunder shall be made and performed by Tenant without cost or expense to Landlord. Tenant shall pay the contractors and suppliers all amounts due to them when due and keep the Premises free from any and all mechanics', materialmen's and other liens and claims arising out of any work performed, materials furnished or obligations incurred by or for Tenant.

(d) Any and all alterations, additions or improvements made to the Premises by Tenant shall become the property of Landlord upon installation and shall be surrendered to Landlord without compensation to Tenant upon the termination of this Lease by lapse of time or otherwise unless Landlord conditioned its approval of such alterations, additions or improvements on Tenant's agreement to remove them, in which case Tenant shall, by the Expiration Date, remove such alterations, additions and improvements, repair any damage resulting from such removal and restore the Premises to their condition existing prior to the date of installation of such alterations, additions and improvements. Notwithstanding anything to the contrary set forth above, this clause shall not apply to movable equipment, personal property or furniture owned by Tenant. Tenant shall repair at its sole cost and expense all damage caused to the Premises by removal of Tenant's movable equipment, personal property or furniture and such other alterations, additions and improvements as Tenant shall be required or allowed by Landlord to remove from the Premises. Nothing herein shall be construed to require Tenant to remove any structures that are located in the Premises as of the Commencement Date.

(e) All alterations, additions and improvements permitted under this Section 4.05 shall be constructed diligently, in a good and workmanlike manner with new, good and sufficient materials and in compliance with all applicable laws, ordinances, rules and regulations including, without limitation, building codes and those related to accessibility and use by individuals with disabilities.

4.06. Compliance With Laws and Insurance Standards. Tenant shall not occupy or use, or permit any portion of the Premises to be occupied or used in a manner that violates any applicable law, ordinance, rule, regulation, order, permit, covenant, easement or restriction of record, or for any business or purpose that is productive of fire hazard. Tenant shall not do or permit anything to be done that would result in the cancellation, or in any way increase the cost, of the all risk property insurance coverage on the Premises and/or its contents. If Tenant does or permits anything to be done that increases the cost of any insurance covering or affecting the Premises paid for by Landlord, then Tenant shall reimburse Landlord, upon demand, as additional rent, for such additional costs. Landlord shall deliver to Tenant a written statement setting forth the amount of any such insurance cost increase and showing in reasonable detail the manner in which it has been computed. Tenant shall, at Tenant's sole cost and expense, comply with all laws, ordinances, rules, regulations and orders (state, federal, municipal or promulgated

by other agencies or bodies having or claiming jurisdiction) related to the use, condition or occupancy of the Premises now in effect or that may hereafter come into effect including, but not limited to, (a) accessibility and use by individuals with disabilities, (b) environmental conditions in, on or about the Premises, and c) Chapters 2.28, 2.56 and 2.60 of the Richmond Municipal Code, if applicable. If anything done by Tenant in its use or occupancy of the Premises shall create, require or cause imposition of any requirement by any public authority for structural or other upgrading of or alteration or improvement to the Premises, Tenant shall, at Landlord's option, either perform the upgrade, alteration or improvement at Tenant's sole cost and expense or reimburse Landlord upon demand, as additional rent, for the reasonable cost to Landlord of performing such work. The judgment of any court of competent jurisdiction or the admission by Tenant in any action against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any law, ordinance, rule, regulation, order, permit, covenant, easement or restriction shall be conclusive of that fact as between Landlord and Tenant.

4.07. No Nuisance. Tenant shall use and occupy the Premises, and control its agents, employees, contractors, invitees and visitors, in such manner so as not to create any nuisance.

4.08. Entry by Landlord. Landlord, its employees, agents and consultants, shall have the right to enter the Premises at any time to inspect the same, to perform such work as may be permitted or required under this Lease, to make repairs to or alterations of the Premises, to deal with emergencies, to post such notices as may be permitted or required by law to prevent the perfection of liens against Landlord's interest in the Premises or to show the Premises to prospective tenants, purchasers, encumbrancers or others; provided, however, that Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use of the Premises. Tenant shall not be entitled to any abatement of rent or damages by reason of the exercise of any such right of entry which is in compliance with this Section 4.08.

