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U.S. Department of Transportation  
**Maritime Administration**

## **APPLICATION FOR CONVEYANCE OF PORT FACILITY PROPERTY**

APPLICATION is hereby made to the Secretary of the Department of Transportation, acting by and through the Maritime Administrator, Maritime Administration (“Secretary”) by the \_\_\_\_\_, a \_\_\_\_\_ located in \_\_\_\_\_ (“Applicant”) for conveyance to it, under and pursuant to the power and authority provided by the National Defense Authorization Act for Fiscal Year 1994, as amended [Public Law 103-160 at Section 2927, dated November 30, 1993]; the Federal Property and Administrative Services Act of 1949, as amended (“Property Act”) at 40 U.S.C.A. 554; the Federal Management Regulation System [41 CFR 102-2]; the Utilization and Disposal of Surplus Federal Real Property for Development or Operation of a Port Facility Regulation, [Title 46 CFR, Part 387]; and upon the terms, reservations, restrictions and conditions herein set forth, of surplus Federal real property consisting of portions of the Federal installation generally known as the \_\_\_\_\_ located in or near \_\_\_\_\_, in \_\_\_\_\_, as more particularly described in Schedule A to this Application and incorporated in the Port Facility Redevelopment Plan (“PFRP”) (Schedule C) hereto, including certain related personal property described in Schedule B hereto. All real and personal property identified in Schedules A and B are hereinafter referred to as the port facility (“Port Facility”). The conveyance is in perpetuity so long as the property is used in the development or operation of a port facility.

## **TERMS AND CONDITIONS**

1. **ENTIRE AGREEMENT.** This Application and any Quitclaim Deed or deeds (“Deed(s)”), to be executed by the Secretary and the Applicant, shall constitute the entire agreement between the Applicant and the Secretary unless modified in writing and signed by both parties.
2. **COVENANT AGAINST CONTINGENT FEES.** The Applicant warrants that no person or selling agency has been employed or retained to solicit or secure acceptance of this Application upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Applicant for the purpose of securing business. For breach or violation of this warranty, the Government of the United States of America (“Government”) shall have the right to annul this Application without liability, or in its discretion, to require Applicant to pay to it the full amount of such commission, percentage, brokerage, or contingent fee.
3. **CONVEYANCE OF THE PORT FACILITY.** This Application sets forth the terms, reservations, restrictions and conditions to be included in any Deed(s) affecting the final disposition of the Port Facility. This Application also contains information required by the Secretary to access the need for the requested surplus Federal property. Upon (1) compliance with the requirements of Section 120 of the Comprehensive, Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA) [42 U.S.C.A. §9620] (“CERCLA 120”) (2) assignment of the property to the Secretary by the Administrator, General Services or the Secretary of Defense, in the case of property located at a military installation closed or realigned pursuant to a base closure law (“Disposal Agency”) and (3) other requirements, the Secretary shall, by Deed(s) convey to the Applicant all of its rights, title and interest in and to the Port Facility, and the Applicant shall accept the conveyance or conveyances.
4. **CONDITION OF THE PORT FACILITY.** It is understood and agreed that the Port Facility shall be conveyed “as is, where is” without any warranty or guarantee, expressed or implied, of any kind or nature, except as otherwise expressly stated in Section 5 below, and the Federal agency which has accountability for the property involved (“Holding Agency”), Disposal Agency and the Secretary shall not be responsible for any liability to the Applicant or third person arising from such condition of the property. The failure of the Applicant to fully inspect the Port Facility or to be fully informed as to the condition thereof shall not constitute grounds for any noncompliance with the terms, reservations, restrictions and conditions terms of any Deed(s).
5. **DEED(S), COVENANTS AND CONDITIONS.** Any Deed(s) conveying the Port Facility to the Applicant shall be in form and substance satisfactory to the Secretary, without warranty, expressed or implied, except that any Deed(s) conveying real property on which hazardous substances were stored for one year or more, known to have been released, or disposed of shall contain, as covenants running with the land and binding on the Government, the covenants required by 42 U.S.C.A. §9620(h)(3) as described in subsection 5a(i) below, and any Deed(s) conveying real property identified by the Holding Agency and/or Disposal

