

CITY OF LOS ANGELES HARBOR DEPARTMENT
PORT OF LOS ANGELES
NONEXCLUSIVE BERTH ASSIGNMENT AGREEMENT

No. 10-13

Berth 302 (parcel 4)

The General Manager of the Harbor Department of the City of Los Angeles hereby (preferentially) (secondarily) (temporarily) assigns to

whose address is Eagle Marine Services
614 Terminal Way
Terminal Island, CA 90731

(hereinafter called "assignee") that certain wharf and/or wharf premises (hereinafter called "premises") shown on Drawing No. _____ on file in the office of the Harbor Engineer. A copy of said drawing is attached hereto as Exhibit A.

This berth assignment shall be nonexclusive, and shall at all times be subject to the Charter of the City of Los Angeles, to Port of Los Angeles Tariff No. 3 and all amendments, supplements thereto and reissues thereof (hereinafter referred to as "Tariff No. 3"), to all orders, rules and regulations of the Board of Harbor Commissioners (hereinafter referred to as "Board"), to the ordinances of the City of Los Angeles (hereinafter referred to as "City") and the following terms, covenants and conditions:

1. The premises shall be used for the berthing and mooring of vessels owned, operated, serviced or represented by assignee, for the embarking and disembarking of passengers and their baggage, and the assembling, distributing, loading and unloading of goods, wares and merchandise on and from such vessels over, through and upon such premises and from and upon other vessels; provided, however, that the right hereby granted to use the premises for said purposes shall not be exclusive, and whenever the premises, or any part thereof, are not required in whole or in part for the use of assignee for the stated purposes, the General Manager shall have the right to and may make other assignments to any other person, firm or corporation to use such premises, or any part thereof, as provided in Tariff No. 3.

2. Assignee shall be liable for and shall pay to City, upon demand, the actual cost of all damages or repairs, other than normal wear and tear, to property owned by or in the care and custody of City caused, negligently or otherwise, by assignee, its officers, agents, employees, licensees, invitees or permittees, or by vessels owned, operated or represented by it. In the event that City chooses not to make repairs, or in the event that repairs will be delayed for any substantial period, assignee shall pay the estimated cost of repairs; provided, however, that when assignee has made a payment based on an estimate, assignee shall be billed or credited for any variance between the estimated cost and actual cost. Assignee agrees that damage to any part of the wharf or wharf fender system, fixed or floating, shall be considered as damage to the premises.

3. Assignee shall at all times keep and maintain the premises in a safe, clean, wholesome, sanitary and slightly condition and in conformance with all applicable Federal, state, regional, municipal and other laws, ordinances, rules and regulations. The appearance of the premises shall be maintained to the satisfaction of the General Manager.

4. Assignee shall, at its own cost and expense, provide all tackle, gear and labor for the berthing and mooring of vessels at the premises, and shall provide, at its own cost and expense, such appliances and employ such persons as it may require for the handling of passengers, goods, wares and merchandise thereat; provided, however, that nothing contained herein shall prevent assignee from using such appliances as may be installed by City at the premises upon the payment to City of the charges fixed therefor. Assignee shall pay all license and excise fees and occupation taxes covering the business conducted on the premises and all taxes on all property, or interests therein, of assignee in or on the premises. THE PROPERTY INTEREST, IF ANY, WHICH MAY BE CREATED BY THIS ASSIGNMENT MAY BE SUBJECT TO PROPERTY TAXATION AND ASSIGNEE MAY BE SUBJECT TO THE PAYMENT OF PROPERTY TAXES LEVIED ON SUCH INTEREST.

5. Assignee agrees to furnish all statements, manifests, reports and other supporting documents and to pay the total amount of all charges accruing at the premises pursuant to and at or before the time provided in Tariff No. 3.

TRANSMITTAL 2

If assignee has been placed on the credit list in accordance with Tariff No. 3, assignee shall file with the General Manager, on forms provided by the Los Angeles Harbor Department, a statement, verified by the oath of assignee, its manager or duly authorized representative, showing all charges which shall have accrued at the premises for dockage and wharfage (including passenger fees) with reference to each vessel berthing or mooring at the premises. Such statement shall be filed on or before the tenth day following the departure of each vessel.

A similar statement showing all charges which shall have accrued at the premises for wharfage where the departure of a vessel is not involved, and for all wharf demurrage, storage and other charges, if any, during the preceding calendar month shall be filed on or before the tenth day of each month.

