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ORIGINAL

1 DAVID A. ROSENFELD, Bar No. 058163
 2 CAREN P. SENCER, Bar No. 233488
 3 LISL R. DUNCAN, Bar No. 261875
 WEINBERG, ROGER & ROSENFELD
 4 A Professional Corporation
 1001 Marina Village Parkway, Suite 200
 Alameda, California 94501
 Telephone (510) 337-1001
 5 Fax (510) 337-1023

FILED
ALAMEDA COUNTY

NOV 09 2011
 CLERK OF THE SUPERIOR COURT
 By Charles Cruz Deputy

6 Attorneys for Plaintiffs
 LAVON GODFREY and GARY GILBERT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 IN AND FOR THE COUNTY OF ALAMEDA

10 LAVON GODFREY and GARY GILBERT, on
 behalf of themselves and all others similarly
 11 situated,

12 Plaintiffs,

13 v.

14 OAKLAND PORT SERVICES CORP. d/b/a
 AB TRUCKING, and DOES 1 through 20,
 15 inclusive,

16 Defendants.

Case No. RG08379099

**PLAINTIFFS' MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT OF MOTION IN LIMINE
 TO EXCLUDE EVIDENCE EXPECTED
 TO BE OFFERED AT TRIAL**

Date: November 10, 2011
 Time: 3:00 p.m.
 Dept.: 20
 Judge: Hon. Robert B. Freedman

Trial Date: November 29, 2011

18 **I. PRELIMINARY STATEMENT**

19 Plaintiffs respectfully move for an order in limine precluding Defendant from, at the time
 20 of trial, questioning witnesses concerning, introducing any evidence regarding, commenting upon
 21 or using as a defense information regarding any argument that Defendant was not a Port-Assisted
 22 Business prior to 2006. Inquiry into this area will only result in prejudice to Plaintiffs.

23 Plaintiffs make this motion prior to trial in order to streamline the issues that must come
 24 before the Court at trial. This issue may be resolved prior to trial.

25 **II. STATEMENT OF FACTS**

26 This is a wage and hour class action suit brought by two former drivers of
 27 Defendant AB Trucking. The operative class action complaint in the instant action (Second
 28 Amended Complaint, filed September 20, 2010, hereafter "Complaint") contains causes of action

FAXED

1 for 1) Unfair Business Practices (Business & Professions Code §§17200, et seq., "UCL"), 2)
2 Failure to Pay for All Hours Worked (Labor Code §§510, 1182.12, and 1194; IWC Wage Order
3 No. 9, §4), 3) Failure to Pay for Any Hours Worked Due to Misclassification of Employment
4 Status (Labor Code §§510, 1182.12 and 1194; IWC Wage Order No. 9, §40, 4) Failure to Pay
5 Overtime (Labor Code §§510 and 1194; IWC Wage Order No. 9, §3), 5) Failure to Pay Living
6 Wage (Oakland City Charter §728), 6) Failure to Provide Meal and/or Rest Periods (Labor Code
7 §§226.7 and 512; IWC Wage Order No. 9), 7) Failure to Pay Wages Owing at Discharge or
8 Quitting (Labor Code §§201, 202 and 203), and 8) Failure to Provide Accurate Itemized Wage
9 Statements (Labor Code §226). Plaintiffs are truck drivers who allege to have worked for
10 Defendant and are representatives of the Class and Subclasses.

11 Plaintiffs seek to recover all wages alleged to be due and alleged applicable penalties on
12 behalf of themselves and the Class. Plaintiffs also seek the difference between the Living Wage,
13 and/or the overtime rate, and the lower wage rate paid for the four (4) years prior to the filing of
14 the Complaint, for themselves and the Class. Plaintiffs request treble damages pursuant to the
15 OLW, costs of litigation and attorneys' fees.

16 **III. ARGUMENT**

17 **A. DEFENDANT SHOULD BE PRECLUDED FROM PRESENTING ANY**
18 **EVIDENCE REGARDING THE STATUS OF WHETHER DEFENDANT WAS A**
19 **PORT-ASSISTED BUSINESS PRIOR TO 2006**

20 Plaintiffs move for an order precluding Defendant from questioning witnesses concerning,
21 introducing any evidence regarding, commenting upon or using as a defense information
22 regarding any argument that Defendant was *not* a Port-Assisted Business prior to 2006. Plaintiff
23 anticipates Defendant will attempt to elicit evidence that Defendant was not a Port-Assisted
24 Business prior to 2006. From this evidence, it is anticipated that Defendants will argue that it was
25 not a Port-Assisted Business and that it, therefore was not required to pay workers the Oakland
26 Living Wage. These arguments are without merit as shown below.

27 **1. Defendant met the definition of a port-assisted business prior to 2006**

28 Oakland City Charter section 728 requires that all Port-Assisted Businesses provide
compensation not less than the Oakland Living Wage ("OLW").

1 A Port-Assisted Business is defined as follows:

2 "Port-Assisted Business" or "PAB" means (1) any person involved
3 in a Port Aviation or Port Maritime Business receiving in excess of
4 \$50,000 worth of financial assistance from the Port, or (2) any Port
5 Contractor involved in a Port Aviation or Port Maritime Business if
6 the person employs more than 20 persons per pay period, unless in
7 the prior 12 pay periods the person has not had more than 20 such
8 employees and will not have more than 20 persons in the next 12
9 pay periods. A PAB shall be deemed to employ more than 20
10 persons if it is part of an 'enterprise' as defined under the Fair
11 Labor Standards Act employing more than 20 persons. "Port
12 Contractor" means any person party to a Port Contract as herein
13 defined.

14 "Port Contract" means:

- 15 (1) Any service contract with the Port for work to be performed at
16 the Port under which the Port is expected to pay more than
17 \$50,000 over the term of the contract;
- 18 (2) Any contract, lease or license from the Port involving payments
19 to the Port expected to exceed \$50,000 either (a) over the term
20 of the contract, lease or license, or (b) during the next 5 years if
21 the current term is less than 1 year but may be renewed or
22 extended, either with or without amendment;
- 23 (3) Any subcontract, sublease, sublicense, management agreement
24 or other transfer or assignment of any right, title or interest
25 received from the Port pursuant to any of the foregoing
26 contracts, leases or licenses.

27 (Oakland City Charter section 728.)

28 **B. THE EVIDENCE UNAMBIGUOUSLY REFLECTS DEFENDANT WAS A PORT-
ASSISTED BUSINESS PRIOR TO 2006**

Documents produced by the Port of Oakland ("Port") in response to a Subpoena for
Business Records on October 31, 2011 reflect that Defendant was a Port-Assisted Business in
2004 and 2005. The documents reflect a Space-Assignment to OPS on Port property. (See
Exhibit A.) OPS was a sublease of Oakland Maritime Support Services ("OMSS"). OMSS has a
lease for the Port property in question with the Port. (See Exhibit B.)

OMSS held a "Port Contract" within the meaning of Section 728 during 2004 and 2005.
OPS held a sublease with OMSS and its Port Contract within the meaning of Section 728 during
2004 and 2005.

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1. Plaintiffs' request for this order will streamline the issues that must come before the Court at trial


Deciding this issue at this stage will allow streamlining of the trial because eliminate this discrete issue from trial.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court issue an Order preventing Defendants and their counsel from questioning any witness or otherwise eliciting information concerning and from arguing that Defendant was *not* a Port-Assisted Business prior to 2006.

Dated: November 9, 2011

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: 
DAVID A. ROSENFELD
CAREN P. SENCER
LISL R. DUNCAN
Attorneys for Plaintiffs
LAVON GODFREY and GARY GILBERT

118212/643999

Exhibit A

**BOARD OF PORT COMMISSIONERS
PORT OF OAKLAND MARITIME DIVISION**

**PORT OF OAKLAND TARIFF NO. 2A
STANDARD TARIFF ASSIGNMENT: WHARF/SPACE**

ASSIGNMENT NO.: 1112MMJ1
 TENANT NO.: 6070
 DATE PREPARED: February 24, 2005
 EFFECTIVE DATE: March 1, 2005
 PAGE 5 NOT APPLICABLE:

NAME OF FIRM Oakland Port Services		Phone: 510-553-1701
BILLING ADDRESS 2505 Bataan Avenue Suite A		Fax: 510-553-8116
CITY Oakland	State CA	Zip 94607
E-Mail: bill@abtruck.com		

SECTION A: TYPE AGREEMENT

<input type="checkbox"/> PREFERENTIAL NON EXCLUSIVE WHARF ASSIGNMENT	<input checked="" type="checkbox"/> SPACE ASSIGNMENT	<input type="checkbox"/> VESSEL BERTH RESERVATION
<input type="checkbox"/> SECONDARY WHARF ASSIGNMENT	<input type="checkbox"/> TEMPORARY WHARF ASSIGNMENT BERTHING OF NON-OPERATIVE VESSEL	<input type="checkbox"/> CONTAINER CRANE ASSIGNMENT (SECONDARY USE)
<input type="checkbox"/> SECONDARY WHARF ASSIGNMENT (FACILITY/VSL OPERATIONAL)	<input type="checkbox"/> USE OF NON-OPERATIVE FACILITY	<input type="checkbox"/> PREFERENTIAL CONTAINER CRANE ASSIGNMENT

THIS ASSIGNMENT IS SUBJECT TO ALL APPLICABLE RULES AND REGULATIONS OF PORT OF OAKLAND TARIFF NO. 2-A

SECTION B: DESCRIPTION OF AREA/ASSIGNEE INFORMATION (Complete all applicable information)

VESSEL	VOYAGE	LOA	ETA	ETD
VESSEL OWNER/LINE	BERTH DESIRED			
VESSEL CHARTERER				
TO LOAD (Commodity Type and Amount/No. of Containers)	TO DISCHARGE (Commodity Type and Amount/No. of Containers)			
TERMS OF AFFREIGHTMENT	TERMS OF AFFREIGHTMENT			
AGENCY FIRM	AUTHORIZED INDIVIDUAL			
CONTAINER CRANE DESIRED	CRANE LOCATION			
REASON AREA REQUIRED Truck support offices				
LOCATION OF WHARF, WHARF AREA, SPACE, OR FACILITY DESIRED OAB Bldg R070 Rooms 2, 17, 22, 23 at 2505 Bataan Avenue				

TYPE OF AREA	SQ. FT/MONTH	RATE	AMOUNT	CALCULATIONS/REMARKS
LAND:				
Unpaved	x	\$0.104	=	\$0.00
Rocked	x	\$0.128	=	\$0.00
Rocked/Lights/Fencing	x	\$0.148	=	\$0.00
Paved	x	\$0.163	=	\$0.00
Paved/Lights/Fencing	x	\$0.180	=	\$0.00
TRUCK or RAIL DOCK FACILITIES:				
Roofed/Doors/Levelers	x	\$0.480	=	\$0.00
Roofed/Doors/No Levelers	x	\$0.410	=	\$0.00
Roofed/No Doors/No Levelers	x	\$0.280	=	\$0.00
Platforms Only	x	\$0.180	=	\$0.00
WAREHOUSE SPACE:				
First Floor Level	x	\$0.300	=	\$0.00
BONDED STORAGE SPACE:				
First Floor Level	x	\$0.320	=	\$0.00
OFFICE SPACE, N.O.S.:				
Non-Air Conditioned	974.00	x	\$1.000	= \$974.00
Air Conditioned		x	\$1.140	= \$0.00
UTILITIES (Cost Plus 5%):		x	=	
MONTHLY DOCKAGE:		x	=	
MISCELLANEDUS (Identify):		x	=	
PRORATE FOR 30 DAYS			TOTAL AMOUNT PER PERIOD	974.00

SUMMARY OF CHARGES PER PERIOD OF USE

Note: Charges specified in Assignment are subject to latest revisions of the Port of Oakland Tariff No. 2-A upon the effective date of such revisions. Pursuant to Item 10155 of Port of Oakland Tariff No. 2-A, Space Assignment rates do not include charges for utilities (water, electricity or telephone)

SECTION C: APPROVAL

Applicant hereby agrees to comply with the Rates, Rules, Regulations and Conditions of Port of Oakland Tariff No. 2-A and with the attached General/Special provisions of this assignment.