Agency pursuant to and in accordance with 42 U.S.C.A. §9620(h)(4) as real property on which no hazardous substances and no petroleum products (or their derivatives) were stored for one year or more, known to have been released, or disposed of shall contain, as covenants running with the land and binding on the Government, the covenants required thereby, as set out in subsection 5a(ii) below. Any Deed(s) also shall contain covenants running with the land which require the observance by the Applicant of the terms, reservations, restrictions, and conditions contained below in Sections 5b to 5aa inclusive; except that the provisions of subsections 5b(i) and 5b(ii) below shall be included in the Deed(s) as conditions subsequent rather than as covenants.

a. Information and Covenants Pursuant to 42 U.S.C.A. §9620(h)

i. 42 U.S.C.A. §9620(h)(3). If any hazardous substance was stored for one year or more, known to have been released, or disposed of, on the real property, each Deed(s) entered into for the conveyance of such property by the Government to any other person or entity shall contain, pursuant to 42 U.S.C.A. §9620(h) (3), the following:

1. To the extent such information is available on the basis of a complete search or the Holding Agency and/or Disposal Agency files, (i) a notice of the type and quantity of such hazardous substances; (ii) notice of the time at which such storage, release, or disposal took place; and (iii) a description of the remedial action taken, if any; and
2. If the Applicant is not a potentially responsible party with respect to the real property, a covenant warranting that (i) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such conveyance, and (ii) any additional remedial action round to be necessary after the date of such conveyance shall be conducted by the Government.
3. A clause granting the Government access to the property in any case in which remedial action or corrective action is round to be necessary after the date of such conveyance.

ii. 42 U.S.C.A. §9620(h)(4).

1. Pursuant to Section 120(h)(4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, CERCLA, 42 U.S.C.A. §9620(h)(4), the Holding Agency and/or Disposal Agency has identified the herein described tracts of land as real property on which no hazardous substances and no petroleum products or their derivatives were stored for one year or more, known to have been released, or disposed of. The Government covenants and warrants that in the event that any response action or corrective action is found to be necessary after the date of conveyance, such response action or corrective action shall be conducted by the Government.

2. The Government reserves a right of access to any and all portions of the herein described tracts of land for purposes of environmental investigation or remediation. This reservation includes the right of access to and use of, to the extent permitted by law, available utilities at reasonable cost to the Government. These rights shall be exercisable in any case in which a remedial action or response action or corrective action is found to be necessary after the date of conveyance of the herein described tracts of land, or such access is necessary to carry out a remedial action or response action or corrective action on adjoining property. Pursuant to this reservation, the Government and its officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable notice to the Applicant or the then owner and any authorized occupant of the property) to enter upon the herein described tracts of land and conduct investigations and surveys, to include drilling, testpitting, boring, data and/or record compilation, and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary under applicable authorities, including but not limited to monitoring wells, pumping wells, and treatment facilities.

b. Use by the Applicant.

- i. That, except as provided in subparagraph c of numbered paragraph 5, the property conveyed shall be used for development or operation of a Port Facility for the use and benefit of the public, on reasonable terms and without unjust discrimination. As used in this document, the term Port Facility shall mean any structure and improved property, including services connected therewith whether located on waterfront or inland, which is used, or intended for use, in developing, transferring or assisting maritime commerce and water related industries, including, but not limited to, terminal and warehouse buildings, piers, wharves, yards, docks, berths, dry and cold storage spaces, bulk and liquid storage terminals, tank farms, aprons, cranes and equipment used to load and discharge cargo and passengers from vessels, multimodal transfer terminals, transshipment and receiving stations, marinas, foreign trade zones, shipyards, industrial property, fishing and aquaculture structures, mixed waterfront complexes, connecting channels and port landside transportation access routes.
  - ii. That, except as provided in subparagraph c of the numbered paragraph 5, the entire Port Facility including all structures, improvements, facilities and equipment conveyed shall be maintained for the use and benefit of the public at all times in safe and serviceable condition, to assure its efficient operation and use, provided, however, that such maintenance shall be required as to structures, improvements, facilities and equipment only during the useful life thereof, as determined by the Secretary or his/her successor in function.
- c. No property conveyed shall be mortgaged or otherwise disposed of or rights or interest granted by the Applicant without the prior written consent of the Secretary.