4.09. Estoppel Certificate. Within ten (10) business days following Landlord's request, Tenant shall execute, acknowledge and deliver written estoppel certificates addressed to (i) any mortgagee or prospective mortgagee of Landlord, or (ii) any purchaser or prospective purchaser of all or any portion of, or interest in, the Premises, on a form reasonably specified by Landlord, certifying as to such facts (if true) and agreeing to such notice provisions and other matters as such mortgagee(s) or purchaser(s) may reasonably require, including, without limitation, the following: (a) that this Lease is unmodified and in full force and effect (or in full force and effect as modified, and stating the modifications); (b) the amount of and date to which Rent and other charges have been paid in advance; and (c) acknowledging that Landlord is not in default under this Lease (or, if Landlord is claimed to be in default, stating the nature of the alleged default). However, in no event shall any such estoppel certificate require an amendment of the provisions of this Lease or otherwise affect or abridge Tenant's rights or increase Tenant's obligations hereunder. Any such estoppel certificate may be relied upon by any such mortgagee or purchaser. Failure by Tenant to execute and deliver any such estoppel certificate within the time requested shall, at Landlord's election, constitute a default hereunder.

4.10. Surrender. Subject to the provisions of Section 4.05 hereof, on the Expiration Date (or earlier termination of this Lease), Tenant shall quit and surrender possession of the Premises to Landlord in as good order and condition as they were in on the Commencement Date, reasonable wear and tear, taking by condemnation and repairs that are Landlord's responsibility under this Lease excepted. Reasonable wear and tear shall not include any damage or deterioration that would have been prevented by good maintenance practice or by Tenant performing all of its obligations under this Lease. Tenant shall, without cost to Landlord, remove all furniture, equipment, trade fixtures, debris and articles of personal property owned by Tenant in the Premises, and shall repair any damage to the Premises resulting from such removal. Any such property not removed by Tenant by the Expiration Date (or earlier termination of this Lease) shall be considered abandoned, and Landlord may remove any or all of such items and dispose of same in any lawful manner or store same in a public warehouse or elsewhere for the account and at the expense and risk of Tenant. If Tenant shall fail to pay the cost of storing any such property after storage for thirty (30) days or more, Landlord may sell any or all of such property at public or private sale, in such manner and at such times and places as Landlord may deem proper, without notice to or demand upon Tenant. Landlord shall apply the proceeds of any such sale as follows: first, to

the costs of such sale; second, to the costs of storing any such property; third, to the payment of any other sums of money that may then or thereafter be due to Landlord from Tenant under any of the terms of this Lease; and fourth, the balance, if any, to Tenant.

4.11. Tenant's Remedies. Landlord shall not be deemed in breach of this Lease unless Landlord fails within a reasonable time to perform an obligation required to be performed by Landlord. For purposes of this Section 4.11, a reasonable time shall in no event be less than thirty (30) days after receipt by Landlord of written notice specifying wherein such obligation of Landlord has not been performed; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days after such notice are reasonably required for its performance, then Landlord shall not be in breach of this Lease if performance is commenced within said thirty (30)-day period and thereafter diligently pursued to completion. Tenant shall not have the right to terminate this Lease or withhold, reduce or offset any amount against any payments of Rent due and payable under this Lease by reason of a breach of this Lease by Landlord.

Article 5. Environmental Matters

5.01. Hazardous Materials Prohibited.

(a) Tenant shall not cause or permit any Hazardous Material (as defined in Section 5.01(b) below) to be brought, kept, used, generated, released or disposed in, on, under or about the Premises or the Premises by Tenant, its agents, employees, contractors or invitees; provided, however, that Tenant may use, store and dispose of, in accordance with applicable Laws, limited quantities of standard office and janitorial supplies, but only to the extent reasonably necessary for Tenant's operations in the Premises and provided that Tenant remains liable for the release or disposal of any such supplies at or on the Premises that occurs during the Term hereof. Tenant hereby indemnifies Landlord from and against any breach by Tenant of the obligations stated in the preceding sentence, and hereby agrees to defend and hold Landlord harmless from and against any and all claims, liability, losses, damages, costs and/or expenses (including, without limitation, diminution in value of the Premises, or any portion thereof, and sums paid in settlement of claims, fines, penalties, attorneys' fees, consultants' fees and experts' fees) that arise during or after the Term as a result of such breach. This indemnification of Landlord by Tenant includes, without limitation, death of or injury to person, damage to any property or the environment and costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision, including the City of Richmond, because of any Hazardous Material present in, on, under or about the Premises or the Premises (including soil and ground water contamination) that results from such a breach. Without limiting the foregoing, if the presence of any Hazardous Material in, on, under or about the Premises caused or permitted by Tenant results in any contamination of the Premises, Tenant shall promptly take all actions at its sole expense as are necessary to return the same to the condition existing prior to the introduction of such Hazardous Material; provided that Landlord's approval of such actions, and the contractors to be used by Tenant in connection therewith, shall first be obtained. This indemnification of Landlord by Tenant shall survive the expiration or sooner termination of this Lease. Notwithstanding the foregoing, in no event shall Tenant be liable for any Hazardous Materials located on the Premises as of the Commencement Date or any Hazardous Materials placed on the Premises by a party other than Tenant or Tenant's agents, contractors or employees.