6. All books, accounts and other records showing the affairs of assignee with respect to its business transacted at, upon or over the premises shall be maintained locally during the life of this assignment and for twelve (12) months thereafter, and shall be subject to examination, audit and transcription by the General Manager or any person designated by him; and in the event it becomes necessary to make such examination, audit or transcription at any place other than within fifty (50) miles of the premises, then all costs and expenses necessary, or incident to such examination, audit or transcription shall be paid by assignee. Upon request in writing by the General Manager, assignee shall furnish a statement of the total cost and unit cost of performing stevedoring, handling, car loading and car unloading, and any other services rendered in connection with the transportation of goods, wares and merchandise over, through and upon the premises. The statement shall be submitted within thirty (30) days of the request and shall contain such detail and cover such period of time as may be specified in any such request.

7. No assignment, transfer, sublease, gift, hypothecation or grant of control of this assignment, or any of the rights or privileges granted hereunder, in whole or in part, whether voluntary or by operation of law, shall be valid for any purpose without the prior written consent of the General Manager first had and obtained; and any such assignment, transfer, sublease, gift, hypothecation or grant of control or other disposition of this assignment shall be evidenced by a duly executed instrument in writing, a copy of which shall be filed in the office of the General Manager.

For purposes of this section, the term "by operation of law" includes the placement of all or substantially all of assignee's assets in the hands of a receiver or trustee, an assignment by assignee for the benefit of creditors, the adjudication of assignee as a bankrupt, the institution of any proceedings (by assignee or against assignee) under the Bankruptcy Act as the same now exists or under any amendment thereof which may hereafter be enacted or under any other act relating to the subject of bankruptcy wherein assignee seeks to be adjudicated a bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition or reorganization.

8. This assignment is and shall be revocable at any time by the General Manager upon at least thirty (30) days' written notice to assignee, which notice shall specify the date upon which this assignment shall terminate, provided, however, that if this assignment is designated hereinabove as a temporary assignment, it shall be revocable upon 5 (five) days' written notice to assignee which notice shall specify the date upon which this assignment shall terminate. Within the time so specified, the assignee shall cease the use of the premises and shall quit and surrender possession of the premises to City. The right of the General Manager to revoke this assignment is and shall remain unconditional and unrestricted. Neither City, nor any of its boards, officers, agents or employees, shall be liable in damages to the assignee or in any other manner, because of any such revocation.

9. If assignee shall abandon or fail to use the premises for a period of sixty (60) consecutive days, this assignment shall cease and terminate unless assignee has, prior to the expiration of any such period of sixty (60) consecutive days, notified the General Manager in writing that such nonuse is only temporary and shall have obtained the consent in writing of the General Manager to such temporary nonuse. The period during which failure to use the premises is occasioned by war, bona fide strikes not caused by assignee or to which assignee is not a party, riots, civil commotion, acts of public enemies, earthquake, other natural disaster or action of the elements shall be excluded in computing the sixty (60) day period set forth herein.

10. Assignee shall signify its acceptance of this assignment in writing, agreeing to abide and be bound by each and every of its terms and conditions. This assignment shall not be or become effective for any purpose until such written acceptance is filed with the General Manager.

11. Upon the neglect, failure or refusal by assignee to comply with any of the terms or conditions of this assignment, the General Manager may, by written notice to assignee, declare this assignment forfeited, and may thereupon exclude assignee and all other persons, firms or corporations from any further use of the premises, and other facilities and appliances, under this assignment.

12. Assignee shall at all times relieve, indemnify, protect and save harmless City and any and all of its boards, officers, agents and employees, from any and all claims and demands, actions, proceedings, losses, liens,

costs and judgments of any kind and nature whatsoever, including expenses incurred in defending against legal actions, for death of or injury to persons or damage to property, including property owned by or under the care and custody of City, and for civil fines and penalties, that may, in whole or in part, arise from or be caused, directly or indirectly, by:

(a) Any dangerous, hazardous, unsafe or defective condition of, in or on the premises, of any nature whatsoever, which may exist by reason of any act, omission, or neglect of, or by any use or occupation of the premises by, assignee, its officers, agents, employees, licensees, permittees, or invitees;