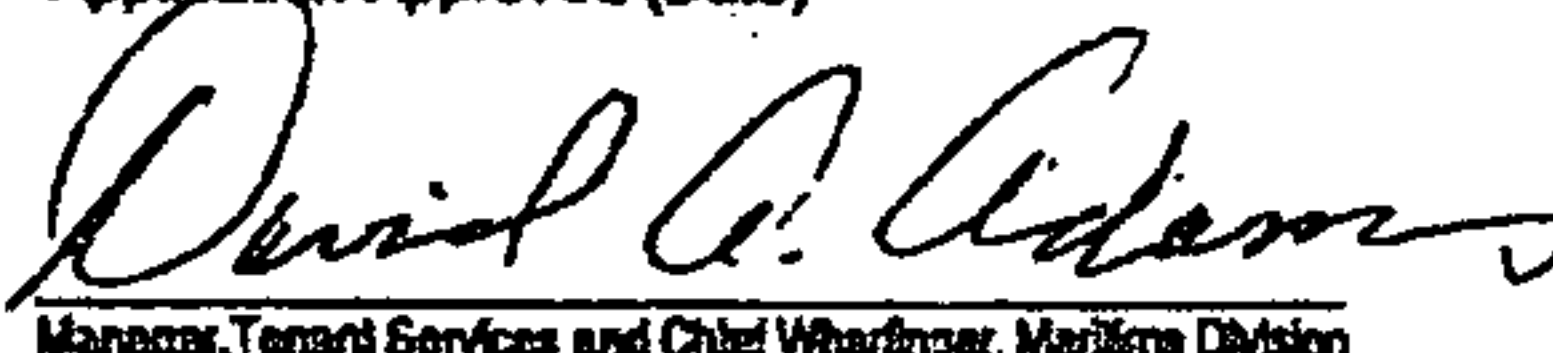
Applicant: Oakland Port Services	Certificate of Insurance on File with Port
By: 	Signature of Port Risk Management Office/Date 2-28-05
Date: 2/25/05	Application Approved (Date)
Type or Print Name and Title of Applicant's Representative: Bill Aboud, President	 Manager, Tenant Services and Chief Wharfinger, Maritime Division

Exhibit A

Assignment No. 112MMJ1

Effective Date: March 1, 2005

GENERAL PROVISIONS

Terms and General Conditions

1. The described space, area, facility or crane is on property under the jurisdiction of the Board of Port Commissioners of the City of Oakland (Port of Oakland) and this application is made pursuant to the applicable provisions of the Port of Oakland Tariff No. 2-A including Items 02210 and Items 03105 through 03190 pertaining to Toxic Materials and Hazardous Cargo. This assignment is for an indefinite period of time and may be terminated by the Port's Executive Director or by the Assignee upon thirty (30) days prior written notice to the other; provided further, however that such assignment may be terminated upon shorter notice at the discretion of the Executive Director.
2. This assignment shall be personal in nature and Assignee shall not transfer any privilege granted hereunder without the prior written consent of the Executive Director of the Port of Oakland.
3. Assignee shall keep the assigned space, area, facility or crane free from any liens arising out of any work performed, materials furnished, or obligations incurred by the Assignee.
4. All notices to be given to Assignee may be given in writing personally or by depositing the same in the United States mail, postage prepaid, and addressed to Assignee at the billing address set forth on page 1 of the assignment. Notice shall be deemed given upon the date of such deposit in the United States mail.
5. The space, area, facility or crane hereunder shall not be used in such a manner nor shall business be conducted in thereon which shall in any way conflict with any law, ordinance, rule or regulation affecting the occupancy or use of the assigned space, area, facility or crane and failure to abide by any such law, ordinance, rule or regulation shall be deemed a violation of a condition of this agreement.
6. Assignee shall, at all times, at Assignee's sole cost, keep and maintain said space, area, facility or crane and every part thereof, including any glazing pavement or asphalted surfaces, and interiors and exteriors of such facilities in good and sanitary condition except for any waivers the Executive Director may extend in writing. In addition, Assignee shall, at its sole cost, from time to time as it may become necessary, promptly repair or restore any and all improvements so as to maintain the space, area, facility or crane in as good a condition as they were on the date of commencement of this assignment. However, the need for said repair or restoration may have arisen, including, but not limited to, damages caused by vessels serving the assigned facility. The Port shall, however, except as otherwise expressly provided in this assignment or in Tariff No. 2-A be responsible for repair or restoration if assignee satisfactorily establishes that repair or restoration is: (1) necessary on account solely of the Port's active negligence; or (2) where Assignee's negligence or breach of its maintenance responsibility or other obligations under this assignment is not a contributing cause and (a) it is necessary on account of earthquake or other acts of God, or (b) in the case of structural items, such as roofs, walls, foundations, or paving, it is necessary on account of the elements or reasonable wear and tear, or (c) it is necessary on account of acts of third parties not arising out of or in the course of Assignee's operations; or (3) necessary on account of latent defect or faulty design or construction not caused in part by Assignee's negligence; or (4) (except for cranes) is covered by a Port fire and extended coverage insurance policy, but solely to the extent and in the amount that such damages may be actually covered by a fire and extended coverage insurance policy covering such risks with such deductibles that the Port may in its sole discretion carry, and Assignee shall be responsible for any such uninsured loss provided that as to any uninsured loss the Port may be responsible under (1) - (3) of this Paragraph 6.
7. Each of the covenants and conditions of this assignment shall, except as otherwise specifically provided in this assignment, apply to and bind the heirs, successors, executors administrators assigns of all of the parties hereto, and all of the parties hereto shall be jointly and severally liability hereunder.
8. Use of Port facilities or service is conditioned upon satisfactory assurance of the Executive Director that applicable charges will be paid when due. All charges are due and payable as they accrue or on completion of service or use. Payment terms are cash and payment may be required in advance unless Port customer has established credit worthiness or has posted acceptable adequate security (Pursuant to Port of Oakland Tariff No. 2-A Item Nos. 02130, 02135, 02140 and 02145)
9. Assignment of Port Area is subject to provisions relating to the handling, transportation or storage of toxic materials in Item 02210 Port of Oakland Tariff NO. 2-A.
10. Assignment of Port Area is subject to International Maritime Organization (IMCO or IMO) regulations and Hazardous Cargo permits issued by the Executive Director as required in Port of Oakland Tariff No. 2-A, Item 03105 through 03190. Assignee shall agree to and shall comply with all of the terms and conditions that may be specified in such issued permit.
11. Except as otherwise provided, Assignee shall, not later than the date of the commencement of the term of this assignment; deposit with the Port and during the entire assignment shall maintain with the Port a deposit in the sum of \$974.00

which deposit will be retained by the Port as a performance deposit and will be returned to Assignee at the termination of assignment hereunder or under any renewal or extension hereof only if said performance deposit or portions thereof are not required to pay the cost of the following restoration, cleaning and maintenance of said space, facility or crane and every part thereof to restore them to the condition pursuant to Paragraph 6 above; repair of any damage to the premises caused by Assignee's occupancy; replacement of any improvements which are the property of the Port pursuant to Paragraph 2 below "IMPROVEMENTS" during the term of this assignment; and payment of any outstanding charges incurred by assignee to the Port pursuant to any of the provisions of this agreement. In the event the Port is required to utilize said deposit or any portion thereof during the term of this assignment for the purpose herein set forth, Assignee shall deposit with the Port an additional sum sufficient to restore the performance deposit to the amount herein set forth. Said performance deposit or any remaining portion thereof shall be returned to Assignee at the termination of this assignment after deduction of any amounts there from for payment of the herein above described charges. The payment of said performance deposit by Assignee shall not limit Assignee's liability to the Port for the payment of charges due the Port by Assignee in excess of the amount of said deposit.

Improvements

1. Assignee shall not make, nor suffer to be made, any alterations or improvements to the space area, facility or crane assigned (including the installation of any trade fixtures affixed to said space area, facility or crane or whose removal may cause injury thereto) without the prior written consent of the Executive Director and any additions to or alterations of, the assigned space, area, facility or crane shall become at once a part of the space, area, facility or crane and belong to the Port of Oakland except that the Executive Director may require Assignee to remove such alterations or improvements upon termination of this assignment at the Assignee's sole cost and expense regardless of whether consent was given, or was not given, by the Executive Director, and, in addition, Assignee shall promptly repair, at Assignee's sole cost and expense, any damage occasioned by such removal. The Executive Director may waive in writing and of all of the rights hereunder.
2. Upon termination of this assignment, the Executive Director may, at his option, require that Assignee, at Assignee's own expense, restore the space, area or facility to at least the same condition that existed when Assignee first took occupancy or possession excepting (unless otherwise provided in this assignment) reasonable wear and tear, damage by the elements where Assignee's negligence or breach of its maintenance or other obligations under this Assignment is not a contributory cause, and damage that the Port is responsible for pursuant to Paragraph 6 above of the "Term and General Conditions."

Secondary Use

1. The parties recognize that in the case of wharf facilities under a preferential assignment, the Executive Director may from time to time require Assignee to permit the vessels of others as Temporary or secondary Assignee to be berthed at such facilities when such berthing will not materially affect the operations of the Preferential Assignee (Note Item No 10120 of Port of Oakland Tariff No2A) In the event (Preferential Assignee shows that any liability, claim, damage, suit or expense arises out of, or is in any way connected with, the use of said premises by such Temporary of Secondary Assignee, and is not caused in whole or in part by the Preferential Assignee's negligence, wrongful act or omission, the Preferential Assignee shall have no liability therefore any other provisions of this assignment notwithstanding

Default

If any default shall be made by the Assignee in any of the conditions or covenants of this assignment then and in that event, the Port, in addition to any other rights or remedies that the Port may have, shall have the right of immediate re-entry, may immediately take possession of any crane and may remove all persons or property from the space area, facility or crane and such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Assignee. No such re-entry or taking of possession by the Port shall be construed as an election on its part to terminate this assignment unless a written notice of such intention be given to the Assignee.

Taxes

Assignee hereby understands that a property interest may be created by this assignment, which interest may be subject to property taxation and the Assignee in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest. The Assignee hereby agrees to pay all lawful taxes, assessments or charges which at any time may be levied by an federal, state, county, city or any tax or assessment levying agency upon any interest in this assignment or any possessory right which Assignee may have in or to the area, facility, space or crane covered hereby or the improvement thereon by reason its use or occupancy thereof or otherwise as well as all taxes, assessments and charges on goods, merchandise, fixtures, appliances, equipment and property owned by it in or about said area, space, facility or crane.

No Relocation Benefits

It is understood and agreed that nothing contained in this assignment shall give the Assignee any right to occupy the assigned premises at any time after expiration of the term of this assignment or its earlier termination and that this assignment shall not create any right in the Assignee for relocation assistance or payment from the Port upon the expiration of the term of this assignment or upon its earlier termination or upon the termination of any holdover tenancy. The Assignee acknowledges and agrees that upon such expiration or termination, it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) with respect to any relocation of its business or activities upon the expiration of the term of this assignment or upon its earlier termination or upon the termination of any holdover tenancy.

Hold Harmless

Assignee assumes responsibility and liability for injury to or death of any person whomsoever or damage to or destruction of property, including employees and property of the Port of Oakland incident to, arising out of, or caused by Assignee's possession, use or operation of any assigned crane or an assigned space, area or facility, and Assignee shall protect, defend, indemnify and save harmless the Port of Oakland, members of the Board of Port Commissioners, and its officers, agents and employees from and against any and all suits, claims, demands, loss, expenses (including counsel fees) and liability of any nature whatsoever for said injury to or death of persons or damage to or destruction of property, and that may be, in whole or in part, incident to, arise out of, or be caused, directly or indirectly, through Assignee's negligence or otherwise, by the Assignee's possession, use or operation of an assigned crane or an assigned space, area or facility, and the Assignee's possession, use or operation of an assigned crane or assigned space, area or facility shall constitute acceptance and acknowledgment by Assignee of Assignee's liability and obligations. In instances in which the Port's negligence causes or contributes to the cause of any such liability as hereinabove set forth Assignee's obligation to exculpate or indemnify and hold harmless the Port pursuant to this item shall be limited to that portion of the liability, on a percentage basis, which is not attributable to the Port's negligence.

Insurance

Assignee shall maintain in force during the term of this assignment bodily injury liability and property damage insurance, including completed operations, contractual and owned, nonowned and hired automobile coverage with such limits and such other coverages (such as protection and indemnity covering vessels, broad form property damage and third party stevedore liability) as may reasonably be requested from time to time by the Port's Executive Director, but not less than the sum of One Million Dollars (\$1,000,000) combined single limit except that for a container crane assignment limits shall not be less than the sum of Six Million Dollars (\$6,000,000) combined single limit; and Assignee agrees that the Port shall be named as an additional insured under such liability policy or policies. All such policies shall be endorsed with a severability of interests or cross-liability endorsement. A certificate or certificates evidencing such insurance coverage shall be filed with the Secretary of the Board of Port Commissioners prior to the commencement of the term of the assignment, and said certificate shall provide that such insurance coverage shall not be canceled or reduced without at least thirty (30) days prior written notice to the Secretary of said Board. Insurance provided shall be with domestic or London insurers satisfactory to the Executive Director. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the Secretary of said Board. If such coverage is canceled or reduced, Assignee shall, within fifteen (15) days after receipt of written notice from the Port of such cancellation or reduction in coverage, but in no event later than the date of such cancellation or reduction, file with the Secretary of said Board a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Notwithstanding any other provisions of this assignment or Port of Oakland Tariff 2-A, upon failure to so file such certificate, the Executive Director may cancel this assignment with one day's prior written notice.

COVERAGE REQUIRED IN ADDITION TO BODILY INJURY LIABILITY AND PROPERTY DAMAGE (CHECK APPLICABLE BOXES):

- Premises/Operations
- Completed operations
- Products
- Owned, nonowned and hired automobiles
- Contractual liability
- Personal injury
- Broad form property damages
- Independent Contractors
- Stevedore liability
- United States Longshoremen & Harbor Workers Act
- Protection and indemnity
- Limits required: \$1,000,000
- Workers Compensation & Employers Liability: \$100,000.
- Fire Legal Liability: \$100,000.

Acknowledged:
Port (P):
Assignee (A):

[Handwritten signatures]

Special Provisions

ASSIGNEE ACKNOWLEDGES AND AGREES THAT THE SPECIFIC PROVISIONS INITIALED BELOW SHALL BE AND ARE A PART OF THE ASSIGNMENT.