However, the Secretary will only review leases of five years or more to determine the interest granted therein.

- d. Property conveyed for a Port Facility shall be used and maintained for the use and benefit of the public on fair and reasonable terms, without discrimination. In furtherance of this covenant (but without limiting its general applicability and effect) the Applicant specifically agrees (1) that it shall keep the Port Facility open to all types and kinds of maritime users without discrimination between such types and kinds. Provided, that the Applicant may establish such fair, equal, and nondiscriminatory conditions to be met by all users of the Port Facilities as may be necessary for the safe and efficient operation of the Port Facility; and provided, further, that the Applicant may prohibit or limit any given type and kind of maritime use of the Port Facility if such action is necessary for the safe operation of the Port Facility, (2) that in its operation and the operation of port facilities at the port, neither it nor any person or organization occupying space or facilities thereupon shall discriminate against any person or class of persons by reason of race<sup>1</sup> color, creed, sex, marital status, political affiliation, national origin, religion, handicap or sexual orientation in the use of any of the facilities provided for the public at the port, and (3) that in any agreement, contract, lease, or other arrangement under which a right or privilege at the port is granted to any person, firm or corporation to conduct or engage in any maritime activity for furnishing services to the public at the port, the Applicant shall insert and enforce provisions requiring the contractor: (a) to furnish said service on a fair, equal and nondiscriminatory basis to all users thereof, and (b) to charge fair, reasonable, and nondiscriminatory prices for each unit for service, provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- e. The Applicant shall, insofar as it is within its powers and to the extent reasonable, adequately protect the water and land access to the Port Facility. The Applicant shall, either by the acquisition and retention of easement or other interest in or rights for the use of land or by adoption and enforcement of zoning regulations, prevent the construction, erection or alteration of any structure in the access routes to and from the Port Facility.
- f. The Applicant shall operate and maintain in a safe and serviceable condition, as deemed reasonably necessary by the Secretary, the port and all facilities thereon and connected therewith which are necessary to service the maritime users of the Port Facility and shall not permit any activity thereon which would interfere with its use as a Port Facility.
- g. The Applicant hereby releases the Government, and shall take whatever action may be required by the Secretary to assure the complete release of the Government from any and all liability the Government may be under for restoration or other damage under any agreement covering the use by the Applicant or its lessees, upon which, adjacent to which, or in connection with which, any property transferred by this instrument was located or used.
- h. The Port Facility is subject to the provisions of Title 46 CFR, Part 340.