(b) As used in this Lease, the term "**Hazardous Material**" means any hazardous or toxic substance, material or waste that is or becomes regulated by any local governmental authority, the State of California or the United States government. The term "**Hazardous Material**" includes, without limitation, any substance, material or waste that is (i) defined as a "hazardous waste" or similar term under the laws of the jurisdiction where the Premises is located; (ii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317); (iii) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource, Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (42 U.S.C. § 6903); (iv) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act,

42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601); (v) hydrocarbons, petroleum, gasoline, crude oil or any products, by-products or fractions thereof; or (vi) asbestos in any form or condition.

(c) As used in this Article 5, the term "**Laws**" means any applicable federal, state or local laws, ordinances, rules or regulations relating to any Hazardous Material affecting the Premises, including, without limitation, the specific laws, ordinances and regulations referred to in Section 5.01(b) above. References to specific Laws shall also be references to any amendments thereto and to any applicable successor Laws.

5.02. Right of Entry. Landlord, its employees, agents and consultants, shall have the right to enter the Premises at any time in order to conduct periodic environmental inspections and tests to determine whether any Hazardous Materials are present. The costs and expenses of such inspections shall be paid by Landlord unless a default or breach of this Lease, violation of Laws or contamination caused or permitted by Tenant is found to exist. In such event, Tenant shall reimburse Landlord upon demand, as additional rent, for the reasonable costs and expenses of such inspections.

5.03. Notice to Landlord. Tenant shall promptly notify Landlord in writing of: (i) any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened regarding the Premises pursuant to any Laws; (ii) any claim made or threatened by any person against Tenant or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Material; and (iii) any reports made to or received from any governmental agency arising out of or in connection with any Hazardous Material in or removed from the Premises, including any complaints, notices, warnings or asserted violations in connection therewith.

Article 6.

Insurance, Indemnity, Condemnation, Damage and Default

6.01. Landlord's Insurance. At no cost to Tenant, Landlord may secure and maintain policies of insurance for the Premises covering loss of or damage to the Premises, but excluding all alterations, additions and improvements to the Premises made by or on behalf of Tenant, with loss payable to Landlord. Landlord shall not be obligated to obtain insurance for Tenant's trade fixtures, equipment, furnishings, machinery or other property. Such policies shall provide protection against fire and extended coverage perils and such additional perils as Landlord deems suitable, and with such deductible(s) as Landlord shall deem reasonably appropriate.

6.02. Tenant's Insurance Requirements. Tenant, at its own cost and expense, shall provide and maintain insurance coverage as required in Exhibit B, "City of Richmond Insurance Requirements for Lessees".

6.03. Indemnity and Exoneration.

(a) Except to the extent caused by the sole active negligence or willful misconduct of Landlord, Landlord and Landlord's representatives shall not be liable for any loss, injury or damage to person or property of Tenant, Tenant's agents, employees, contractors, invitees or any other person, whether caused by theft, fire, act of God, acts of the public enemy, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority or that may arise through repair, alteration or maintenance of any part of the Premises or failure to make any such repair or from any other cause whatsoever except as expressly otherwise provided in Sections 6.05 and 6.06.