(b) Any operation conducted upon or any use or occupation of the premises by assignee, its officers, agents, employees, licensees, permittees, or invitees, under or pursuant to the provisions of this assignment or otherwise;

(c) Any act, omission or negligence of assignee, its agents, officers, employees, licensees, permittees, or invitees, regardless of whether any act, omission or negligence of City, its officers, agents or employees, contributed thereto;

(d) Any failure of assignee, its officers, agents or employees, to comply with any of the terms or conditions of this assignment or any applicable Federal, state, regional or municipal law, ordinance, rule or regulation; or

(e) The conditions, operations, uses, occupations, acts, omissions, or negligence referred to in (a), (b), (c) and (d) above, existing or conducted upon or arising from the use or occupation by assignee, its agents, officers, employees, licensees, permittees or invitees, of any other area within the Harbor District, as defined in the Charter of City, including the approaches, channels, turning basins and other waters.

The term "person", as used in this paragraph 12 and paragraph 13 shall include, but not be limited to, officers and employees of assignee.

Assignee hereby waives any right to limit its liability by abandonment of a wreck or otherwise under any Wreck Act or Limitation of Liability Act.

13. Assignee shall procure and maintain at all times during the life of this assignment at its expense the following insurance:

(a) Broad form comprehensive public liability and property damage insurance written by an insurance company authorized to do business in the State of California and rated AAA or better in Best's Insurance Guide, with assignee's normal limits of liability but not less than five hundred thousand dollars (\$500,000) for injury or death to one person and one million dollars (\$1,000,000) for injury or death to more than one person arising out of each accident or occurrence and five hundred thousand dollars (\$500,000) for property damage for each accident or occurrence. Said limits shall be without deduction, provided that the General Manager may permit a deductible amount in those cases where, in his judgment, such a deductible is justified by the net worth of assignee. Such policy shall contain an endorsement substantially as follows:

"(i) Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that the City of Los Angeles, its Board of Harbor Commissioners, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all operations, uses, occupations, acts and activities of the insured under Berth Assignment No. , and under any amendments, modifications, extensions or renewals of said berth assignment regardless of whether such operations, uses, occupations, acts and activities occur on the premises or elsewhere within the Harbor District, and regardless of whether liability is attributable to the insured, or a combination of the insured and additional insured.

"(ii) The policy to which this endorsement is attached shall not be cancelled or reduced in coverage until after the Board and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to P.O. Box 151, San Pedro, California 90733;

"(iii) The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by City is excess coverage;

"(iv) The inclusion of more than one named insured under this policy shall not operate to impair the rights of one insured against another insured and the coverages afforded by this policy shall apply as though separate policies had been issued to each insured. The inclusion of more than one insured shall not, however, operate to increase the limit of liability;

"(v) Notice of occurrences of claims under the policy shall be made to [the name and address of the person to be notified]."

(b) In addition to and concurrently with the aforesaid insurance coverage, assignee shall also secure and maintain, either by an endorsement thereto or by a separate policy, fire legal liability insurance with a minimum limit of one hundred thousand dollars (\$100,000) covering legal liability of assignee for damage or destruction to the works, structures and improvements owned by City; provided, that said minimum limit of liability shall be subject to adjustments by General Manager to conform with the deductible amount of the fire insurance policy maintained by Board, with waiver of subrogation in favor of assignee so long as permitted by Board's fire insurance policy, upon thirty (30) days' prior written notice thereof to assignee at any time during the term of the berth assignment. The provisions of subparagraph (a) of this paragraph 13 relating to the insurer and endorsement shall apply to the fire legal liability coverage, except that City shall not be an additional named insured with respect to such coverage.

(c) Two certified copies of each policy shall be furnished to Board and the form of such policy shall be subject to the approval of the City Attorney of City. The City Attorney may accept certificates evidencing the required insurance coverage in lieu of the policies.

(d) At least sixty (60) days prior to the expiration of each policy, assignee shall furnish to Board a certificate or certificates showing that the policy has been renewed or extended or, if new insurance has been obtained, assignee shall comply with subsection (c) hereof. If assignee neglects or fails to submit copies thereof or certificates as required above, Board may, at its option and at the expense of assignee, obtain such insurance for assignee.

(e) The General Manager, at his discretion, based upon recommendation of independent insurance consultants to City, may require an increase or decrease in the amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to assignee.