- i. The Applicant shall: (1) furnish the Secretary with annual or special Port Facility financial and operational reports as requested, (2) furnish the Secretary with an annual utilization report that demonstrates that the Port Facility is being used in accordance with the terms and conditions of the Deed(s), and (3) upon reasonable request of the Secretary, make available for inspection by any duly authorized representative of the Secretary, the Port Facility, at which the property described herein is located, and all Port Facility records and documents affecting the port, including deeds, leases, operation and use agreements, regulations, and other instruments and shall furnish to the Secretary a true copy of any such document.
- j. Where construction or major renovation is not required or proposed, the Port Facility must be placed into use within twelve (12) months from the date of the conveyance. Where construction or major renovation is contemplated at the time of conveyance, the property shall be placed in service according to the redevelopment time table approved by the Secretary in the PFRP Section of the Application.
- k. The Applicant shall not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform or comply with any or all of the terms, reservations, restrictions and conditions set forth herein, if an arrangement is made for management or operation of the Port Facility by any agency or person other than the Applicant, it shall reserve sufficient rights and authority to ensure that such Port Facility shall be operated and maintained in accordance with these terms, reservations, restrictions and conditions.
- l. The Applicant shall keep up to date at all times a Port Facility layout map of the property described herein showing: (a) the boundaries of the Port Facility and all proposed additions thereto, and (b) the location of all existing and proposed port facilities and structures, including all proposed extensions and reductions of existing port facilities.
- m. That in the event that any of the aforesaid terms, reservations, restrictions and conditions are not met, observed, or complied with by the Applicant, whether caused by the legal inability of said Applicant to perform any of the obligations herein set out, or otherwise, the title, right of possession and all other rights conveyed by any Deed(s) to the Applicant, or any portion thereof, shall at the option of the Secretary revert to the Government in its then existing condition sixty (60) days following the date upon which demand to this effect is made in writing by Secretary or his successor in function, unless within said sixty (60) days such default or violation shall have been cured and all such terms, reservations, restrictions and conditions shall have been met, observed, or complied with, in which event said reversion shall not occur and title, right of possession, and all other rights conveyed hereby, except such, if any, as shall have previously reverted, shall remain vested in the Applicant.
- n. That if the construction of any of the foregoing terms, reservations, restrictions and conditions recited herein as provisions or the application of the same as provisions in any particular instance is held invalid, the particular term, reservation, restriction or condition in question shall be construed instead merely as conditions upon the breach of which the Secretary may exercise its option to cause the title, interest, right of possession, and all other rights conveyed to the Applicant, or any portion thereof, to revert to it, and the application of such term, reservation, restrictions or condition as

provision in any other instance and the construction of the remainder of such terms, reservations, restrictions and conditions as provisions shall not be affected thereby.

- o. The Applicant shall remain at all times a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any other political subdivision, municipality, or instrumentality thereof.
- p. The Applicant shall comply at all times with all applicable provisions of law, including, the Water Resources Development Act of 1990.
- q. The Applicant may not modify, amend or otherwise change its approved PFRP without the prior written consent of the Secretary and shall implement the PFRP as approved by the Secretary.
- r. The Applicant agrees that in the event, the Secretary exercises its option to revert all, right, title, and interest in and to any portion of the property to the Government, or the Applicant voluntarily returns title to the property in lieu of a reverter, then the Applicant shall provide protection to, and maintenance of the property at all times until such time as the title is actually reverted or returned to and accepted by the Government. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal, as listed in Title 41 CFR Chapter 102, Part 75, Section 875 [41 CFR 102-75.875] in effect as of the date of the conveyance.
- s. The Disposal Agency expressly reserves from the conveyance (1) oil, gas and mineral rights, (2) improvements without land, (3) military chapels, and (4) property disposed of pursuant to 204(c) of the Act.
- t. The Government reserves all right, title, and interest in and to all property of whatsoever nature not specifically conveyed, together with right of removal thereof from the Port Facility within one (1) year after the date of the Deed(s). During such period, the Government, its agents, customers, transferees, and successors shall have the right of ingress to and egress from the Port Facility for the purposes of using, disposing of by sale or otherwise, and removing such property.
- u. Preservation Covenant for Historic Property.

The Applicant hereby covenants, to preserve and maintain any portion of the \_\_\_\_\_, more particularly described in Schedule A and shown on Schedule A as a Historic Area (“Historic Area”), in a manner that preserves the overall character of the Historic Area, in accordance with the recommended approaches in the **Secretary of the Interior’s Standards and Guidelines for Federal Agency Historic Preservation Programs** in order to preserve and enhance those qualities that make the Historic Area eligible for inclusion in the National Register of Historic Places. This covenant shall be a binding servitude upon the Historic Area and shall be deemed to run with the land. This covenant is binding on the Applicant, in perpetuity. The restrictions, stipulations and covenants contained herein shall be inserted by the Applicant,

verbatim or by express reference in any other legal instrument by which it transfers any interest or estate in the Historic Area, or any part thereof.