(b) Except to the extent caused by the sole active negligence or willful misconduct of Landlord, its agents, contractors or employees, Tenant shall indemnify, protect, defend and hold the Landlord and its representatives, harmless of and from any and all claims, liability, costs, penalties, fines, damages, injury, judgments, forfeiture, losses (including without limitation diminution in the value of the Premises) or expenses (including without limitation attorneys' fees, consultant fees, testing and investigation fees, expert fees and court costs) arising out of or in any way related to or resulting directly or indirectly from (i) the use or occupancy of the Premises, (ii) the activities of Tenant, its agents,

employees, contractors or invitees in or about the Premises, (iii) any failure to comply with any applicable law, and (iv) any default or breach by Tenant in the performance of any obligation of Tenant under this Lease.

(c) Tenant shall indemnify, protect, defend and hold the Landlord and its representatives, harmless of and from any and all claims, liability, costs, penalties, fines, damages, injury, judgments, forfeiture, losses (including without limitation diminution in the value of the Premises) or expenses (including without limitation attorneys' fees, consultant fees, testing and investigation fees, expert fees and court costs) arising out of or in any way related to or resulting directly or indirectly from work or labor performed, materials or supplies furnished to or at the request of Tenant or in connection with obligations incurred by or performance of any work done for the account of Tenant in the Premises.

(d) The provisions of this Section 6.03 shall survive the expiration or sooner termination of this Lease.

6.04. Waiver of Subrogation. Tenant agrees that in the event of loss arising out of any of the perils for which it has agreed to provide insurance against, Tenant shall look solely to its insurer for recovery. Tenant hereby grants to Landlord, on behalf of its insurers, a waiver of any right to subrogation which any such insurer of Tenant may acquire against Landlord by virtue of the payment of any loss under such insurance.

6.05. Condemnation. If all or any portion of the Premises are taken under the power of eminent domain or sold under the threat of the exercise of such power (all of which are referred to herein as "condemnation"), this Lease shall cease and terminate as of the date of taking. All proceeds from any condemnation of the Premises shall belong and be paid to Landlord; provided that Tenant shall be entitled to any compensation separately awarded to Tenant for loss of Tenant's trade fixtures, if any.

6.06. Damage or Destruction. In the event of a fire or other casualty in the Premises, this Lease shall terminate effective immediately. The proceeds from any insurance paid by reason of damage to or destruction of the Premises or any part thereof insured by Landlord shall belong to and be paid to Landlord. The proceeds from any insurance paid by reason of damage to or destruction of the Premises or any part thereof insured by Tenant shall belong to and be paid to Tenant. Landlord and Tenant agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute or law to the extent inconsistent therewith.

6.07. Default by Tenant.

(a) Events Of Default. The occurrence of any of the following shall constitute an event of default on the part of Tenant:

(1) Nonpayment Of Rent. Failure to pay any installment of Rent due and payable hereunder where such failure continues for a period of five (5) business days after written notice thereof to Tenant;

(2) Other Obligations. Failure to perform any obligation, agreement or covenant under this Lease other than those matters specified in Sections 6.07(a)(1), such failure continuing for a period of thirty (30) days after written notice of such failure (or such longer period as is reasonably necessary to remedy such default, provided that Tenant commences the remedy within such thirty (30)-day period and continuously and diligently pursues such remedy until such default is cured);

(3) General Assignment. Any general arrangement or assignment by Tenant for the benefit of creditors;

(4) Bankruptcy. The filing of any voluntary petition in bankruptcy by Tenant, or the filing of an involuntary petition against Tenant, which involuntary petition remains undischarged for a period of ninety (90) days. In the event that under applicable law the trustee in bankruptcy or Tenant has

the right to affirm this Lease and continue to perform the obligations of Tenant hereunder, such trustee or Tenant shall, within such time period as may be permitted by the bankruptcy court having jurisdiction, cure all defaults of Tenant hereunder outstanding as of the date of the affirmance of this Lease and provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations under this Lease;

(5) Receivership. The appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets or the Premises when possession is not restored to Tenant within ten (10) business days;

(6) Attachment. The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets or the Premises, if such attachment or other seizure remains undismissed or undischarged for a period of ten (10) business days after the levy thereof;

(7) Insolvency. The admission by Tenant in writing of its inability to pay its debts as they become due; the filing by Tenant of a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation; the filing by Tenant of an answer admitting or failing timely to contest a material allegation of a petition filed against Tenant in any such proceeding; or, if within sixty (60) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed.

(b) Remedies Upon Default.