PORT
 ASSIGNEE

PREFERENTIAL NON-EXCLUSIVE WHARF ASSIGNMENT/SECONDARY ASSIGNMENT/TEMPORARY WHARF ASSIGNMENT

a) Except with prior written consent of the Executive Director, Assignee's use of this assigned space, area or facility shall be limited to the use prescribed in Item No. 10115 of Port of Oakland Tariff No. 2-A. Assignee shall be responsible for the delivery to the Port of the manifests and statements required by Item No. 05110 of Port of Oakland Tariff No. 2-A. Applicant agrees to comply with applicable provisions of Section X-A and in particular item 10105 of Port of Oakland Tariff No. 2-A, including without limitation responsibility for repair and replacement of Fender Piles and Fender System.

b) The Assignee agrees to pay all charges as required by Items 02135 and 02140 of Port of Oakland Tariff No. 2-A. The Assignee further guarantee that any vessel at the wharf that is authorized by Assignee to berth thereat, is not prohibited by the terms of any charter party, agreement of sale, or other restrictions, from incurring a lien for any charges assessed against such vessel.

PORT
 ASSIGNEE

SPACE ASSIGNMENT

a) Assignee agrees that the assigned space or facility shall be used only to assemble, distribute, store and handle cargo or merchandise prior to or subsequent to carriage by water and movement through the marine terminal area and for the performance of such other related activity as may be necessary. Assignee agrees to pay to the Port all tariff charges as required by Items 02135 and 02140 of Port of Oakland Tariff No. 2-A.

PORT

WHARF FACILITIES AND CONTAINER CRANE ASSIGNMENT

ASSIGNEE

a) This assignment permits Assignee to arrange for terminal services at a Port owned facility and Assignee, whether as owner or agent of the vessel, hereby agrees to pay to the Port all applicable wharfage, dockage, wharf demurrage, wharf storage and crane charges and other applicable charges and shall be subject to all other rules and regulations in effect in the Port of Oakland Tariff No. 2-A. Assignee guarantees that each such vessel is not prohibited by the terms of any charter party, agreement of sale, or other restrictions, from incurring a lien for any of the above named obligations.

b) Assignee agrees to submit to the Port all information required by Item 051110 of Tariff No. 2-A and comply with all other applicable provisions in Sections IX, X-A and X-B of this tariff.

PORT

TEMPORARY WHARF ASSIGNMENT (NON-OPERATIVE FACILITY)

ASSIGNEE

a) Assignee hereby agrees to pay all dockage charges, to be subject to all other applicable charges, rules and regulations in effect in the Port of Oakland Tariff No. 2-A and to pay any and all other claims whatsoever contracted for or damages caused by said vessel, irrespective of Assignee's own negligence. Assignee guarantees that the above vessel is not prohibited by the terms of any charter party, agreement of sale or other restrictions, from incurring a lien for any of the above named obligations.

b) If any vessel berthed at the Port's facilities pursuant to this assignment shall sink alongside, become submerged in whole or in part, or be otherwise unseaworthy, or should Assignee fail, neglect or refuse to remove such vessel from the berth assigned hereby and from the Port area, the Port may, upon first giving Assignee seven (7) days written notice by U.S. mail to the address mentioned herein, remove said vessel from the assigned berth and from the Port area, and may, in the discretion of the Port, berth the same at another location or destroy the same. Assignee agrees to pay to the Port upon demand the cost of such removal, storage or destruction. Applicant agrees to comply with applicable provisions of Section X-A and in particular item 20205 of Port of Oakland Tariff No. 2-A, including without limitation responsibility for repair and replacement of Fender Piles and Fender System.

c) This assignment is for a single berthing of a vessel, on a ship-by-ship basis.

PORT

CRANE ASSIGNMENT (PREFERENTIAL OR SECONDARY USE)

ASSIGNEE

a) Assignee shall stow and operate the crane at all times in conformance with the manufacturer's instructions and an operations program consistent with said manufacturer's instructions, prepared by Preferential Assignee and approved by the Port's Chief Engineer; provided that the Chief Engineer may direct modifications to said program as a condition of his approval. Assignee shall have qualified crane operators handling operation of said crane at all times.

b) Preferential Assignee shall at its own cost and expense operate the crane or any substitute crane and maintain and service it so as to keep it in good operating condition, such operations, maintenance and servicing to be in accordance with a maintenance and servicing program consistent with the crane manufacturer's instructions on operations and procedures as contained in the Crane Maintenance Manual and instructions affixed inside the crane cab prepared by Preferential Assignee and approved by the Port's Chief Engineer, provided, that the Chief Engineer may direct modifications to said program as a condition of approval. However, Preferential Assignee shall be entitled to charge for any use by any secondary user of the crane a maintenance charge for such use as provided in Port of Oakland Tariff No. 2-A. such maintenance and servicing program shall include a requirement for immediate spot painting when paint is damaged but Preferential Assignee shall not be responsible for overall painting of the crane. It is understood and agreed that the maintenance responsibility of the Preferential Assignee shall not include replacing major drive components (such as motors and gear reducers) of basic drive systems of fifty or more horsepower or larger when, in the opinion of the Port's Chief Engineer, such repairs or replacements require that the motor or gear reducer be removed from the crane to that gears be removed from the gear reducer, except when such repairs or replacements are necessary because of lack of maintenance or improper crane use.

c) Preferential Assignee shall be responsible for any and all damages, repairs or replacements to the assigned crane that become necessary for any reason whatsoever, save and except solely those damages, repairs, or replacements that are caused (1) solely by the active negligence of the Port, (2) by earthquake or other acts of God or acts of third parties not arising out of or in the course of Preferential Assignee's operations where Preferential Assignee's negligence or breach of its maintenance or other obligations under this assignment is not a contributing cause, or (3) by latent defect or faulty design or construction and was not caused in part by Preferential Assignee's negligence or breach of its maintenance or other obligations; provided, however, that Secondary Assignee, and not Preferential Assignee, shall be responsible for any and all damages, repairs or replacements to the assigned crane that become necessary for any reason whatsoever during assignment of the crane to the Secondary Assignee, except that Secondary Assignee shall be covered by the same exceptions, (1)-(3) above, as are applicable to Preferential Assignee, and except for ordinary wear and tear and maintenance which shall remain the responsibility of Preferential Assignee.

d) The Port reserves the right, but is not obligated to inspect the crane and to require the appropriate Assignee to correct any dangerous conditions and or any unsafe operating procedures. The Port reserves the right, but is not obligated, to audit the Preferential Assignee's maintenance record and to require Preferential Assignee to improve maintenance and the program of routine servicing and maintenance, but the Port agrees that such right shall be reasonable exercised. Notwithstanding the Port's right to inspect the crane, Preferential Assignee shall diligently inspect the crane during the term of this assignment and the Preferential Assignee and Secondary Assignee shall promptly advise the Port of any condition of or damage to the crane requiring maintenance or repairs for which the Port is responsible pursuant to the provisions of this assignment. Immediately after the Preferential Assignee or Secondary Assignee knows or reasonable should know that said crane is damaged or is in need of repair, it shall notify the Port in order that the Port be able to undertake such timely investigations that it determines necessary. If notice is required to be given at other than during Port business hours or on a weekend or holiday it may be given by telephone to Port employees pursuant to a list provided by the Port. In the event that the appropriate Assignee does not notify the Port within a reasonable period of time, in no event exceed 12 hours, such Assignee shall in all cases repair said crane at its sole cost and expense.

e) Should Preferential Assignee fail to provide any required maintenance or servicing for the crane, the Port shall have the option to provide the same if Preferential Assignee fails to do so after receiving three (3) days notice from the Port and Preferential Assignee shall immediately reimburse the Port for the cost thereof, including the Port's administrative overhead. The provision of such maintenance or servicing by the Port shall in no event be construed as a waiver of the duty of Preferential Assignee to provide such maintenance and servicing as herein provided.

f) The Port shall not be liable for, and Assignee agrees to defend, indemnify and save harmless the Port from any and all claims, liabilities, costs and expenses for delay and other consequential damages arising out of or caused by a breakdown of the crane or the crane being out of service for any reason whatsoever, irrespective of negligence of Assignee. In instances in which the Port's negligence causes or contributes to the cause of any such liability as hereinabove set forth Assignee's obligation to exculpate or indemnify and hold harmless the Port pursuant to this item shall be limited to that portion of the liability, on a percentage basis which is not attributable to the Port's negligence.

g) Assignee agrees at all times to have qualified crane operators operating the crane(s), to conform to all operating procedures set forth in the manufacturer's Crane Maintenance Manual and the instructions affixed inside the crane cab and to comply with all of the provisions of Item No. 09120 of Port of Oakland Tariff No. 2-A. Hourly rates payable to the Port pursuant to said Port of Oakland Tariff No. 2-A will be in accordance with the provisions of Section IX of Port of Oakland Tariff No. 2-A except where contrary provisions of any other Container Crane Agreement are applicable in which event said latter provisions shall apply. Assignee further agrees to submit a report for billing purposes in a form satisfactory to the Port of hours the crane(s) is used.

Exhibit B

BILLING ADDRESS 2505 BATAAN AVE.				
CITY OAKLAND		State CA	Zip 94607	
SECTION A: TYPE AGREEMENT				
<input type="checkbox"/> PREFERENTIAL NON EXCLUSIVE WHARF ASSIGNMENT	<input checked="" type="checkbox"/> SPACE ASSIGNMENT		<input type="checkbox"/> VESSEL BERTH RESERVATION	
<input type="checkbox"/> SECONDARY WHARF ASSIGNMENT	<input type="checkbox"/> TEMPORARY WHARF ASSIGNMENT BERTHING OF NON-OPERATIVE VESSEL		<input type="checkbox"/> CONTAINER CRANE ASSIGNMENT (SECONDARY USE)	
<input type="checkbox"/> SECONDARY WHARF ASSIGNMENT (FACILITY/VSL OPERATIONAL)	<input type="checkbox"/> USE OF NON-OPERATIVE FACILITY		<input type="checkbox"/> PREFERENTIAL CONTAINER CRANE ASSIGNMENT	
THIS ASSIGNMENT IS SUBJECT TO ALL APPLICABLE RULES AND REGULATIONS OF PORT OF OAKLAND TARIFF NO. 2-A				
SECTION B: DESCRIPTION OF AREA/ASSIGNEE INFORMATION (Complete all applicable information)				
VESSEL	VOYAGE	LOA	ETA	ETD
VESSEL OWNER/LINE	BERTH DESIRED			
VESSEL CHARTERER				
TO LOAD (Commodity Type and Amount/No. of Containers)		TO DISCHARGE (Commodity Type and Amount/No. of Containers)		
TERMS OF AFFREIGHTMENT		TERMS OF AFFREIGHTMENT		
AGENCY FIRM		AUTHORIZED INDIVIDUAL		
CONTAINER CRANE DESIRED		CRANE LOCATION		
REASON AREA REQUIRED OFFICE SPACE, TRUCKING YARD				
LOCATION OF WHARF, WHARF AREA, SPACE, OR FACILITY DESIRED OAB WEST BLDG. 7D, STPA OAB WEST				
TYPE OF AREA	SQ. FT/MONTH	RATE	AMOUNT	CALCULATIONS/REMARKS
LAND:				
Unpaved	x	\$0.100	=	\$0.00
Rocked	x	\$0.122	=	\$0.00
Rocked/Lights/Fencing	x	\$0.139	=	\$0.00
Paved	VARIABLE	\$0.148	=	\$0.00
Paved/Lights/Fencing	x	\$0.181	=	\$0.00
TRUCK or RAIL				
DOCK FACILITIES:				
Roofed/Doors/Levelers	x	\$0.480	=	\$0.00
Roofed/Doors/No Levelers	x	\$0.380	=	\$0.00
Roofed/No Doors/No Levelers	x	\$0.280	=	\$0.00
Platforms Only	x	\$0.180	=	\$0.00
WAREHOUSE SPACE:				
First Floor Level	x	\$0.290	=	\$0.00
BONDED STORAGE SPACE:				
First Floor Level	x	\$0.300	=	\$0.00
OFFICE SPACE, N.O.S.:				
Non-Air Conditioned	VARIABLE	\$0.950	=	\$0.00
Air Conditioned	x	\$1.090	=	\$0.00
UTILITIES (Cost Plus 5%):	x		=	
MONTHLY DOCKAGE:	x		=	
MISCELLANEOUS (Identify):	x		=	
PRORATE FOR 30 DAYS		TOTAL AMOUNT PER PERIOD		0.00
SUMMARY OF CHARGES PER PERIOD OF USE				
Note: Charges specified in Assignment are subject to latest revisions of the Port of Oakland Tariff No. 2-A upon the effective date of such revisions. Pursuant to Item 10155 of Port of Oakland Tariff No. 2-A, Space Assignment rates do not include charges for utilities (water, electricity or telephone).				
SECTION C: APPROVAL				
Applicant hereby agrees to comply with the Rates, Rules, Regulations and Conditions of Port of Oakland Tariff No. 2-A and with the attached General/Special provisions of this assignment.		Certificate of Insurance on File with Port		
[Signature]		[Signature] Jacqueline Chow for Andrew Thomas Signature of Port Risk Management Office Date 11/11		

Port of Oakland.

Assignee shall keep the assigned space, area, facility or crane free from any liens arising out of any work performed, materials furnished, or obligations incurred by Assignee.

Notices to be given to Assignee may be given in writing personally or by depositing the same in the United States mail, postage prepaid, and addressed to Assignee at the mailing address set forth on page 1 of the assignment. Notice shall be deemed given upon the date of such deposit in the United States mail.

The space, area, facility or crane hereunder shall not be used in such a manner nor shall business be conducted in thereon which shall in any way conflict with any law, ordinance, rule or regulation affecting the occupancy or use of the assigned space, area, facility or crane and failure to abide by any such law, ordinance, rule or regulation shall be deemed a violation of a condition of this agreement.