- i. No construction, alteration, remodeling, demolition, disturbance of the ground surface, or other action shall be undertaken or permitted to be undertaken on the Historic Area that would materially affect the integrity or the appearance of the attributes described above without the prior written permission of the \_\_\_\_\_ State Historic Preservation Officer (“SHPO”). Should the SHPO object to the proposed treatment within \_\_ days of receiving the request and cannot resolve the differences, the Applicant shall request the Advisory Council on Historic Preservation (“Council”) to resolve the dispute. The Council shall provide comments within \_\_ days of receiving the request from the Applicant. The Applicant shall consider the Council’s comments in reaching its decision on the treatment. The Applicant shall report its decision to the Council, and if practicable, it shall do so prior to initiating the treatment.
  - ii. Upon acquisition of any standing historic structures, the Applicant shall take prompt action to secure all of the structure from the elements, vandalism, or arson. The Applicant shall, to the extent practicable, make every effort to retain or reuse the historic structures.
  - iii. Should any archeological site be discovered during any project activities, the Applicant shall stop work promptly and obtain the comments of the SHPO regarding appropriate treatment of the site. The final mitigation plan shall be approved by the SHPO.
  - iv. The Applicant shall allow the SHPO or his or her designee, at all reasonable times and upon reasonable advance notice to the Applicant, to inspect the Historic Area in order to ascertain whether the Applicant is complying with the conditions of this preservation covenant.
  - v. The Applicant shall provide the SHPO and the Council with a written summary of actions taken to implement the provisions of this preservation covenant within one (1) year after the effective date of the transfer of the Historic Area.
  - vi. Failure of the SHPO to exercise any right or remedy granted under this covenant shall not have the effect of waiving or limiting the exercise by the SHPO of any other right or remedy or the invocation of such right or remedy at any other time.
  - vii. The Applicant may, with the prior written approval of the SHPO, modify for good cause any or all of the foregoing restrictions. Prior to such action, the Applicant shall notify the Council of the proposed modification and allow them \_\_ days to comment.
- v. Lead-Based Paint Covenant.



- i. Prior to use of any property on the Port Facility by children less than seven (7) years of age, the Applicant shall remove all lead-based paint hazards and all potential lead-based paint hazards from the property in accordance with all Federal, State and local lead-based paint laws and regulations.
- ii. The Applicant agrees to indemnify the Government to the extent allowable under applicable Law from any liability arising by reason of the Applicant's failure to perform the Applicant's obligations hereunder with respect to the elimination of immediate lead-based paint health hazards, the prohibition against the use of lead-paint, and the Applicant's responsibility for complying with applicable State and local lead-based paint laws and regulations.

w. Protection of Wetlands.

Certain portions of the Port Facility may be declared jurisdictional "wetlands," as determined by the Army Corps of Engineers. All construction on those portions of the Port Facility must comply with Department of the Army WETLAND CONSTRUCTION RESTRICTIONS contained in Title 33, Code of Federal Regulations, Sections 320 through 330, as amended, and any other applicable Federal, State, or local wetlands regulations.

- x. The Applicant agrees to maintain, indemnify and hold harmless the Secretary and the Government from any and all claims, demands, costs or judgments for damages to persons or property that may arise from the use of the property by the Applicant, guests, employees and lessees.
- y. The Applicant agrees that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14 CFR Part 77 or under the authority of the Federal Aviation Act of 1958, as amended.
- z. The Secretary on written request from the Applicant may grant release from any of the terms, reservations, restrictions and conditions contained in the Deed(s), or the Secretary may release the Applicant from any terms, restrictions, reservations or conditions if the Secretary determines that the property so conveyed no longer serves the purpose for which it was conveyed.
- aa. The Secretary shall make reforms, corrections or amendments to the Deed(s) if necessary to correct such Deed(s) or to conform such Deed(s) to the requirements of applicable law.