(1) Termination. If an event of default occurs, Landlord shall have the right, with or without notice or demand, immediately (after expiration of any applicable notice and grace periods specified herein) to terminate this Lease, and at any time thereafter to recover possession of the Premises or any part thereof and expel and remove therefrom Tenant and any other person occupying the same, by any lawful means, and again repossess and enjoy the Premises without prejudice to any of the remedies that Landlord may have under this Lease, or at law or in equity by reason of Tenant's default or of such termination.

(2) Continuation After Default. Even though Tenant has breached this Lease and/or abandoned the Premises, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession under Section 6.07(b)(1) hereof in writing, and Landlord may enforce all of its rights and remedies under this Lease, including (but without limitation) the right to recover Rent as it becomes due, and Landlord, without terminating this Lease, may exercise all of the rights and remedies of a landlord under Section 1951.4 of the Civil Code of the State of California or any amended or successor code section. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease shall not constitute an election to terminate Tenant's right to possession. If Landlord elects to relet the Premises for the account of Tenant, the rent received by Landlord from such reletting shall be applied as follows: first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any costs of such reletting; third, to the payment of Rent due and unpaid hereunder; and the balance, if any, shall be held by Landlord and applied in payment of future Rent as it becomes due. If that portion of rent received from the reletting that is applied against the Rent due hereunder is less than the amount of the Rent due, Tenant shall pay the deficiency to Landlord promptly upon demand by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as determined, reasonable costs and expenses incurred by Landlord in connection with such reletting or in making alterations and repairs to the Premises that are not covered by the rent received from the reletting.

(c) Damages Upon Termination. Should Landlord terminate this Lease pursuant to the provisions of Section 6.07(b)(1) hereof, Landlord shall have all the rights and remedies of a landlord provided by Section 1951.2 of the Civil Code of the State of California or any amended or successor code section. Upon such termination, in addition to any other rights and remedies to which Landlord may be

entitled under applicable law, Landlord shall be entitled to recover from Tenant: (i) the worth at the time of award of the unpaid rent and other amounts that had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of such rent loss that Tenant proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or that, in the ordinary course of things, would be likely to result therefrom. The "worth at the time of award" of the amounts referred to in clauses (i) and (ii) shall be computed with interest at the lesser of eighteen percent (18%) per annum or the maximum rate then allowed by law. The "worth at the time of award" of the amount referred to in clause (iii) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

(d) Late Charge. If any payment required to be made by Tenant under this Lease is not received by Landlord on or before the date the same is due, Tenant shall pay to Landlord an amount equal to five percent (5%) of the delinquency. The parties agree that Landlord would incur costs not contemplated by this Lease by virtue of such delinquencies, including without limitation administrative, collection, processing and accounting expenses, the amount of which would be extremely difficult to compute, and the amount stated herein represents a reasonable estimate thereof. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's breach or default with respect to such delinquency, or prevent Landlord from exercising any of Landlord's other rights and remedies.

(e) Interest on Past-Due Obligations. Except as expressly otherwise provided in this Lease, any Rent due Landlord hereunder, other than late charges, that is not received by Landlord on the date on which it was due, shall bear interest from the day after it was due at the maximum rate then allowed by law, in addition to the late charge provided for in Section 6.07(d).

(f) Landlord's Right to Perform. Notwithstanding anything to the contrary set forth elsewhere in this Lease, in the event Tenant fails to perform any affirmative duty or obligation of Tenant under this Lease, then within five (5) business days after written notice to Tenant (and without notice in case of an emergency) Landlord may (but shall not be obligated to) perform such duty or obligation on Tenant's behalf, including, without limitation, the obtaining of insurance policies or governmental licenses, permits or approvals. Tenant shall reimburse Landlord upon demand for the reasonable costs and expenses of any such performance (including penalties, interest and attorneys' fees incurred in connection therewith). Such reasonable costs and expenses incurred by Landlord shall be deemed additional rent hereunder.

(g) Remedies Cumulative. All rights, privileges and elections or remedies of Landlord are cumulative and not alternative with all other rights and remedies at law or in equity to the fullest extent permitted by law.

(h) Waiver. Tenant waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other present or future law in the event Tenant is evicted and Landlord takes possession of the Premises by reason of a default.