Assignee shall, at all times, at Assignee's sole cost, keep and maintain said space, area, facility or crane and every part thereof, including any glazing pavement, paved surfaces, and interiors and exteriors of such facilities in good and sanitary condition except for any waivers the Executive Director may extend in writing. Assignee shall, at its sole cost, from time to time as it may become necessary, promptly repair or restore any and all improvements so as to maintain the space, area, facility or crane in as good a condition as they were on the date of commencement of this assignment. However, the need for said repair or restoration may have arisen during, but not limited to, damages caused by vessels serving the assigned facility. The Port shall, however, except as otherwise expressly provided in this assignment, not be responsible for repair or restoration if Assignee satisfactorily establishes that repair or restoration is: (1) necessary on account solely of the Port's negligence; or (2) where Assignee's negligence or breach of its maintenance responsibility or other obligations under this assignment is not a contributing cause and (a) necessary on account of earthquake or other acts of God, or (b) in the case of structural items, such as roofs, walls, foundations, or paving, it is necessary on account of elements or reasonable wear and tear, or (c) it is necessary on account of acts of third parties not arising out of or in the course of Assignee's operations; or (3) necessary on account of latent defect or faulty design or construction not caused in part by Assignee's negligence; or (4) (except for cranes) is covered by a Port fire and extended coverage insurance policy, but solely to the extent and in the amount that such damages may be actually covered by a fire and extended coverage insurance policy covering risks with such deductibles that the Port may in its sole discretion carry, and Assignee shall be responsible for any such uninsured loss provided that as to any uninsured loss the Port may be responsible under (1) - (3) of this Paragraph 6.

All of the covenants and conditions of this assignment shall, except as otherwise specifically provided in this assignment, apply to and bind the heirs, successors, administrators and assigns of all of the parties hereto, and all of the parties hereto shall be jointly and severally liable hereunder.

Use of Port facilities or services is conditioned upon satisfactory assurance of the Executive Director that applicable charges will be paid when due. All charges are due when incurred or on completion of service or use. Payment terms are cash and payment may be required in advance unless Port customer has established creditworthiness or has posted acceptable adequate security (Pursuant to Port of Oakland Tariff No. 2-A Item Nos. 02130, 02135, 02140 and 02145).

This assignment of Port Area is subject to provisions relating to the handling, transportation or storage of toxic materials in Item 02210 Port of Oakland Tariff NO. 2-A.

This assignment of Port Area is subject to International Maritime Organization (IMCO or IMO) regulations and Hazardous Cargo permits issued by the Executive Director as provided in Port of Oakland Tariff No. 2-A, Item 03105 through 03190. Assignee shall agree to and shall comply with all of the terms and conditions that may be specifically set forth in any issued permit.

Except as otherwise provided, Assignee shall, not later than the date of the commencement of the term of this assignment; deposit with the Port and during the term of this assignment shall maintain with the Port a deposit in the sum of _____

The above deposit will be retained by the Port as a performance deposit and will be returned to Assignee at the termination of assignment hereunder or under any renewal of this assignment hereof only if said performance deposit or portions thereof are not required to pay the cost of the following restoration, cleaning and maintenance of said space, area, facility or crane and every part thereof to restore them to the condition pursuant to Paragraph 6 above; repair of any damage to the premises caused by Assignee's negligence; replacement of any improvements which are the property of the Port pursuant to Paragraph 2 below "IMPROVEMENTS" during the term of this assignment; payment of any outstanding charges incurred by Assignee to the Port pursuant to any of the provisions of this agreement. In the event the Port is required to utilize said deposit or any portion thereof during the term of this assignment for the purpose herein set forth, Assignee shall deposit with the Port an additional sum sufficient to restore the performance deposit to the amount herein set forth. Said performance deposit or any remaining portion thereof shall be returned to Assignee at the termination of this assignment after deduction of any amounts therefrom for payment of the herein above described charges. The payment of said performance deposit by Assignee shall constitute Assignee's liability to the Port for the payment of charges due the Port by Assignee in excess of the amount of said deposit.

Improvements

Assignee shall not make, nor suffer to be made, any alterations or improvements to the space area, facility or crane assigned (including the installation of any trade fixtures attached to said space area, facility or crane or whose removal may cause injury thereto) without the prior written consent of the Executive Director and any additions thereto. Alterations of, the assigned space, area, facility or crane shall become at once a part of the space, area, facility or crane and belong to the Port of Oakland except that the Executive Director may require Assignee to remove such alterations or improvements upon termination of this assignment at the Assignee's sole cost and expense regardless of whether consent was given, or was not given, by the Executive Director, and, in addition, Assignee shall promptly repair, at Assignee's sole cost and expense, any damage caused by such removal. The Executive Director may waive in writing any or all of the rights hereunder.

Upon termination of this assignment, the Executive Director may, at his option, require that Assignee, at Assignee's own expense, restore the space, area or facility to the same condition that existed when Assignee first took occupancy or possession excepting (unless otherwise provided in this assignment) reasonable wear and tear caused by the elements where Assignee's negligence or breach of its maintenance or other obligations under this Assignment is not a contributory cause, and damage to the Port is responsible for pursuant to Paragraph 6 above of the "Term and General Conditions."

Secondary Use

The parties recognize that in the case of wharf facilities under a preferential assignment, the Executive Director may from time to time require Assignee to permit berthing of others as Temporary or secondary Assignee to be berthed at such facilities when such berthing will not materially affect the operations of the Preferential Assignee (Item No 10120 of Port of Oakland Tariff No2A) in the event (Preferential Assignee shows that any liability, claim, damage, suit or expense arises out of, or is in any way connected with; the use of said premises by such Temporary or Secondary Assignee, and is not caused in whole or in part by the Preferential Assignee's negligence, wrong or omission, the Preferential Assignee shall have no liability therefore any other provisions of this assignment notwithstanding.

NO RELOCATION ASSISTANCE

It is understood and agreed that nothing contained in this assignment shall give the Assignee any right to occupy the assigned premises at any time after expiration of the term of this assignment or its earlier termination and that this assignment shall not create any right in the Assignee for relocation assistance or payment from the Port upon the expiration of the term of this assignment or upon its earlier termination or upon the termination of any holdover tenancy. The Assignee acknowledges and agrees that upon such expiration or termination, it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title I, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) with respect to any relocation of its business or activities upon the expiration of the term of this assignment or upon its earlier termination or upon the termination of any holdover tenancy.

Hold Harmless

Assignee assumes responsibility and liability for injury to or death of any person whomsoever or damage to or destruction of property, including employees and property of the Port of Oakland incident to, arising out of, or caused by Assignee's possession, use or operation of any assigned crane or an assigned space, area or facility, and Assignee shall protect, defend, indemnify and save harmless the Port of Oakland, members of the Board of Port Commissioners, and its officers, agents and employees from and against any and all suits, claims, demands, loss, expenses (including counsel fees) and liability of any nature whatsoever for said injury to or death of persons or damage to or destruction of property, and that may be, in whole or in part, incident to, arise out of, or be caused, directly or indirectly, through Assignee's negligence or otherwise, by the Assignee's possession, use or operation of an assigned crane or an assigned space, area or facility, and the Assignee's possession, use or operation of an assigned crane or assigned space, area or facility shall constitute acceptance and acknowledgment by Assignee of Assignee's liability and obligations. In instances in which the Port's negligence causes or contributes to the cause of any such liability as hereinabove set forth Assignee's obligation to exculpate or indemnify and hold harmless the Port pursuant to this item shall be limited to that portion of the liability, on a percentage basis, which is not attributable to the Port's negligence.

Insurance

Assignee shall maintain in force during the term of this assignment bodily injury liability and property damage insurance, including completed operations, contractual and owned, nonowned and hired automobile coverage with such limits and such other coverages (such as protection and indemnity covering vessels, broad form property damage and third party stevedore liability) as may reasonably be requested from time to time by the Port's Executive Director, but not less than the sum of One Million Dollars (\$1,000,000) combined single limit except that for a container crane assignment limits shall not be less than the sum of Six Million Dollars (\$6,000,000) combined single limit; and Assignee agrees that the Port shall be named as an additional insured under such liability policy or policies. All such policies shall be endorsed with a severability of interests or cross-liability endorsement. A certificate or certificates evidencing such insurance coverage shall be filed with the Secretary of the Board of Port Commissioners prior to the commencement of the term of the assignment, and said certificate shall provide that such insurance coverage shall not be canceled or reduced without at least thirty (30) days prior written notice to the Secretary of said Board. Insurance provided shall be with domestic or London insurers satisfactory to the Executive Director. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the Secretary of said Board. If such coverage is canceled or reduced, Assignee shall, within fifteen (15) days after receipt of written notice from the Port of such cancellation or reduction in coverage, but in no event later than the date of such cancellation or reduction, file with the Secretary of said Board a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Notwithstanding any other provisions of this assignment or Port of Oakland Tariff 2-A, upon failure to so file such certificate, the Executive Director may cancel this assignment with one day's prior written notice.

COVERAGE REQUIRED IN ADDITION TO BODILY INJURY LIABILITY AND PROPERTY DAMAGE (CHECK APPLICABLE BOXES):

- Premises/Operations
- Completed operations
- Products
- Owned, nonowned and hired automobiles
- Contractual liability
- Personal injury
- Broad form property damages
- Independent Contractors
- Stevedore liability
- United States Longshoremen & Harbor Workers Act
- Protection and Indemnity
- Limits required: \$1,000,000
- Workers Compensation & Employers Liability: \$100,000.
- Fire Legal Liability: \$100,000.

Acknowledged:

Port (P):

Assignee (A):

Jacqueline Chow for Audrey Thomas
3/11/04

Special Provisions

ASSIGNEE ACKNOWLEDGES AND AGREES THAT THE SPECIFIC PROVISIONS INITIALED BELOW SHALL BE AND ARE A PART OF THE ASSIGNMENT.

PORT

PREFERENTIAL NON-EXCLUSIVE WHARF ASSIGNMENT/SECONDARY ASSIGNMENT/TEMPORARY WHARF ASSIGNMENT

ASSIGNEE

a) Except with prior written consent of the Executive Director, Assignee's use of this assigned space, area or facility shall be limited to the use prescribed in Item No. 10115 of Port of Oakland Tariff No. 2-A. Assignee shall be responsible for the delivery to the Port of the manifests and statements required by Item No. 06110 of Port of Oakland Tariff No. 2-A. Applicant agrees to comply with applicable provisions of Section X-A and in particular Item 10105 of Port of Oakland Tariff No. 2-A, including without limitation responsibility for repair and replacement of Fender Piles and Fender System.

b) The Assignee agrees to pay all charges as required by items 02135 and 02140 of Port of Oakland Tariff No. 2-A. The Assignee further guarantees that any vessel at the wharf that is authorized by Assignee to berth thereat, is not prohibited by the terms of any charter party, agreement of sale, or other restrictions, from incurring a lien for any charges assessed against such vessel.

PORT

Assignee agrees to submit to the Port all information required by Item 051110 of Tariff No. 2-A and comply with all other applicable provisions in Sections IX, X-A and its tariff.

PORT

TEMPORARY WHARF ASSIGNMENT (NON-OPERATIVE FACILITY)

ASSIGNEE

Assignee hereby agrees to pay all dockage charges, to be subject to all other applicable charges, rules and regulations in effect in the Port of Oakland Tariff No. 2-A and any and all other claims whatsoever contracted for or damages caused by said vessel, irrespective of Assignee's own negligence. Assignee guarantees that the above is not prohibited by the terms of any charter party, agreement of sale or other restrictions, from incurring a lien for any of the above named obligations.

Any vessel berthed at the Port's facilities pursuant to this assignment shall sink alongside, become submerged in whole or in part, or be otherwise unseaworthy, or shall, through negligence, neglect or refuse to remove such vessel from the berth assigned hereby and from the Port area, the Port may, upon first giving Assignee seven (7) days written notice by U.S. mail to the address mentioned herein, remove said vessel from the assigned berth and from the Port area, and may, in the discretion of the Port, berth the vessel at another location or destroy the same. Assignee agrees to pay to the Port upon demand the cost of such removal, storage or destruction. Applicant agrees to conform to all applicable provisions of Section X-A and in particular item 20205 of Port of Oakland Tariff No. 2-A, including without limitation responsibility for repair and replacement of Piles and Fender System.

This assignment is for a single berthing of a vessel, on a ship-by-ship basis.

PORT

CRANE ASSIGNMENT (PREFERENTIAL OR SECONDARY USE)

ASSIGNEE

Assignee shall stow and operate the crane at all times in conformance with the manufacturer's instructions and an operations program consistent with said manufacturer's instructions, prepared by Preferential Assignee and approved by the Port's Chief Engineer; provided that the Chief Engineer may direct modifications to said program as a condition of his approval. Assignee shall have qualified crane operators handling operation of said crane at all times.

Preferential Assignee shall at its own cost and expense operate the crane or any substitute crane and maintain and service it so as to keep it in good operating condition. Operations, maintenance and servicing to be in accordance with a maintenance and servicing program consistent with the crane manufacturer's instructions and procedures as contained in the Crane Maintenance Manual and instructions affixed inside the crane cab prepared by Preferential Assignee and approved by the Port's Chief Engineer, provided, that the Chief Engineer may direct modifications to said program as a condition of approval. However, Preferential Assignee shall be held liable to charge for any use by any secondary user of the crane a maintenance charge for such use as provided in Port of Oakland Tariff No. 2-A. Such maintenance and servicing program shall include a requirement for immediate spot painting when paint is damaged but Preferential Assignee shall not be responsible for overall painting of the crane. It is understood and agreed that the maintenance responsibility of the Preferential Assignee shall not include replacing major drive components (such as motors or reducers) of basic drive systems of fifty or more horsepower or larger when, in the opinion of the Port's Chief Engineer, such repairs or replacements require that the motor or gear reducer be removed from the crane to that gears be removed from the gear reducer, except when such repairs or replacements are necessary because of maintenance or improper crane use.