14. Assignee shall report in writing to the General Manager, within fifteen (15) days after assignee, its officers or managing agents, have knowledge thereof, any and all accidents or occurrences involving death of or injury to persons or damage in excess of one thousand dollars (\$1,000) to property occurring on said premises or other premises in the Harbor District used or occupied by it without express written authorization of Board or General Manager, which may arise from or be caused by (a) the condition of structures or facilities owned by City on the premises or (b) conditions or occurrences which may give rise to claims against, or liability to others on the part of City referred to in the provisions of clauses (b), (c), (d), or (e) of paragraph 12 hereof. The report shall contain: (1) The name and address of each person involved, (2) a general statement as to the nature and extent of the injuries or damage, (3) the date and hour of the accident or occurrence, (4) the names and addresses of known witnesses, and (5) such other information relative to such accident or occurrence as may be in the possession of or known to assignee, its officers or managing agents.

15. No additions, alterations or repairs shall be made by assignee, its officers, agents or employees, to the premises or to any of the buildings, structures or improvements located thereon and owned by City. No facilities, equipment or appliances, including space heaters, shall be installed or located on the premises or in or about any building, structure or improvement located thereon, until and unless a permit has first been obtained from the Chief Harbor Engineer. When so installed or located, such facilities, equipment or appliances must conform in all respects to all applicable Federal, state or municipal building, fire safety, environmental and other laws, ordinances, rules and regulations. The provisions of this paragraph requiring that a permit be obtained from the Chief Harbor Engineer shall not apply to office equipment and furniture. A permit from the Chief Harbor Engineer shall not be required for cargo, cargo-handling equipment or rolling equipment of assignee if assignee has a valid cargo-handling permit issued by the General Manager.

16. Upon acceptance of this assignment assignee shall file with the General Manager a statement in writing containing the names of all vessels represented by assignee which it anticipates will be berthing or mooring at the premises, together with the names and addresses of the persons, firms or corporations owning or operating said vessels, and shall annually file with the General Manager supplemental statements in writing showing any deletions from or additions to such statement.

17. Unless otherwise provided for herein, assignee shall pay all charges for services furnished to the premises or used in connection with its occupancy, including but not limited to heat, gas, power, telephone, water, light and janitorial services, and pay all deposits, connection fees, charges and meter rentals required by the supplier of any such service, including City.

18. The General Manager and any duly authorized representatives shall have the right to enter upon the premises and improvements constructed by assignee at any and all reasonable times during the term of this assignment for the purpose of determining compliance with its terms and conditions or for any other purpose incidental to the rights of City. The right of inspection reserved hereunder shall impose no obligation upon City to make inspections to ascertain the condition of the premises and shall impose no liability upon City for failure to make such inspections. By reserving the right of inspection, City assumes no responsibility or liability for loss or damage to the property of assignee or property under the control of assignee whether caused by fire, water or other causes, nor does City assume responsibility for any shortages of cargo handled by assignee at the premises.

19. Assignee shall not erect or display, or permit to be erected or displayed, on the premises, or upon works, structures and improvements made by assignee, any advertising matter of any kind, including signs, without the prior written consent of General Manager. Assignee shall post, erect and maintain on the premises such signs as General Manager may direct.

20. This assignment is granted pursuant to an application filed by assignee with the General Manager. If the application or any of the attachments thereto contain any material misstatement of fact, the General Manager may cancel this assignment.

21. Assignee agrees not to discriminate in its employment practices against any employee or applicant for employment because of the applicant's race, religion, national origin, ancestry, sex, age or physical handicap. All subcontracts awarded under or pursuant to this assignment shall contain this provision.

22. It is hereby understood and agreed that the parties to this assignment have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of the Harbor Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this assignment. Notwithstanding any other provision of this assignment, it is further understood and agreed that if such a financial interest does exist at the inception of this assignment, the General Manager may immediately terminate it by giving written notice thereof.

23. If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of or based upon this assignment, including but not limited to the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to recovery of its costs and reasonable attorneys' fees, including the reasonable value of the services rendered by the Office of the City Attorney or house counsel of assignee, if any.

24. In all cases where written notice is to be given under this assignment, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to City shall be addressed to General Manager, Los Angeles Harbor Department, P. O. Box 151, San Pedro, California 90733, and notice to assignee shall be addressed to it at the address set forth hereinabove. Nothing herein contained shall preclude or render inoperative service of such notice in the manner prescribed by law.