Article 7. Miscellaneous Matters

7.01. Security Deposit. On execution of this Lease Tenant shall deliver to Landlord the sum of \$27,373 (the "**Deposit**"). The Deposit shall be held by Landlord as security for the performance by Tenant of all of the provisions of this Lease. Following an event of default by Tenant under this Lease, Landlord may use, apply or retain all or any portion of the Deposit for the payment of any rent or other charge in default, or the payment of any other sum to which Landlord may become obligated by Tenant's default, or to compensate Landlord for any expense, loss or damage which Landlord may suffer thereby. If Landlord so uses or applies all or any portion of the Deposit, then within ten (10) days after demand therefor Tenant shall deposit cash with Landlord in an amount sufficient to restore the Deposit to the full amount thereof, and Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not

be required to keep the Deposit separate from its general accounts. If Tenant performs all of Tenant's obligations under this Lease, the Deposit, or so much thereof as has not theretofore been applied by Landlord, shall be returned, without payment of interest for its use, to Tenant (or, at Landlord's option, to the last assignee, if any, of Tenant's interest under this Lease) at the expiration of the term hereof, and after Tenant has vacated the Premises. No trust relationship is created herein between Landlord and Tenant with respect to the Deposit. Tenant waives the provisions of California Civil Code Section 1950.7, and all other present and future laws which restrict the amount or types of claim that a landlord may make upon a security deposit or imposes upon a landlord or a successor any obligation with respect to the handling or return of security deposits.

7.02. No Brokers. Tenant and Landlord each represents and warrants to the other that they have not had any dealings with any agents, brokers, finders or other similar parties in connection with the negotiation of this Lease and the consummation of the transaction contemplated hereby. Each of Tenant and Landlord hereby agrees to indemnify, defend and hold the other free and harmless from and against liability for compensation or charges that may be claimed by any agent, broker, finder or other similar party by reason of any dealings with or actions in connection with the negotiation of this Lease and the consummation of this transaction, including any costs, expenses and attorneys' fees incurred with respect thereto.

7.03. No Waiver. No waiver by Landlord of the default or breach of any term, covenant or condition of this Lease by Tenant shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent default or breach by Tenant of the same or of any other term, covenant or condition hereof. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to, or approval of, any subsequent or similar act by Tenant, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. Regardless of Landlord's knowledge of a default or breach at the time of accepting Rent, the acceptance of Rent by Landlord shall not be a waiver of any preceding default or breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular Rent so accepted. Any payment given Landlord by Tenant may be accepted by Landlord on account of monies or damages due Landlord, notwithstanding any qualifying statements or conditions made by Tenant in connection therewith, which statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Landlord at or before the time of deposit of such payment.

7.04. Recording. Neither this Lease nor a memorandum thereof shall be recorded without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion.

7.05. Holding Over. If Tenant holds over after expiration or termination of this Lease without the written consent of Landlord, such tenancy shall be from month-to-month only, and in such case Base Rent shall be payable at a monthly rate equal to one hundred fifty percent (150%) of the Base Rent to that which Tenant was obligated to pay for the month immediately preceding the end of the Term, together with such other amounts as may become due hereunder. No holding over by Tenant after the Term shall operate to extend the Term. Any holding over with the consent of Landlord in writing shall thereafter constitute a month-to-month lease, terminable upon thirty (30) days' written notice from either party, at a monthly rental rate equal to that which Tenant was obligated to pay for the month immediately preceding the end of the Term, together with such other amounts as may become due hereunder.

7.06. Transfers by Landlord. Landlord shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and in the Premises and other property referred to herein, and in such event and upon such transfer (any such transferee to have the benefit of, and be subject to, the rights and obligations of Landlord hereunder), Landlord shall be released from any further obligations hereunder, and Tenant agrees to look solely to such successor in interest of Landlord for the performance of such obligations.

7.07. Attorneys' Fees. In the event either party places the enforcement of this Lease, or any part of it, or the collection of any Rent due, or to become due, hereunder, or recovery of the possession of the Premises, in the hands of an attorney, or files suit upon the same, the prevailing party shall recover its reasonable attorneys' fees, costs and expenses, including those that may be incurred on appeal. Such

fees may be awarded in the same suit or recovered in a separate suit, whether or not suit is filed or any suit that may be filed is pursued to decision or judgment. The term "prevailing party" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by judgment or the abandonment by the other party of its claim or defense; provided however, the parties may agree to compromise or settlement in writing, which compromise or settlement may include a provision that each party is to bear their own attorneys' fees and costs. The attorneys' fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

7.08. Termination; Merger. No act or conduct of Landlord, including, without limitation, the acceptance of keys to the Premises, if any, shall constitute an acceptance of the surrender of the Premises by Tenant before the scheduled Expiration Date. Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Lease.