Preferential Assignee shall be responsible for any and all damages, repairs or replacements to the assigned crane that become necessary for any reason whatsoever, except solely those damages, repairs, or replacements that are caused (1) solely by the active negligence of the Port, (2) by earthquake or other acts of God or acts of parties not arising out of or in the course of Preferential Assignee's operations where Preferential Assignee's negligence or breach of its maintenance or other obligations under this assignment is not a contributing cause, or (3) by latent defect or faulty design or construction and was not caused in part by Preferential Assignee's negligence or breach of its maintenance or other obligations; provided, however, that Secondary Assignee, and not Preferential Assignee, shall be responsible for any and all damages, repairs or replacements to the assigned crane that become necessary for any reason whatsoever during assignment of the crane to the Secondary Assignee, except that such damages, repairs or replacements shall be covered by the same exceptions, (1)-(3) above, as are applicable to Preferential Assignee, and except for ordinary wear and tear and maintenance which shall remain the responsibility of Preferential Assignee.

The Port reserves the right, but is not obligated to inspect the crane and to require the appropriate Assignee to correct any dangerous conditions and or any unsafe operating procedures. The Port reserves the right, but is not obligated, to audit the Preferential Assignee's maintenance record and to require Preferential Assignee to provide maintenance and the program of routine servicing and maintenance, but the Port agrees that such right shall be reasonable exercised. Notwithstanding the Port's right to inspect the crane, Preferential Assignee shall diligently inspect the crane during the term of this assignment and the Preferential Assignee and Secondary Assignee shall promptly advise the Port of any condition of or damage to the crane requiring maintenance or repairs for which the Port is responsible pursuant to the provisions of this assignment. Immediately after the Preferential Assignee or Secondary Assignee knows or reasonable should know that said crane is damaged or is in need of repair, it shall notify the Port in order that the Port be able to undertake such timely investigations that it determines necessary. If notice is required to be given at other than during business hours or on a weekend or holiday it may be given by telephone to Port employees pursuant to a list provided by the Port. In the event that the appropriate Assignee does not notify the Port within a reasonable period of time, in no event exceed 12 hours, such Assignee shall in all cases repair said crane at its sole cost and expense.

If Preferential Assignee fail to provide any required maintenance or servicing for the crane, the Port shall have the option to provide the same if Preferential Assignee fails to do so after receiving three (3) days notice from the Port and Preferential Assignee shall immediately reimburse the Port for the cost thereof, including the Port's administrative overhead. The provision of such maintenance or servicing by the Port shall in no event be construed as a waiver of the duty of Preferential Assignee to provide such maintenance and servicing as herein provided.

The Port shall not be liable for, and Assignee agrees to defend, indemnify and save harmless the Port from any and all claims, liabilities, costs and expenses for delay or consequential damages arising out of or caused by a breakdown of the crane or the crane being out of service for any reason whatsoever, irrespective of negligence. In instances in which the Port's negligence causes or contributes to the cause of any such liability as hereinabove set forth Assignee's obligation to exculpate, defend, indemnify and hold harmless the Port pursuant to this item shall be limited to that portion of the liability, on a percentage basis which is not attributable to the Port's negligence.

Assignee agrees at all times to have qualified crane operators operating the crane(s), to conform to all operating procedures set forth in the manufacturer's Crane Maintenance Manual and the instructions affixed inside the crane cab and to comply with all of the provisions of Item No. 09121 of Oakland Tariff No. 2-A. Hourly rates payable to the Port pursuant to said Port of Oakland Tariff No. 2-A will be in accordance with the provision:

STANDARD TARIFF ASSIGNMENT: WHARF/SPACE

PAGE 6 NOT APPLICABLE:

NAME OF FIRM Oakland Port Services		Phone: 610-553-1701
BILLING ADDRESS 2505 Bataan Avenue Suite A		Fax: 610-663-8115
CITY Oakland		E-Mail: bill@abruck.com
State CA	Zip 94607	

SECTION A: TYPE AGREEMENT

<input type="checkbox"/> PREFERENTIAL NON EXCLUSIVE WHARF ASSIGNMENT	<input checked="" type="checkbox"/> SPACE ASSIGNMENT	<input type="checkbox"/> VESSEL BERTH RESERVATION
<input type="checkbox"/> SECONDARY WHARF ASSIGNMENT	<input type="checkbox"/> TEMPORARY WHARF ASSIGNMENT BERTHING OF NON-OPERATIVE VESSEL	<input type="checkbox"/> CONTAINER CRANE ASSIGNMENT (SECONDARY USE)
<input type="checkbox"/> SECONDARY WHARF ASSIGNMENT (FACILITY/VSL OPERATIONAL)	<input type="checkbox"/> USE OF NON-OPERATIVE FACILITY	<input type="checkbox"/> PREFERENTIAL CONTAINER CRANE ASSIGNMENT

THIS ASSIGNMENT IS SUBJECT TO ALL APPLICABLE RULES AND REGULATIONS OF PORT OF OAKLAND TARIFF NO. 2-A

SECTION B: DESCRIPTION OF AREA/ASSIGNEE INFORMATION (Complete all applicable information)

VESSEL	VOYAGE	LOA	ETA	ETD
VESSEL OWNER/LINE	BERTH DESIRED			
VESSEL CHARTERER				
TO LOAD (Commodity Type and Amount/No. of Containers)	TO DISCHARGE (Commodity Type and Amount/No. of Containers)			
TERMS OF AFFREIGHTMENT	TERMS OF AFFREIGHTMENT			
AGENCY FIRM	AUTHORIZED INDIVIDUAL			
CONTAINER CRANE DESIRED	CRANE LOCATION			
REASON AREA REQUIRED Trucker support offices				
LOCATION OF WHARF, WHARF AREA, SPACE, OR FACILITY DESIRED OAB Bldg R070 Rooms 2, 17, 22, 23 at 2505 Bataan Avenue				

TYPE OF AREA	SQ. FT/MONTH	RATE	AMOUNT	CALCULATIONS/REMARKS
LAND:				
Unpaved	x	\$0.104	=	\$0.00
Rocked	x	\$0.128	=	\$0.00
Rocked/Lights/Fencing	x	\$0.146	=	\$0.00
Paved	x	\$0.163	=	\$0.00
Paved/Lights/Fencing	x	\$0.180	=	\$0.00
TRUCK or RAIL DOCK FACILITIES:				
Roofed/Doors/Levelers	x	\$0.480	=	\$0.00
Roofed/Doors/No Levelers	x	\$0.410	=	\$0.00
Roofed/No Doors/No Levelers	x	\$0.280	=	\$0.00
Platforms Only	x	\$0.190	=	\$0.00
WAREHOUSE SPACE:				
First Floor Level	x	\$0.300	=	\$0.00
BONDED STORAGE SPACE:				
First Floor Level	x	\$0.320	=	\$0.00
OFFICE SPACE, N.O.S.:				
Non-Air Conditioned	874.00	x \$1.000	=	\$874.00
Air Conditioned		x \$1.140	=	\$0.00
UTILITIES (Cost Plus 5%):				
MONTHLY DOCKAGE:		x	=	
MISCELLANEOUS (Identify):		x	=	
PRORATE FOR 30 DAYS		TOTAL AMOUNT PER PERIOD		874.00

Utilities will be billed separately. Possessory interest tax to be billed by Alameda County.

SUMMARY OF CHARGES PER PERIOD OF USE


Note: Charges specified in Assignment are subject to latest revisions of the Port of Oakland Tariff No. 2-A upon the effective date of such revisions. Pursuant to Item 10155 of Port of Oakland Tariff No. 2-A, Space Assignment rates do not include charges for utilities (water, electricity or telephone)

SECTION C: APPROVAL

Applicant hereby agrees to comply with the Rates, Rules, Regulations and Conditions of Port of Oakland Tariff No. 2-A and with the attached General/Special provisions of this assignment.

Certificate of Insurance on File with Port

Signature of Port Risk Management Office/Date

Applicant: Oakland Port Services
By:  Dated: 7/25/05
Type or Print Name and Title of Applicant's Representative:

2-28-05
Application Approved (Date)



Port of Oakland.

Assignee shall keep the assigned space, area, facility or crane free from any liens arising out of any work performed, materials furnished, or obligations incurred by Assignee.

All notices to be given to Assignee may be given in writing personally or by depositing the same in the United States mail, postage prepaid, and addressed to Assignee at the mailing address set forth on page 1 of the assignment. Notice shall be deemed given upon the date of such deposit in the United States mail.

The space, area, facility or crane hereunder shall not be used in such a manner nor shall business be conducted in thereon which shall in any way conflict with any ordinance, rule or regulation affecting the occupancy or use of the assigned space, area, facility or crane and failure to abide by any such law, ordinance, rule or regulation shall be deemed a violation of a condition of this agreement.

Assignee shall, at all times, at Assignee's sole cost, keep and maintain said space, area, facility or crane and every part thereof, including any glazing pavement, paved surfaces, and interiors and exteriors of such facilities in good and sanitary condition except for any waivers the Executive Director may extend in writing. Assignee shall, at its sole cost, from time to time as it may become necessary, promptly repair or restore any and all improvements so as to maintain the space, area, facility or crane in as good a condition as they were on the date of commencement of this assignment. However, the need for said repair or restoration may have arisen during, but not limited to, damages caused by vessels serving the assigned facility. The Port shall, however, except as otherwise expressly provided in this assignment and Tariff No. 2-A be responsible for repair or restoration if Assignee satisfactorily establishes that repair or restoration is: (1) necessary on account solely of the Port's negligence; or (2) where Assignee's negligence or breach of its maintenance responsibility or other obligations under this assignment is not a contributing cause and (a) necessary on account of earthquake or other acts of God, or (b) in the case of structural items, such as roofs, walls, foundations, or paving, it is necessary on account of defects or reasonable wear and tear, or (c) it is necessary on account of acts of third parties not arising out of or in the course of Assignee's operations; or (3) necessary on account of latent defect or faulty design or construction not caused in part by Assignee's negligence; or (4) (except for cranes) is covered by a Port fire and extended coverage insurance policy, but solely to the extent and in the amount that such damages may be actually covered by a fire and extended coverage insurance policy covering risks with such deductibles that the Port may in its sole discretion carry, and Assignee shall be responsible for any such uninsured loss provided that as to any uninsured loss the Port may be responsible under (1) - (3) of this Paragraph 6.

All of the covenants and conditions of this assignment shall, except as otherwise specifically provided in this assignment, apply to and bind the heirs, successors, administrators, assigns of all of the parties hereto, and all of the parties hereto shall be jointly and severally liable hereunder.

Use of Port facilities or service is conditioned upon satisfactory assurance of the Executive Director that applicable charges will be paid when due. All charges are due when billed as they accrue or on completion of service or use. Payment terms are cash and payment may be required in advance unless Port customer has established creditworthiness or has posted acceptable adequate security (Pursuant to Port of Oakland Tariff No. 2-A Item Nos. 02130, 02135, 02140 and 02145)

Assignment of Port Area is subject to provisions relating to the handling, transportation or storage of toxic materials in Item 02210 Port of Oakland Tariff NO. 2-A.

Assignment of Port Area is subject to International Maritime Organization (IMCO or IMO) regulations and Hazardous Cargo permits issued by the Executive Director and listed in Port of Oakland Tariff No. 2-A, Item 03105 through 03190. Assignee shall agree to and shall comply with all of the terms and conditions that may be specified in any issued permit.

Except as otherwise provided, Assignee shall, not later than the date of the commencement of the term of this assignment, deposit with the Port and during the entire term of assignment shall maintain with the Port a deposit in the sum of \$974.00

The deposit will be retained by the Port as a performance deposit and will be returned to Assignee at the termination of assignment hereunder or under any renewal of assignment hereof only if said performance deposit or portions thereof are not required to pay the cost of the following restoration, cleaning and maintenance of said space, area, facility or crane and every part thereof to restore them to the condition pursuant to Paragraph 6 above; repair of any damage to the premises caused by Assignee's negligence; replacement of any improvements which are the property of the Port pursuant to Paragraph 2 below "IMPROVEMENTS" during the term of this assignment; payment of any outstanding charges incurred by Assignee to the Port pursuant to any of the provisions of this agreement. In the event the Port is required to utilize the deposit or any portion thereof during the term of this assignment for the purpose herein set forth, Assignee shall deposit with the Port an additional sum sufficient to restore the performance deposit to the amount herein set forth. Said performance deposit or any remaining portion thereof shall be returned to Assignee at the termination of assignment after deduction of any amounts therefrom for payment of the herein above described charges. The payment of said performance deposit by Assignee shall constitute Assignee's liability to the Port for the payment of charges due the Port by Assignee in excess of the amount of said deposit.