25. Assignee hereby irrevocably appoints The Prentice-Hall Corporation System, Inc., at 5225 Wilshire Boulevard, Los Angeles, California 90036, as its agent for the purpose of service of process in any suit or proceeding which may be instituted in any court of the State of California or in any Federal court in said State by the City which arises out of or is based upon this assignment, and delivery to such agent of a copy of any process in any such action shall constitute valid service upon assignee. It is further expressly agreed, covenanted and stipulated that if for any reason service of such process upon such agent is not possible, then in such event assignee may be served with such process in or out of this State in any manner authorized by the California Code of Civil Procedure. It is further expressly agreed that assignee is amenable to the process so served, submits to the jurisdiction of the court so acquired, and waives any and all objection and protest thereto. All costs in connection with such appointment shall be borne by City.

26. No waiver by either party at any time of any of the terms, conditions, covenants of this assignment shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the proper party.

27. Any default in assignee's obligation to make payments to City under the terms of any other berth assignment, lease, permit or other agreement, when such default involves the sum of five hundred dollars (\$500) or more, shall constitute a default on the part of assignee with respect to this assignment.

28. The following numbered paragraphs, to wit: _____, are deleted and are not to be considered as constituting a part of this assignment, and they are so marked.

29. There is attached to this assignment an addendum consisting of numbered paragraphs 30 to _____, inclusive, the provisions of which paragraphs are made a part of this assignment as though set forth herein in full. [If no addendum is attached, this paragraph 29 shall be deleted, and so marked.]

Effective _____, 20 ____.

CITY OF LOS ANGELES HARBOR DEPARTMENT


General Manager

ACCEPTANCE

The undersigned assignee hereby accepts the foregoing assignment and agrees to abide and be bound by and to observe each and every of the terms and conditions thereof, including those set forth in the addendum, if any, and excluding those marked as being deleted. Assignee acknowledges that it has received a copy of Tariff No. 3, has read it, and agrees to be bound by all of its terms and conditions.

Dated: May 18, 20 10.

(SEAL)

Jack Cuthbert
Assignee
Jack Cuthbert
Port Manager

By _____
President

Attest: _____
Secretary

Approved as to Form

_____, 20 ____

CARMEN A. TRUTANICH, City Attorney

By _____

MUTUAL TERMINATION

It is mutually agreed that this assignment is revoked and shall no longer have any force or effect from and after _____, 20 ____.

CITY OF LOS ANGELES HARBOR DEPARTMENT

General Manager

Assignee

By _____
President

Addendum to Temporary Berth Assignment No.

Between the City and

30. Assignee understands that City has adopted Tariff No. 4 which supercedes Tariff No. 3 and that all references in this temporary assignment to Tariff No. 3 shall be deemed to refer to Tariff No. 4.

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SUPPLEMENT NO. 1 TO
NONEXCLUSIVE PREFERENTIAL BERTH ASSIGNMENT NO. 10-13

SPACE ASSIGNMENT

Eagle Marine Services

Assignee is hereby granted a Space Assignment to use the following designated area on the premises described in the abovementioned Berth Assignment, to wit:

1,318,996.8 square feet (30.28 acres) of uncovered, paved land area located off of Earle Street for the purpose of storing and operating containers and chassis.

(Map attached)

All rates subject to Tariff No. 4, Item 810, at \$0.17 per square foot per 30 day period.

This Space Assignment shall begin on 6/4/2010 and continue for a minimum of twenty-nine (29) consecutive days thereafter, unless cancelled by the Executive Director upon five days' prior notice in writing to assignee. Either the Executive Director or assignee may cancel this Space Assignment at any time after thirty (30) days from its effective date by giving to the other party five (5) days prior written notice.

This Space Assignment is a supplement to and a part of the abovementioned Berth Assignment and shall be held by assignee subject to the provisions of Port of Los Angeles Tariff No. 4 as amended, and all of the terms, conditions and provisions contained in the abovementioned Berth Assignment.

Dated: May 18, 2010

CITY OF LOS ANGELES HARBOR DEPARTMENT

BY: 
Executive Director

RECOMMENDED BY:


Chief Wharfinger

The undersigned assignee hereby accepts the foregoing Space Assignment and agrees to abide and be bound by and to observe each and every of the terms and conditions thereof.


Assignee