6. **NOTICE OF HAZARDOUS SUBSTANCES.** Schedule D contains a notice of hazardous substances that have been stored for one year or more, or known to have been released, or disposed of, on certain portions of the real property, and the date(s) that such storage, release, or disposal took place, as required by Title 40 CFR Part 37:3, and 42 U.S.C.A. §9620(h)(1). Section 373.3(b) requires that the following statement be prominently displayed:

*The information contained in this notice is required under the authority of regulations promulgated under Section 10(h) of CERCLA or "Superfund" 42 U.S.C.A. §9620(h).*

7. **PRESENCE OF ASBESTOS.** The Port Facility may be improved with buildings and facilities and equipment that may contain asbestos-containing materials. The Finding of Suitability to Transfer may disclose the condition and location of any asbestos-containing materials. **WARNING!**
- a. The Applicant is warned that the Port Facility contains asbestos-containing materials. Unprotected or unregulated exposure to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.
  - b. The Applicant is invited, urged, and cautioned to inspect the Port Facility prior to submitting an Application. More particularly, the Applicant is invited, urged, and cautioned to inspect the Port Facility as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The Government shall assist the Applicant in obtaining any authorization(s) which may be required in order to carry out any such inspection(s). The Applicant shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Port Facility, including without limitation, any asbestos hazards or concerns.
  - c. No warranties, either express or implied, are given with regard to the condition of the Port Facility including, without limitation, whether the Port Facility does or does not contain asbestos or is or is not safe for a particular purpose. The failure of the Applicant to inspect or to be fully informed as to the condition of all or any portion of the Port Facility shall not constitute grounds for any claim or demand for adjustment or withdrawal by the Applicant from the agreement formed by the execution of any Deed(s).
  - d. The description of the Port Facility set forth in the Application and any other information provided therein with respect to the Port Facility is based on the best information available to the Disposal Agency and is believed to be correct, but an error or omission, including but not limited to the omission of any information available to the Disposal Agency or any other Federal agency, shall not constitute grounds or reason for non-performance of the agreement formed by an acceptance of the Application by the Disposal Agency or any claim by the Applicant against the Government including, without limitation, any claim for allowance, refund, deduction, or payment of any kind.
  - e. The Government assumes no liability for damages for personal injury, illness, disability, or death to the Applicant or to the Applicant's successors, assigns, employees, invitees or any other person subject to the Applicant's control or direction or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other

activity causing or leading to contact of any kind whatsoever with asbestos on the Port Facility, whether the Applicant, has or have properly warned or failed to properly warn the individuals(s) injured.

- f. The Applicant further agrees that in its use and occupancy of the Port Facility it shall comply with all Federal, state, and local laws relating to asbestos.

8. **PRESENCE OF LEAD.** (Can be deleted if not applicable.) The Applicant is informed that the property includes improvements that are duly presumed to contain lead-based paint because they are thought or known to have been constructed before 1978. The hazards of lead-based paint are often present in dust, paint chips, or surfaces upon which lead-based paint has been applied. High concentrations of lead in the body can damage the brain, nervous system, kidneys, or hearing; affect learning and coordination, cause behavioral problems, blindness, and even death; and cause problems in pregnancy and fetal development. Lead is especially hazardous to children of less than seven (7) years of age.

- a. The Applicant is invited, urged, and cautioned to inspect the property prior to acquiring it. More particularly, the Applicant is invited, urged, and cautioned to inspect the property as to its lead-based paint content and condition and any hazardous or environmental conditions relating thereto. The Disposal Agency shall assist the Applicant in obtaining any authorization which may be required in order to carry out any such inspection. The Applicant shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the property, including, without limitation, any lead-based paint hazards or concerns.