Improvements

Assignee shall not make, nor suffer to be made, any alterations or improvements to the space, area, facility or crane assigned (including the installation of any trade fixtures) to said space, area, facility or crane or whose removal may cause injury thereto) without the prior written consent of the Executive Director and any additions to alterations of, the assigned space, area, facility or crane shall become at once a part of the space, area, facility or crane and belong to the Port of Oakland except that the Executive Director may require Assignee to remove such alterations or improvements upon termination of this assignment at the Assignee's sole cost and expense regardless whether consent was given, or was not given, by the Executive Director, and, in addition, Assignee shall promptly repair, at Assignee's sole cost and expense, any damages caused by such removal. The Executive Director may waive in writing any or all of the rights hereunder.

Upon termination of this assignment, the Executive Director may, at his option, require that Assignee, at Assignee's own expense, restore the space, area or facility to the same condition that existed when Assignee first took occupancy or possession excepting (unless otherwise provided in this assignment) reasonable wear and tear by the elements where Assignee's negligence or breach of its maintenance or other obligations under this assignment is not a contributory cause, and damage to the Port is responsible for pursuant to Paragraph 6 above of the "Term and General Conditions."

Secondary Use

The parties recognize that in the case of wharf facilities under a preferential assignment, the Executive Director may from time to time require Assignee to permit vessels of others as Temporary or Secondary Assignee to be berthed at such facilities when such berthing will not materially affect the operations of the Preferential Assignee. Item No 10120 of Port of Oakland Tariff No. 2A) in the event (Preferential Assignee shows that any liability, claim, damage, suit or expense arises out of, or is in any way connected with, the use of said premises by such Temporary or Secondary Assignee, and is not caused in whole or in part by the Preferential Assignee's negligence, wrong or omission, the Preferential Assignee shall have no liability therefore any other provisions of this assignment notwithstanding

understood and agreed that nothing contained in this assignment shall give the Assignee any right to occupy the assigned premises at any time after expiration of the term of this assignment or its earlier termination and that this assignment shall not create any right in the Assignee for relocation assistance or payment from the Port upon the expiration of the term of this assignment or upon its earlier termination or upon the termination of any holdover tenancy. The Assignee acknowledges and agrees that upon such expiration or termination, it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title I, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) with respect to any relocation of its vessel or activities upon the expiration of the term of this assignment or upon its earlier termination or upon the termination of any holdover tenancy.

Hold Harmless

Assignee assumes responsibility and liability for injury to or death of any person whomsoever or damage to or destruction of property, including employees property of the Port of Oakland incident to, arising out of, or caused by Assignee's possession, use or operation of any assigned crane or an assigned space, area or facility, and Assignee shall protect, defend, indemnify and save harmless the Port of Oakland, members of the Board of Port Commissioners, its officers, agents and employees from and against any and all suits, claims, demands, loss, expenses (including counsel fees) and liability of any nature whatsoever for said injury to or death of persons or damage to or destruction of property, and that may be, in whole or in part, incident to, arise out of, or be caused, directly or indirectly, through Assignee's negligence or otherwise, by the Assignee's possession, use or operation of an assigned crane or an assigned space, area or facility, and the Assignee's possession, use or operation of an assigned crane or assigned space, area or facility shall constitute acceptance and acknowledgment by Assignee of Assignee's liability and obligations. In instances in which the Port's negligence causes or contributes to the cause of any liability as hereinabove set forth Assignee's obligation to exculpate or indemnify and hold harmless the Port pursuant to this item shall be limited to that portion of the liability, on a percentage basis, which is not attributable to the Port's negligence.

Insurance

Assignee shall maintain in force during the term of this assignment bodily injury liability and property damage insurance, including completed operations, contractual and owned, nonowned and hired automobile coverage with such limits and such other coverages (such as protection and indemnity covering vessels, third party property damage and third party stevedore liability) as may reasonably be requested from time to time by the Port's Executive Director, but not less than the sum of One Million Dollars (\$1,000,000) combined single limit except that for a container crane assignment limits shall not be less than the sum of Six Million Dollars (\$6,000,000) combined single limit; and Assignee agrees that the Port shall be named as an additional insured under such liability policy policies. All such policies shall be endorsed with a severability of interests or cross-liability endorsement. A certificate or certificates evidencing such insurance coverage shall be filed with the Secretary of the Board of Port Commissioners prior to the commencement of the term of the assignment, and said certificate shall provide that such insurance coverage shall not be canceled or reduced without at least thirty (30) days prior written notice to the Secretary of said Board. Insurance provided shall be with domestic or London insurers satisfactory to the Executive Director. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the Secretary of said Board. If such coverage is canceled or reduced, Assignee shall, within fifteen (15) days after receipt of written notice from the Port of such cancellation or reduction in coverage, but in no event later than the date of such cancellation or reduction, file with the Secretary of said Board a certificate showing that required insurance has been reinstated or provided through another insurance company or companies. Notwithstanding any other provisions of this assignment or Port of Oakland Tariff 2-A, upon failure to so file such certificate, the Executive Director may cancel this assignment with one day's prior written notice.

COVERAGE REQUIRED IN ADDITION TO BODILY INJURY LIABILITY AND PROPERTY DAMAGE (CHECK APPLICABLE BOXES):

- Premises/Operations
- Completed operations
- Products
- Owned, nonowned and hired automobiles
- Contractual liability
- Personal injury
- Broad form property damages
- Independent Contractors
- Stevedore liability
- United States Longshoremen & Harbor Workers Act
- Protection and indemnity
- Limits required: \$1,000,000
- Workers Compensation & Employers Liability: \$100,000.
- Fire Legal Liability: \$100,000.

Acknowledged:

Port (P):

Assignee (A):

[Handwritten signature]

[Handwritten signature]

Special Provisions

ASSIGNEE ACKNOWLEDGES AND AGREES THAT THE SPECIFIC PROVISIONS INITIALED BELOW SHALL BE AND ARE A PART OF THE ASSIGNMENT.

_____ PORT
 _____ ASSIGNEE
 PREFERENTIAL NON-EXCLUSIVE WHARF ASSIGNMENT/SECONDARY ASSIGNMENT/TEMPORARY WHARF ASSIGNMENT

Except with prior written consent of the Executive Director, Assignee's use of this assigned space, area or facility shall be limited to the use prescribed in Item No. 10115 of Port of Oakland Tariff No. 2-A. Assignee shall be responsible for the delivery to the Port of the manifests and statements required by Item No. 05110 of Port of Oakland Tariff No. 2-A. Applicant agrees to comply with applicable provisions of Section X-A and in particular item 10105 of Port of Oakland Tariff No. 2-A, including without limitation responsibility for repair and replacement of Fender Piles and Fender System.

The Assignee agrees to pay all charges as required by Items 02135 and 02140 of Port of Oakland Tariff No. 2-A. The Assignee further guarantees that the vessel at the wharf that is authorized by Assignee to berth thereat, is not prohibited by the terms of any charter party, agreement of sale, or other arrangements, from incurring a lien for any charges assessed against such vessel.

_____ PORT
 _____ ASSIGNEE
 SPACE ASSIGNMENT

Assignee agrees to submit to the Port all information required by Item 051110 of Tariff No. 2-A and comply with all other applicable provisions in Sections IX, X-A and a tariff.

PORT

TEMPORARY WHARF ASSIGNMENT (NON-OPERATIVE FACILITY)

ASSIGNEE

Assignee hereby agrees to pay all dockage charges, to be subject to all other applicable charges, rules and regulations in effect in the Port of Oakland Tariff No. 2-A and any and all other claims whatsoever contracted for or damages caused by said vessel, irrespective of Assignee's own negligence. Assignee guarantees that the vessel is not prohibited by the terms of any charter party, agreement of sale or other restrictions, from incurring a lien for any of the above named obligations.

Any vessel berthed at the Port's facilities pursuant to this assignment shall sink alongside, become submerged in whole or in part, or be otherwise unseaworthy, or shall, through neglect or refusal to remove such vessel from the berth assigned hereby and from the Port area, the Port may, upon first giving Assignee seven (7) days written notice by U.S. mail to the address mentioned herein, remove said vessel from the assigned berth and from the Port area, and may, in the discretion of the Port, berth the vessel at another location or destroy the same. Assignee agrees to pay to the Port upon demand the cost of such removal, storage or destruction. Applicant agrees to conform to all applicable provisions of Section X-A and in particular Item 20205 of Port of Oakland Tariff No. 2-A, including without limitation responsibility for repair and replacement of Piles and Fender System.

This assignment is for a single berthing of a vessel, on a ship-by-ship basis.

PORT

CRANE ASSIGNMENT (PREFERENTIAL OR SECONDARY USE)

ASSIGNEE

Assignee shall stow and operate the crane at all times in conformance with the manufacturer's instructions and an operations program consistent with said manufacturer's instructions, prepared by Preferential Assignee and approved by the Port's Chief Engineer; provided that the Chief Engineer may direct modifications to said program as a condition of his approval. Assignee shall have qualified crane operators handling operation of said crane at all times.

Preferential Assignee shall at its own cost and expense operate the crane or any substitute crane and maintain and service it so as to keep it in good operating condition. Operations, maintenance and servicing to be in accordance with a maintenance and servicing program consistent with the crane manufacturer's instructions and procedures as contained in the Crane Maintenance Manual and Instructions affixed inside the crane cab prepared by Preferential Assignee and approved by the Port's Chief Engineer, provided, that the Chief Engineer may direct modifications to said program as a condition of approval. However, Preferential Assignee shall be liable to charge for any use by any secondary user of the crane a maintenance charge for such use as provided in Port of Oakland Tariff No. 2-A. Such maintenance and servicing program shall include a requirement for immediate spot painting when paint is damaged but Preferential Assignee shall not be responsible for overall painting of the crane. It is understood and agreed that the maintenance responsibility of the Preferential Assignee shall not include replacing major drive components (such as motors, reducers) of basic drive systems of fifty or more horsepower or larger when, in the opinion of the Port's Chief Engineer, such repairs or replacements require that the motor or gear reducer be removed from the crane to that gears be removed from the gear reducer, except when such repairs or replacements are necessary because of maintenance or improper crane use.

Preferential Assignee shall be responsible for any and all damages, repairs or replacements to the assigned crane that become necessary for any reason whatsoever, except solely those damages, repairs, or replacements that are caused (1) solely by the active negligence of the Port, (2) by earthquake or other acts of God or acts of parties not arising out of or in the course of Preferential Assignee's operations where Preferential Assignee's negligence or breach of its maintenance or other obligations in this assignment is not a contributing cause, or (3) by latent defect or faulty design or construction and was not caused in part by Preferential Assignee's negligence or breach of its maintenance or other obligations; provided, however, that Secondary Assignee, and not Preferential Assignee, shall be responsible for any and all damages, repairs or replacements to the assigned crane that become necessary for any reason whatsoever during assignment of the crane to the Secondary Assignee, except that such damages, repairs or replacements shall be covered by the same exceptions, (1)-(3) above, as are applicable to Preferential Assignee, and except for ordinary wear and tear and maintenance which shall remain the responsibility of Preferential Assignee.

The Port reserves the right, but is not obligated to inspect the crane and to require the appropriate Assignee to correct any dangerous conditions and or any unsafe operating procedures. The Port reserves the right, but is not obligated, to audit the Preferential Assignee's maintenance record and to require Preferential Assignee to provide maintenance and the program of routine servicing and maintenance, but the Port agrees that such right shall be reasonable exercised. Notwithstanding the Port's right to inspect the crane, Preferential Assignee shall diligently inspect the crane during the term of this assignment and the Preferential Assignee and Secondary Assignee shall promptly advise the Port of any condition of or damage to the crane requiring maintenance or repairs for which the Port is responsible pursuant to the provisions of this assignment. Immediately after the Preferential Assignee or Secondary Assignee knows or reasonable should know that said crane is damaged or is in need of repair, it shall notify the Port in order that the Port be able to undertake such timely investigations that it determines necessary. If notice is required to be given at other than during business hours or on a weekend or holiday it may be given by telephone to Port employees pursuant to a list provided by the Port. In the event that the appropriate Assignee does not notify the Port within a reasonable period of time, in no event exceed 12 hours, such Assignee shall in all cases repair said crane at its sole cost and expense.

If Preferential Assignee fails to provide any required maintenance or servicing for the crane, the Port shall have the option to provide the same if Preferential Assignee fails to do so after receiving three (3) days notice from the Port and Preferential Assignee shall immediately reimburse the Port for the cost thereof, including the Port's administrative overhead. The provision of such maintenance or servicing by the Port shall in no event be construed as a waiver of the duty of Preferential Assignee to provide such maintenance and servicing as herein provided.

The Port shall not be liable for, and Assignee agrees to defend, indemnify and save harmless the Port from any and all claims, liabilities, costs and expenses for delay or consequential damages arising out of or caused by a breakdown of the crane or the crane being out of service for any reason whatsoever, irrespective of negligence. In instances in which the Port's negligence causes or contributes to the cause of any such liability as hereinabove set forth Assignee's obligation to exculpate, defend, indemnify and hold harmless the Port pursuant to this item shall be limited to that portion of the liability, on a percentage basis which is not attributable to the Port's negligence.