7.09. Amendments; Interpretation. This Lease may not be altered, changed or amended, except by an instrument in writing signed by the parties in interest at the time of the modification. The captions of this Lease are for convenience only and shall not be used to define or limit any of its provisions.

7.10. Severability. If any term or provision of this Lease, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and shall be enforceable to the fullest extent permitted by law.

7.11. Notices. All notices, demands, consents and approvals that are required or permitted by this Lease to be given by either party to the other shall be in writing and shall be deemed to have been fully given by personal delivery or by recognized overnight courier service or when deposited in the United States mail, certified or registered, with postage prepaid, and addressed to the party to be notified at the address for such party specified on the Basic Lease Information sheet, or to such other place as the party to be notified may from time to time designate by at least fifteen (15) days' notice to the notifying party given in accordance with this Section 7.11. A copy of all notices given to Landlord under this Lease shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate by notice to Tenant.

Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. Notices delivered by recognized overnight courier shall be deemed given twenty-four (24) hours after delivery of the same to the courier. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

7.12. Force Majeure. Any prevention, delay or stoppage of work to be performed by Landlord or Tenant that is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor, acts of God, governmental restrictions or regulations or controls, judicial orders, enemy or hostile government actions, civil commotion, or other causes beyond the reasonable control of the party obligated to perform hereunder, shall excuse performance of the work by that party for a period equal to the duration of that prevention, delay or stoppage. Nothing in this Section 7.12 shall excuse or delay Tenant's obligation to pay Rent or other charges due under this Lease.

7.13. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of Landlord, its successors and assigns (subject to the provisions hereof) and shall be binding upon and inure to the benefit of Tenant, its successors.

7.14. Further Assurances. Landlord and Tenant each agree to promptly sign all documents reasonably requested to give effect to the provisions of this Lease.

7.15. No Prior Agreements. This Lease, including the exhibits and addenda attached to it, contains all agreements of Landlord and Tenant with respect to any matter referred to herein. No prior agreement or understanding pertaining to such matters shall be effective.

7.16. Applicable Law. This Lease shall be governed by, construed and enforced in accordance with the laws of the State of California. This Lease is made in Contra Costa County, California, and any action relating to this Lease shall be instituted and prosecuted in the courts of Contra Costa County, California.

7.17. Time of the Essence. Time is of the essence of each and every covenant of this Lease. Each and every covenant, agreement or other provision of this Lease on Tenant's part to be performed shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease or on any other covenant or agreement set forth herein.

7.18. No Joint Venture. This Lease shall not be deemed or construed to create or establish any relationship of partnership or joint venture or similar relationship or arrangement between Landlord and Tenant hereunder. If requested by Landlord, Tenant shall post signs at the Premises stating that Landlord is not responsible for the day-to-day operations of the Premises.

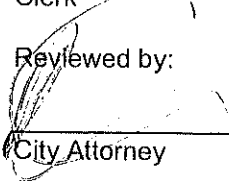
7.19. Authority. If Tenant is a corporation, limited liability company, trust or general or limited partnership, each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on Tenant's behalf and that this Lease is binding upon Tenant in accordance with its terms.

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

ATTEST:


Clerk

Reviewed by:


City Attorney

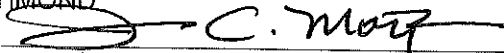
LANDLORD:

SURPLUS PROPERTY AUTHORITY OF THE CITY OF RICHMOND

By:

Name:

Its:


JAMES C. MATZORKIS
PORT - EXECUTIVE DIRECTOR

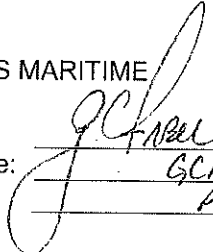
TENANT:

FOSS MARITIME

By:

Name:

Its:


GCFABEC
PRESIDENT