

EXHIBIT "D"

INSURANCE

Without limiting Lessee's indemnification of Lessor, Lessee will obtain, provide and maintain at its own expense during the Term of this Agreement, a policy or policies of insurance of the type, amounts and form acceptable to Lessor. The policy or policies shall provide, at a minimum, those items described below.

(a) **Coverage Requirements**

- (i) Workers' compensation insurance providing statutory benefits and Employer's Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) each accident, each employee and policy limit. Coverage shall include USL&H and Maritime Coverages as appropriate. In addition, Lessee shall require each subtenant or subcontractor to similarly maintain workers compensation insurance and employer's liability insurance, including USL&H and Maritime Coverages as appropriate, in accordance with the laws of the State of California for all of the subtenant's or subcontractor's employees. The insurer shall agree to waive all rights of subrogation against Lessor, its officers, agents, employees and volunteers for losses arising from work performed by Lessee for Lessor, by endorsement to the policy.

- (ii) Commercial general liability insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) General Aggregate for bodily injury, personal injury, and property damage. Coverage shall be at least as broad as that provided by Insurance Services Office form CG 00 01 and may be arranged through any combination of primary and excess insurance as required to achieve the limits specified provided that any excess liability policy does not restrict coverage provided in the primary policy. Other policy forms may be acceptable if more appropriate to the exposures, such as Marina Operator's Liability insurance. None of the policies required herein shall be in compliance with these requirements if they include any limiting endorsement that has not been first submitted to City and approved in writing.

- (iii) Contractor's pollution liability insurance for contractors or subcontractors performing construction work written on a form acceptable to City providing coverage for liability arising out of sudden, accidental and gradual pollution. The policy limit shall be no less than One Million Dollars (\$1,000,000) per claim and in the aggregate for contractors and between Two Million Dollars (\$2,000,000) and Five Million Dollars (\$5,000,000) for Lessee, as determined by Lessor depending on services offered by Lessee on the Premises (e.g., fuel dock, boat repair, etc.). When this insurance is required, all activities comprising the work shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the Premises to the

final disposal location, including non-owned disposal sites. Products/completed operations coverage shall extend a minimum of three (3) years after completion of the work.

- (iv) Pollution legal liability applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims; all in connection with any loss arising from the insured facility. Coverage shall be maintained in an amount of at least One Million Dollars (\$1,000,000) per loss, with an annual aggregate of at least One Million Dollars (\$1,000,000).

(b) Endorsements: Policies shall contain or be endorsed to contain the following provisions:

- (i) Lessor, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as an additional insured under all general and pollution liability policies with respect to liability arising out of lessee's activities related to this Agreement and with respect to use or occupancy of the Premises.
- (ii) The insurer waives all rights related to workers' compensation subrogation against Lessor, its elected or appointed officers, officials, employees, agents and volunteers.
- (iii) The insurance required by this agreement shall not be suspended, voided, canceled, or reduced in coverage or in limits.

(c) Additional Requirements

- (i) All insurance shall be written on an occurrence-made form, except the Pollution Liability policy which is on a claims-made form of insurance requiring the Lessee to provide proof of coverage (extending reporting) for a minimum of three (3) years following termination of lease agreement; and
- (ii) In the event Lessor determines that (i) the Lessee's activities in the Premises creates an increased or decreased risk of loss to the Lessor, (ii) greater insurance coverage is required due to the passage of time, or (iii) changes in the industry require different coverages be obtained, Lessee agrees that the minimum limits of any insurance policy required to be obtained by Lessee may be changed accordingly upon receipt of written notice from Lessor; provided that Lessee shall have the right to appeal a determination of increased coverage to the City Council within fourteen (14) calendar days of receipt of notice from the Risk Manager in the manner provided in Municipal Code Section 17.65.010 *et seq.* (or any amended or successor Code section or ordinance) If Lessee fails to timely appeal a decision, it shall be deemed final. With respect to changes in insurance requirements that are available from Lessee's then-

existing insurance carrier, Lessee shall deposit certificates evidencing acceptable insurance policies with Lessor incorporating such changes within thirty (30) calendar days of receipt of such notice. With respect to changes in insurance requirements that are not available from Lessee's then-existing insurance carrier, Lessee shall deposit certificates evidencing acceptable insurance policies with Lessor, incorporating such changes, within ninety (90) calendar days of receipt of such notice.

- (iii) All insurance policies shall be issued by an insurance company currently authorized by the California Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders'. Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by Lessor.
- (iv) All licensees, sub-lessees (not including slip renters) and concessionaires shall be subject to the insurance requirements contained herein unless written approval is granted by the Lessor.
- (v) Lessee shall provide certificates of insurance, with original endorsements as required above, to Lessor as evidence of the insurance coverage required herein. Insurance certificates must be approved by Lessor prior to commencement of performance or issuance of any permit. Current certification of insurance shall be kept on file with Lessor at all times during the Term of this Agreement.
- (vi) All required insurance shall be in force on the Commencement Date, and shall be maintained continuously in force throughout the term of this Agreement. In addition, the cost of all required insurance shall be borne by Lessee.
- (vii) If Lessee fails or refuses to maintain insurance as required in this Agreement, or fails to provide proof of insurance, Lessor has the right to declare this Agreement in default without further notice to Lessee, and Lessor shall be entitled to exercise all available remedies.