Assignee agrees at all times to have qualified crane operators operating the crane(s), to conform to all operating procedures set forth in the manufacturer's Crane Maintenance Manual and the Instructions affixed inside the crane cab and to comply with all of the provisions of Item No. 09121 of Port of Oakland Tariff No. 2-A. Hourly rates payable to the Port pursuant to said Port of Oakland Tariff No. 2-A will be in accordance with the provisions

STANDARD TARIFF ASSIGNMENT: WHARF/SPACE

PAGE 5 NOT APPLICABLE:

NAME OF FIRM OAKLAND MARITIME SUPPORT SERVICES		Phone: 510-868-1005
BILLING ADDRESS 2505 BATAAN AVENUE		Fax: 510-868-1007
CITY OAKLAND		E-Mail: Bill@Abtruck.com
State CA	Zip 94607	

SECTION A: TYPE AGREEMENT

<input type="checkbox"/> PREFERENTIAL NON EXCLUSIVE WHARF ASSIGNMENT	<input checked="" type="checkbox"/> SPACE ASSIGNMENT	<input type="checkbox"/> VESSEL BERTH RESERVATION
<input type="checkbox"/> SECONDARY WHARF ASSIGNMENT	<input type="checkbox"/> TEMPORARY WHARF ASSIGNMENT BERTHING OF NON-OPERATIVE VESSEL	<input type="checkbox"/> CONTAINER CRANE ASSIGNMENT (SECONDARY USE)
<input type="checkbox"/> SECONDARY WHARF ASSIGNMENT (FACILITY/VSL OPERATIONAL)	<input type="checkbox"/> USE OF NON-OPERATIVE FACILITY	<input type="checkbox"/> PREFERENTIAL CONTAINER CRANE ASSIGNMENT

THIS ASSIGNMENT IS SUBJECT TO ALL APPLICABLE RULES AND REGULATIONS OF PORT OF OAKLAND TARIFF NO. 2-A

SECTION B: DESCRIPTION OF AREA/ASSIGNEE INFORMATION (Complete all applicable information)

VESSEL	VOYAGE	LOA	ETA	ETD
VESSEL OWNER/LINE	BERTH DESIRED			
VESSEL CHARTERER				
TO LOAD (Commodity Type and Amount/No. of Containers)	TO DISCHARGE (Commodity Type and Amount/No. of Containers)			
TERMS OF AFFREIGHTMENT	TERMS OF AFFREIGHTMENT			
AGENCY FIRM	AUTHORIZED INDIVIDUAL			
CONTAINER CRANE DESIRED	CRANE LOCATION			
REASON AREA REQUIRED OWNER OPERATOR PUBLIC TRACTOR & CONTAINER STORAGE				
LOCATION OF WHARF, WHARF AREA, SPACE, OR FACILITY DESIRED OAB WEST PARADE GROUND LOT				

TYPE OF AREA	SQ. FT/MONTH	RATE	AMOUNT	CALCULATIONS/REMARKS
LAND:				THE AREA HAS 222 CONTAINER SPACES OF 45 FT. x 11 FT. FOR 495 SQ. FT. EACH, TOTALING 109890 SQ. FT. THE AREA HAS 74 TRACTOR TRUCK SPACES OF 30 FT. x 13 FT. FOR 390 SQ. FT. EACH, TOTALING 28860 SQ. FT. THE TOTAL AREA = 138750 SQ. FT. THE TENANT WILL SUB-LEASE THE STORAGE SPACES TO OWNER OPERATORS AND/OR TRUCKING COMPANIES USING OWNER OPERATORS. THE TENANT WILL BE BILLED THE FIXED AMOUNT MONTHLY. THE TENANT WILL PROVIDE UTILIZATION DOCUMENTATION IN A FORM SPECIFIED BY THE CHIEF WHARFINGER TO THE PORT ON A MONTHLY BASIS. THE TENANT WILL BE ADDING VALUE TO THE PREMESIS AND MAY PASS ON THE COST TO THE SUB-TENANTS. THE PORT OF OAKLAND TARIFF NO. 2A SPACE CHARGES TO THE SUB-TENANT WILL BE \$75.74 FOR A CONTAINER SPACE AND \$68.67 FOR A TRACTOR TRUCK SPACE. THE TENANT WILL HAVE USE OF 40 CONTAINER SPACES AND 8 TRUCK SPACES FREE OF CHARGE IN LIEU OF A MANAGEMENT FEE. THE REMAINING 182 CONTAINER SPACES AND 66 TRACTOR TRUCK SPACES WILL BE SUB-ASSIGNED TO THE OWNER OPERATORS.
Unpaved	x	\$0.104	= \$0.00	
Rocked	x	\$0.128	= \$0.00	
Rocked/Lights/Fencing	x	\$0.148	= \$0.00	
Paved	115,830.00	\$0.153	= \$17,721.89	
Paved/Lights/Fencing	x	\$0.180	= \$0.00	
TRUCK or RAIL DOCK FACILITIES:				
Rocked/Doors/Levelers	x	\$0.480	= \$0.00	
Rocked/Doors/No Levelers	x	\$0.410	= \$0.00	
Rocked/No Doors/No Levelers	x	\$0.280	= \$0.00	
Platforms Only	x	\$0.180	= \$0.00	
WAREHOUSE SPACE:				
First Floor Level	x	\$0.300	= \$0.00	
BONDED STORAGE SPACE:				
First Floor Level	x	\$0.320	= \$0.00	
OFFICE SPACE, N.O.S.:				
Non-Air Conditioned	x	\$1.000	= \$0.00	
Air Conditioned	x	\$1.140	= \$0.00	
UTILITIES (Cost Plus 5%):	x		=	
MONTHLY DOCKAGE:	x		=	
MISCELLANEOUS (Identify):	x		=	
PRORATE FOR 30 DAYS		TOTAL AMOUNT PER PERIOD	17,721.89	

SUMMARY OF CHARGES PER PERIOD OF USE

Note: Charges specified in Assignment are subject to latest revisions of the Port of Oakland Tariff No. 2-A upon the effective date of such revisions. Pursuant to Item 10155 of Port of Oakland Tariff No. 2-A, Space Assignment rates do not include charges for utilities (water, electricity or telephone)

SECTION C: APPROVAL

Applicant hereby agrees to comply with the Rates, Rules, Regulations and Conditions of Port of Oakland Tariff No. 2-A and with the attached General/Special provisions of this assignment.

Applicant: <i>Bill Abtruck</i>	Signature of Applicant's Representative: <i>Bill Abtruck</i>
By: <i>Bill Abtruck</i>	Dated: 3/19/05
Type of Print Name and Title of Applicant's Representative:	

Certificate of Insurance on File with Port

Steve Cole
Signature of Port Risk Management Office/Date

3-10-05
Application Approved (Date)

Richard Adams

1 of Oakland.

Assignee shall keep the assigned space, area, facility or crane free from any liens arising out of any work performed, materials furnished, or obligations incurred by the Assignee.

Notices to be given to Assignee may be given in writing personally or by depositing the same in the United States mail, postage prepaid, and addressed to Assignee at the address set forth on page 1 of the assignment. Notice shall be deemed given upon the date of such deposit in the United States mail.

The assigned space, area, facility or crane hereunder shall not be used in such a manner nor shall business be conducted in thereon which shall in any way conflict with any law, rule or regulation affecting the occupancy or use of the assigned space, area, facility or crane and failure to abide by any such law, ordinance, rule or regulation shall be deemed a violation of a condition of this agreement.

Assignee shall, at all times, at Assignee's sole cost, keep and maintain said space, area, facility or crane and every part thereof, including any glazing pavement covered surfaces, and interiors and exteriors of such facilities in good and sanitary condition except for any waivers the Executive Director may extend in writing. Assignee shall, at its sole cost, from time to time as it may become necessary, promptly repair or restore any and all improvements so as to maintain the space, facility or crane in as good a condition as they were on the date of commencement of this assignment. However, the need for said repair or restoration may have arisen, but not limited to, damages caused by vessels serving the assigned facility. The Port shall, however, except as otherwise expressly provided in this assignment, Assignee shall be responsible for repair or restoration if Assignee satisfactorily establishes that repair or restoration is: (1) necessary on account solely of the Port's activities; or (2) where Assignee's negligence or breach of its maintenance responsibility or other obligations under this assignment is not a contributing cause and (a) it is necessary on account of earthquake or other acts of God, or (b) in the case of structural items, such as roofs, walls, foundations, or paving, it is necessary on account of its or reasonable wear and tear, or (c) it is necessary on account of acts of third parties not arising out of or in the course of Assignee's operations; or (3) necessary on account of latent defect or faulty design or construction not caused in part by Assignee's negligence; or (4) (except for cranes) is covered by a Port fire and extended coverage insurance policy, but solely to the extent and in the amount that such damages may be actually covered by a fire and extended coverage insurance policy covering risks with such deductibles that the Port may in its sole discretion carry, and Assignee shall be responsible for any such uninsured loss provided that as to any uninsured loss the Port may be responsible under (1) - (3) of this Paragraph 6.

All of the covenants and conditions of this assignment shall, except as otherwise specifically provided in this assignment, apply to and bind the heirs, successors and administrators and assigns of all of the parties hereto, and all of the parties hereto shall be jointly and severally liable hereunder.

Use of Port facilities or service is conditioned upon satisfactory assurance of the Executive Director that applicable charges will be paid when due. All charges are due and payable as they accrue or on completion of service or use. Payment terms are cash and payment may be required in advance unless Port customer has established credit or has posted acceptable adequate security (Pursuant to Port of Oakland Tariff No. 2-A Item Nos. 02130, 02135, 02140 and 02145)

Assignment of Port Area is subject to provisions relating to the handling, transportation or storage of toxic materials in Item 02210 Port of Oakland Tariff NO. 2-A.

Assignment of Port Area is subject to International Maritime Organization (IMCO or IMO) regulations and Hazardous Cargo permits issued by the Executive Director as set forth in Port of Oakland Tariff No. 2-A, Item 03105 through 03190. Assignee shall agree to and shall comply with all of the terms and conditions that may be specified in such permit.

Except as otherwise provided, Assignee shall, not later than the date of the commencement of the term of this assignment; deposit with the Port and during the entire term shall maintain with the Port a deposit in the sum of

Such deposit will be retained by the Port as a performance deposit and will be returned to Assignee at the termination of assignment hereunder or under any renewal of this assignment hereof only if said performance deposit or portions thereof are not required to pay the cost of the following restoration, cleaning and maintenance of said space, area, facility or crane and every part thereof to restore them to the condition pursuant to Paragraph 6 above; repair of any damage to the premises caused by Assignee's negligence; replacement of any improvements which are the property of the Port pursuant to Paragraph 2 below "IMPROVEMENTS" during the term of this assignment; and payment of any outstanding charges incurred by Assignee to the Port pursuant to any of the provisions of this agreement. In the event the Port is required to utilize said deposit or any portion thereof during the term of this assignment for the purpose herein set forth, Assignee shall deposit with the Port an additional sum sufficient to restore the performance deposit to the amount herein set forth. Said performance deposit or any remaining portion thereof shall be returned to Assignee at the termination of the assignment after deduction of any amounts therefrom for payment of the herein above described charges. The payment of said performance deposit by Assignee shall not constitute Assignee's liability to the Port for the payment of charges due the Port by Assignee in excess of the amount of said deposit.

Improvements

Assignee shall not make, nor suffer to be made, any alterations or improvements to the space area, facility or crane assigned (including the installation of any trade fixture to said space area, facility or crane or whose removal may cause injury thereto) without the prior written consent of the Executive Director and any additions to or alterations of, the assigned space, area, facility or crane shall become at once a part of the space, area, facility or crane and belong to the Port of Oakland except that the Executive Director may require Assignee to remove such alterations or improvements upon termination of this assignment at the Assignee's sole cost and expense regardless of whether consent was given, or was not given, by the Executive Director, and, in addition, Assignee shall promptly repair, at Assignee's sole cost and expense, any damage caused by such removal. The Executive Director may waive in writing and of all of the rights hereunder.

Upon termination of this assignment, the Executive Director may, at his option, require that Assignee, at Assignee's own expense, restore the space, area or facility to the same condition that existed when Assignee first took occupancy or possession excepting (unless otherwise provided in this assignment) reasonable wear and tear by the elements where Assignee's negligence or breach of its maintenance or other obligations under this Assignment is not a contributory cause, and damage thereto it is responsible for pursuant to Paragraph 6 above of the "Term and General Conditions."

Secondary Use

The parties recognize that in the case of wharf facilities under a preferential assignment, the Executive Director may from time to time require Assignee to permit the use of such facilities by others as Temporary or secondary Assignee to be berthed at such facilities when such berthing will not materially affect the operations of the Preferential Assignee under Item No 10120 of Port of Oakland Tariff No2A) In the event (Preferential Assignee shows that any liability, claim, damage, suit or expense arises out of, or is in any way connected with, the use of said premises by such Temporary or Secondary Assignee, and is not caused in whole or in part by the Preferential Assignee's negligence, wrongful omission, the Preferential Assignee shall have no liability therefore any other provisions of this assignment notwithstanding

understood and agreed that nothing contained in this assignment shall give the Assignee any right to occupy the assigned premises at any time after expiration of the term of this assignment or its earlier termination and that this assignment shall not create any right in the Assignee for relocation assistance or payment from the Port upon the expiration of the term of this assignment or upon its earlier termination or upon the termination of any holdover tenancy. The Assignee acknowledges and agrees that upon such expiration or termination, it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title I, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) with respect to any relocation of its premises or activities upon the expiration of the term of this assignment or upon its earlier termination or upon the termination of any holdover tenancy.