- b. All applicable surfaces of structures on the property to be conveyed constructed prior to 1978 and used by children of less than seven (7) years of age shall be inspected to determine whether defective paint surfaces exist. For this purpose all defective paint surfaces shall be assumed to be immediate hazards; and (2) treatment necessary to eliminate the hazards of lead-based paint shall be taken in accordance with Federal, State and local lead-based paint laws and regulations.

9. **RISK OF LOSS.** From time to time, the Disposal Agency assigns property to the Secretary for conveyance. From the date(s) of the conveyance by the Secretary, the Applicant shall bear all risks and shall bear any and all losses sustained by reason of damage due to casualty that may be suffered by the Port Facility and shall bear any and all losses associated therewith. Notwithstanding any such losses or damage, each and all of the provisions of the Deed(s) shall remain unimpaired and in full force and effect.

10. **ENTRY INTO POSSESSION OF THE PORT FACILITY.** The Applicant agrees to enter into possession of the Port Facility or such portions thereof as described in Schedule A and B, from the date(s) of conveyance by the Secretary.

11. **ASSIGNMENT BY THE DISPOSAL AGENCY.** The Disposal Agency may assign the property to the Secretary for conveyance to the Applicant upon request by the Secretary. Upon such assignment and compliance with the requirements of Section 120 of the

Comprehensive, Environmental Response, Compensation and Liability Act of 1980, as amended CERCLA (42 U.S.C.A. §9620) ("CERCLA 120"), and other legal and policy requirements, the Secretary shall, by one or more Deed(s) incorporating the applicable terms, reservations, restrictions and conditions of this Application and any other reservations, restrictions, easements, and exceptions, required by law or pursuant to this Application, convey to the Applicant all of its rights, title and interest in and to the Port Facility, and the Applicant shall accept the conveyance or conveyances.

12. **NO ASSIGNMENT BY APPLICANT.** No interest therein shall be assigned or transferred by the Applicant to any other party.

13. **OFFICIAL NOT TO BENEFIT.** No member of or delegate to U.S. Congress or the State Assembly shall be admitted to any share or part of any benefit arising from any conveyance by the Secretary to the Applicant.

14. **SCHEDULES.** Four (4) schedules are attached to and made a part of the Application, as follows:

- Schedule A: Legal Description of Real Property
- Schedule B: Description of Personal Property
- Schedule C: Port Facility Redevelopment Plan (PFRP)
- Schedule D: Notice Pursuant to CERCLA 120(h) (1)  
(Provided by the Holding Agency and/or Disposal Agency)

The Applicant on whose behalf I have executed the foregoing Application needs and can utilize said property and has legal authority, is willing, and is in a position financially and otherwise to assume immediate care and maintenance of the Port Facility; and I have carefully examined the Application and all the documents submitted in connection therewith and, to the best of my knowledge, information and belief, the statements and representations contained in said Application and related documents are full, complete, accurate and true.

**By:** \_\_\_\_\_  
(Signature)

**Name:** \_\_\_\_\_  
(Printed Name)

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**INSTRUCTIONS:**  
**APPLICATION FOR CONVEYANCE OF PORT FACILITY PROPERTY**

These schedules provide the information required by the Secretary to assess the need for surplus Federal property for the development or operation of a port facility. In your responses, please use complete sentences and set out at the beginning of each response, the number and the heading you are responding to. In an instance where a request for information is not applicable to your program, please include the heading and state "Not Applicable." Failure to provide sufficient data will delay review and any final decision on the PFRP.