Harmless

Assignee assumes responsibility and liability for injury to or death of any person whomsoever or damage to or destruction of property, including employees or property of the Port of Oakland incident to, arising out of, or caused by Assignee's possession, use or operation of any assigned crane or an assigned area or facility, and Assignee shall protect, defend, indemnify and save harmless the Port of Oakland, members of the Board of Port Commissioners, officers, agents and employees from and against any and all suits, claims, demands, loss, expenses (including counsel fees) and liability of any nature whatsoever for said injury to or death of persons or damage to or destruction of property, and that may be, in whole or in part, incident to, arise out of, or be caused, directly or indirectly, through Assignee's negligence or otherwise, by the Assignee's possession, use or operation of an assigned crane or an assigned area or facility, and the Assignee's possession, use or operation of an assigned crane or assigned space, area or facility shall constitute acceptance of knowledge by Assignee of Assignee's liability and obligations. In instances in which the Port's negligence causes or contributes to the cause of any injury or liability as hereinabove set forth Assignee's obligation to exculpate or indemnify and hold harmless the Port pursuant to this item shall be limited to that portion of the liability, on a percentage basis, which is not attributable to the Port's negligence.

Insurance

Assignee shall maintain in force during the term of this assignment bodily injury liability and property damage insurance, including completed operations, contract and owned, nonowned and hired automobile coverage with such limits and such other coverages (such as protection and indemnity covering vessels, contract property damage and third party stevedore liability) as may reasonably be requested from time to time by the Port's Executive Director, but not in excess of the sum of One Million Dollars (\$1,000,000) combined single limit except that for a container crane assignment limits shall not be less than the sum of One Million Dollars (\$6,000,000) combined single limit; and Assignee agrees that the Port shall be named as an additional insured under such liability policy policies. All such policies shall be endorsed with a severability of interests or cross-liability endorsement. A certificate or certificates evidencing such insurance coverage shall be filed with the Secretary of the Board of Port Commissioners prior to the commencement of the term of the assignment, and said certificate shall provide that such insurance coverage shall not be canceled or reduced without at least thirty (30) days prior written notice to the Secretary of the Board. Insurance provided shall be with domestic or London Insurers satisfactory to the Executive Director. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the Secretary of said Board. If such coverage is canceled or reduced, Assignee shall, within fifteen (15) days after receipt of written notice from the Port of such cancellation or reduction in coverage, but in no event later than the date of such cancellation or reduction, file with the Secretary of said Board a certificate showing that required insurance has been reinstated or provided through another insurance company or companies. Notwithstanding any other provisions of this agreement or Port of Oakland Tariff 2-A, upon failure to so file such certificate, the Executive Director may cancel this assignment with one day's prior notice.

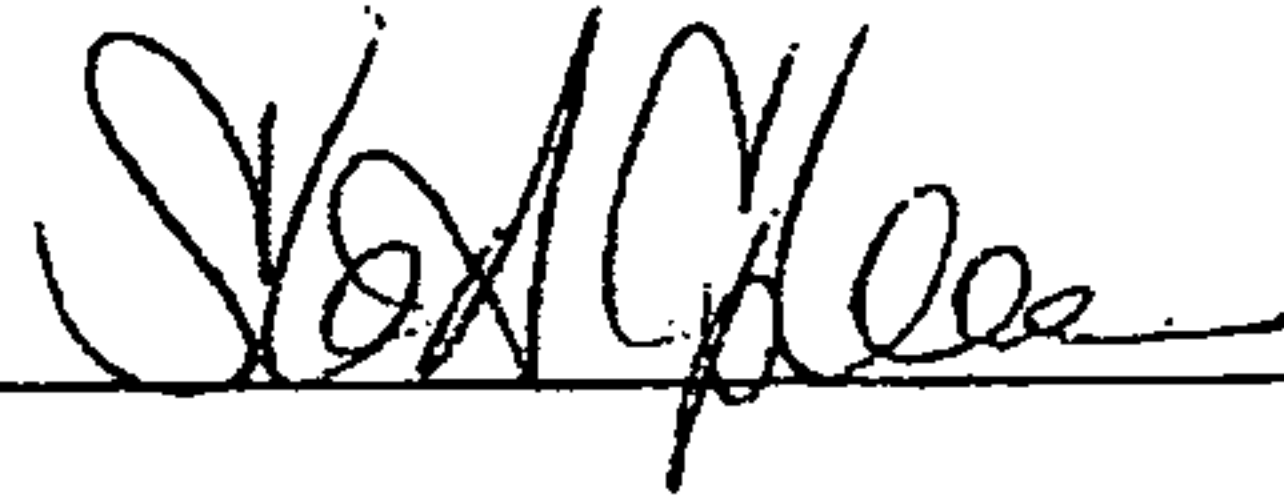
COVERAGE REQUIRED IN ADDITION TO BODILY INJURY LIABILITY AND PROPERTY DAMAGE (CHECK APPLICABLE BOXES):

- Premises/Operations
- Completed operations
- Products
- Owned, nonowned and hired automobiles
- Contractual liability
- Personal injury
- Broad form property damages
- Independent Contractors
- Stevedore liability
- United States Longshoremen & Harbor Workers Act
- Protection and indemnity
- Limits required: \$1,000,000
- Workers Compensation & Employers Liability: \$100,000.
- Fire Legal Liability: \$100,000.

Acknowledged:

Port (P):

Assignee (A):



Special Provisions

ASSIGNEE ACKNOWLEDGES AND AGREES THAT THE SPECIFIC PROVISIONS INITIALED BELOW SHALL BE AND ARE A PART OF THIS ASSIGNMENT.

PORT

PREFERENTIAL NON-EXCLUSIVE WHARF ASSIGNMENT/SECONDARY ASSIGNMENT/TEMPORARY WHARF ASSIGNMENT

ASSIGNEE

Except with prior written consent of the Executive Director, Assignee's use of this assigned space, area or facility shall be limited to the use prescribed in Item 10115 of Port of Oakland Tariff No. 2-A. Assignee shall be responsible for the delivery to the Port of the manifests and statements required by Item 06110 of Port of Oakland Tariff No. 2-A. Applicant agrees to comply with applicable provisions of Section X-A and in particular Item 10105 of Port of Oakland Tariff No. 2-A, including without limitation responsibility for repair and replacement of Fender Piles and Fender System.

Assignee agrees to pay all charges as required by Items 02135 and 02140 of Port of Oakland Tariff No. 2-A. The Assignee further guarantees that any vessel at the wharf that is authorized by Assignee to berth thereat, is not prohibited by the terms of any charter party, agreement of sale, or other arrangements, from incurring a lien for any charges assessed against such vessel.

PORT

SPACE ASSIGNMENT

ASSIGNEE

Assignee agrees to submit to the Port all information required by Item 051110 of Tariff No. 2-A and comply with all other applicable provisions in Sections IX, X-A and X-B of said Tariff.

PORT

TEMPORARY WHARF ASSIGNMENT (NON-OPERATIVE FACILITY)

ASSIGNEE

Assignee hereby agrees to pay all dockage charges, to be subject to all other applicable charges, rules and regulations in effect in the Port of Oakland Tariff No. 2-A and to indemnify the Port and all other claims whatsoever contracted for or damages caused by said vessel, irrespective of Assignee's own negligence. Assignee guarantees that the above is not prohibited by the terms of any charter party, agreement of sale or other restrictions, from incurring a lien for any of the above named obligations.

If a vessel berthed at the Port's facilities pursuant to this assignment shall sink alongside, become submerged in whole or in part, or be otherwise unseaworthy, or should fail, neglect or refuse to remove such vessel from the berth assigned hereby and from the Port area, the Port may, upon first giving Assignee seven (7) days written notice by U.S. mail to the address mentioned herein, remove said vessel from the assigned berth and from the Port area, and may, in the discretion of the Port, berth the vessel at another location or destroy the same. Assignee agrees to pay to the Port upon demand the cost of such removal, storage or destruction. Applicant agrees to comply with all applicable provisions of Section X-A and in particular Item 20205 of Port of Oakland Tariff No. 2-A, including without limitation responsibility for repair and replacement of Piles and Fender System.

This assignment is for a single berthing of a vessel, on a ship-by-ship basis.

PORT

CRANE ASSIGNMENT (PREFERENTIAL OR SECONDARY USE)

ASSIGNEE

Assignee shall stow and operate the crane at all times in conformance with the manufacturer's instructions and an operations program consistent with said manufacturer's instructions, prepared by Preferential Assignee and approved by the Port's Chief Engineer; provided that the Chief Engineer may direct modifications to said program as a condition of his approval. Assignee shall have qualified crane operators handling operation of said crane at all times.

Preferential Assignee shall at its own cost and expense operate the crane or any substitute crane and maintain and service it so as to keep it in good operating condition. Operations, maintenance and servicing to be in accordance with a maintenance and servicing program consistent with the crane manufacturer's instructions or manuals and procedures as contained in the Crane Maintenance Manual and instructions affixed inside the crane cab prepared by Preferential Assignee and approved by the Port's Chief Engineer, provided, that the Chief Engineer may direct modifications to said program as a condition of approval. However, Preferential Assignee shall be liable to charge for any use by any secondary user of the crane a maintenance charge for such use as provided in Port of Oakland Tariff No. 2-A. Such maintenance and servicing program shall include a requirement for immediate spot painting when paint is damaged but Preferential Assignee shall not be responsible for overall painting of the crane. It is understood and agreed that the maintenance responsibility of the Preferential Assignee shall not include replacing major drive components (such as motors and reducers) of basic drive systems of fifty or more horsepower or larger when, in the opinion of the Port's Chief Engineer, such repairs or replacements require that the gear reducer be removed from the crane to that gears be removed from the gear reducer, except when such repairs or replacements are necessary because of lack of maintenance or improper crane use.

Preferential Assignee shall be responsible for any and all damages, repairs or replacements to the assigned crane that become necessary for any reason whatsoever, except solely those damages, repairs, or replacements that are caused (1) solely by the active negligence of the Port, (2) by earthquake or other acts of God or acts of parties not arising out of or in the course of Preferential Assignee's operations where Preferential Assignee's negligence or breach of its maintenance or other obligation in this assignment is not a contributing cause, or (3) by latent defect or faulty design or construction and was not caused in part by Preferential Assignee's negligence or breach of its maintenance or other obligations; provided, however, that Secondary Assignee, and not Preferential Assignee, shall be responsible for any and all damages, repairs or replacements to the assigned crane that become necessary for any reason whatsoever during assignment of the crane to the Secondary Assignee, except the damages, repairs or replacements to the assigned crane shall be covered by the same exceptions, (1)-(3) above, as are applicable to Preferential Assignee, and except for ordinary wear and tear and maintenance which shall remain the responsibility of Preferential Assignee.

Port reserves the right, but is not obligated to inspect the crane and to require the appropriate Assignee to correct any dangerous conditions and or any unsafe operating procedures. The Port reserves the right, but is not obligated, to audit the Preferential Assignee's maintenance record and to require Preferential Assignee to maintain the maintenance and the program of routine servicing and maintenance, but the Port agrees that such right shall be reasonable exercised. Notwithstanding the Port's right to inspect the crane, Preferential Assignee shall diligently inspect the crane during the term of this assignment and the Preferential Assignee and Secondary Assignee shall promptly advise the Port of any condition of or damage to the crane requiring maintenance or repairs for which the Port is responsible pursuant to the provisions of this assignment. Immediately after the Preferential Assignee or Secondary Assignee knows or reasonable should know that said crane is damaged or is in need of repair, it shall notify the Port in order that the Port be able to undertake such timely investigations that it determines necessary. If notice is required to be given at other than during Port business hours or on a weekend or holiday it may be given by telephone to Port employees pursuant to a list provided by the Port. In the event that the appropriate Assignee fails to notify the Port within a reasonable period of time, in no event exceed 12 hours, such Assignee shall in all cases repair said crane at its sole cost and expense.

If Preferential Assignee fails to provide any required maintenance or servicing for the crane, the Port shall have the option to provide the same if Preferential Assignee does not do so after receiving three (3) days notice from the Port and Preferential Assignee shall immediately reimburse the Port for the cost thereof, including the Port's administrative overhead. The provision of such maintenance or servicing by the Port shall in no event be construed as a waiver of the duty of Preferential Assignee to provide such maintenance and servicing as herein provided.

Port shall not be liable for, and Assignee agrees to defend, indemnify and hold harmless the Port from any and all claims, liabilities, costs and expenses for delay and consequential damages arising out of or caused by a breakdown of the crane or the crane being out of service for any reason whatsoever, irrespective of negligence or fault. In instances in which the Port's negligence causes or contributes to the cause of any such liability as hereinabove set forth Assignee's obligation to exculpate, defend, indemnify and hold harmless the Port pursuant to this item shall be limited to that portion of the liability, on a percentage basis which is not attributable to the Port's negligence.

Assignee agrees at all times to have qualified crane operators operating the crane(s), to conform to all operating procedures set forth in the manufacturer's Crane Maintenance Manual and the instructions affixed inside the crane cab and to comply with all of the provisions of Item No. 09120 of Port of Oakland Tariff No. 2-A. Hourly rates payable to the Port pursuant to said Port of Oakland Tariff No. 2-A will be in accordance with the provisions of

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**PROOF OF SERVICE
(CCP §1013)**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On November 9, 2011, I served the following documents in the manner described below:

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION IN LIMINE TO EXCLUDE EVIDENCE EXPECTED TO BE OFFERED AT
TRIAL**

- (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.
- (BY FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.
- (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from jkoffler@unioncounsel.net to the email addresses set forth below.
- (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by United Parcel Service for overnight delivery.

On the following part(ies) in this action:

Mr. Jay Ian Aboudi
The Law Office of Jay Ian Aboudi
1855 Olympic Boulevard, Suite 210
Walnut Creek, CA 94596
(925) 465-5169 (fax)
jay@aboudi-law.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 9, 2011, at Alameda, California.


Jennifer Koffler