**Schedule A: LEGAL DESCRIPTION OF REAL PROPERTY**

The following real property is hereby requested for conveyance for port facility use, hereafter identified as Property A, which property is essential, suitable, desirable or reasonably necessary to fulfill the immediate and foreseeable requirements of the Applicant for the development or operation of a port facility, to wit: Property A (legal description)

**Schedule B: DESCRIPTION OF PERSONAL PROPERTY**

The following personal property is hereby requested for conveyance for port facility use, in connection with Property A, which personal property, hereafter identified as Property B, is essential, suitable, desirable or reasonably necessary to fulfill the immediate and foreseeable requirements of the Applicant for the development or operation of a port facility, to wit: Property B (Description)

**Schedule C: PORT FACILITY REDEVELOPMENT PLAN (PFRP)**

**1. Identification of Applicant**

- a. Legal name of government entity to which conveyance is to be made and statement whether applicant is a State, the District of Columbia, the Commonwealth or Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of North Mariana Island, or political subdivision, municipality, or instrumentality thereof.
- b. Name and title of individual authorized by resolution of governing authority to negotiate the conveyance and accept legal responsibilities for the property.
- c. A copy of the document showing-statutory or other authority under which it is authorized by law to acquire and hold title to the property for the purpose for which it is to be conveyed.
- d. Address and telephone number of applicant.

## **2. Proposed Redevelopment Plan**

- a. In narrative form, give a complete detailed plan of use for the property. Explain how the land, buildings and/or other improvements will be used to fulfill the needs of the proposed plan. Include as an exhibit a Port Facility layout plan for the property showing existing and planned improvements, and proposed land use. The plan must be adequately documented to reflect well-planned utilization, and should be effectively supported by written recommendations, endorsements, and studies of appropriate State agencies, public officials of State and local governments, and recognized transportation consultants.
- b. Indicate time required to bring the property to full utilization. State when construction, demolition, alteration, or adaptation of facilities will begin and when commercial port activities shall commence. If the program will not be fully implemented in the first year after conveyance, state what phase shall be implemented on what date. Provide a detailed time line of development.
- c. List the structures and improvements which will be required for implementation of the proposed program together with the estimated construction costs. Include dredging requirements, utility system upgrades and improvements to land transportation access to ports facilities.
- d. A statement and supporting data that the property is currently, or will be located in an area of serious economic disruption as a result of the Federal installation closure or realignment.
- e. Estimate of jobs lost by the closure and the economic impact on the community. Estimate the number of jobs that will be created by the proposed plan by job category and estimate the date of job creation.
- f. A statement of the estimated economic impacts on the region and the state by the proposed development.

## **3. Proof of Need and Suitability of Property**

- a. In narrative form, provide detailed proof of need for the property. This information should demonstrate both a need for the property and program to be operated thereon, as well as the suitability of the property for the purpose intended. Submit studies, statistics, or other data which support need and suitability.
- b. A statement that the PFRP is part of a necessary economic development program for the entire Federal installation closed or realigned.

## **4. Capital Improvement Program and Financial Plan**

- a. Statement of sources of present funding for operation and capital improvements including statement that funds are currently available.
- b. If the program contemplates major capital improvement projects and funds are not currently available, give the sources of the funding.

- c. Provide sources and uses fund statement for the first ten years after conveyance, including a clear source of funding for the payment of all debt when due.
- d. Provide the most recent financial statement of the Applicant.

**5. Economic Soundness**

- a. A written narrative detailing the normal throughput capacity, storage/staging capacity and level of demand for present port facilities owned, leased and/or operated by the Applicant. Provide estimated normal throughput capacity, storage/staging capacity and level of demand for new Port Facility.
- b. Demonstrate that the demand for additional port services and facilities is sufficient to support the development and will not significantly impact the economic viability of existing competing port services and facilities. Competitors include port services and facilities in the same geographic area and also on the same coast.

**6. Environmental Evaluation**

The reuse plan in the PFRP shall comply with the provisions of the National Environmental Policy Act of 1969 (NEPA), as prepared by the Disposal Agency. Provide a statement that the PFRP is in the Disposal Agency's NEPA evaluation and the PFRP will comply with NEPA.