

**ELEVENTH AMENDMENT TO  
PERMIT NO. 733  
FENIX MARINE SERVICES, LTD.**

Permit No. 733, as amended, between the CITY OF LOS ANGELES, a municipal corporation acting by and through its Board of Harbor Commissioners ("City"), and EAGLE MARINE SERVICES, LTD. ("Tenant"), is hereby amended an eleventh time as follows:

1. Name Change of, and Assumption of Rights, Duties, Liabilities and Obligations by, Tenant. The name of the "Tenant," as defined in the Agreement, hereby is changed from Eagle Marine Services, Ltd., to Fenix Marine Services, Ltd. In consideration of the benefits bestowed by this Eleventh Amendment, Fenix Marine Services, Ltd. assumes each and every of the rights, duties, liabilities and obligations under the Agreement which arose prior to the effective date of this Eleventh Amendment.
2. Section 2(b). Section 2(b) is hereby deleted in its entirety, along with Exhibit "A-3" of the Agreement referenced in such Section 2(b), and is hereby replaced with the following provision:

"(b) Description. The premises subject to this Agreement consist of parcel numbers 1, 2, 3, 4, 6, 7 and 8, including Berths 302, 303, 304, and 305 (which berths in the aggregate measure four thousand sixteen and thirty-three hundredths (4,016.33) feet in length, and backlands area which measures two hundred ninety-two (292) wharf and backland acres, including rail and other improvements ("Premises"), and consist, for purposes of Section 4, of three areas: a "MAG Area" of two hundred sixty-one and three hundredths (261.03) acres consisting of parcel numbers 1, 2 and 3; a "Non-MAG Area" of thirty and twenty-eight hundredths (30.28) acres consisting of parcel number 4; and an "Ancillary Area," consisting of sixty-nine hundredths (.69) acres of land (parcel numbers 6, 7 and 8). Notwithstanding any of the other provisions of this Agreement, either City or Tenant may delete parcel numbers 6, 7, and/or 8 of the Ancillary Area, or each of them, from the Premises upon not less than thirty (30) days' written notice from one to the other, in which case notice by City shall be provided by Executive Director, and that such deletions are subject to Tenant's prior compliance with the provisions of Section 10 and full restoration pursuant to Sections 10(b) and 10(c) to the conditions they were in on Tenant's first occupancy on July 17, 2002 as to parcel number 6, December 23, 2004 as to parcel number 7, and May 21, 2007 as to parcel number 8. Such deletion(s) shall become effective on the date Executive Director provides written notice to Tenant of Tenant's compliance with Section 10 as to all deleted parcels, and any other applicable provisions of this Agreement. Any such deletion is not intended to and shall not cancel, waive or otherwise alter any rights, requirements, duties or obligations which may exist between City and Tenant in previous entitlements issued with respect to parcel numbers 6, 7 and 8.

For compensation purposes, such deletion shall become final upon the date Executive Director provides such written notice. Such parcels and areas (including the MAG Area, Non-MAG Area, and Ancillary Area (including parcel numbers 6, 7 and 8)) are delineated and more particularly described on Drawing No. 1-1993-2, Revision 3, which drawing is on file in the office of the Chief Harbor Engineer of the Harbor Department of City ("Harbor Engineer"), which in turn is attached hereto as Exhibit "A-4." The Premises shall include the City Improvements, and all other structures owned by or under the control of the Board within said parcels which are made available for Tenant's use, whether on or below the surface, and such structures as City may construct for Tenant. Tenant's use and occupancy of any lands covered by Revocable Permit Nos. 02-05 and 04-08, of which Tenant acknowledges possessing true and correct copies, shall have ceased or shall cease (without waiving, releasing, altering or affecting any right or obligation of Tenant or City), and Tenant's use and occupancy of such lands, and rights and obligations thereto, shall be pursuant to this Agreement."

3. Section 3(a). Section 3(a) is deleted in its entirety and replaced as follows:

"(a) Permitted Uses. Tenant shall have preferential use of the Premises and the improvements situated thereon for the docking and mooring of vessels owned, operated, chartered or space chartered by Tenant or its rationalization partners, or vessels of Tenant's customers or invitees, and for the receiving, assembling, distributing, loading and unloading, storing, transporting and delivering of goods, containers, container handling and other terminal equipment on and from such vessels over, through and upon such Premises and from and upon other vessels, for operation of an intermodal rail container transfer facility, and for purposes incidental and related to the operation of a container terminal. The uses permitted by this Section include roll-on, roll-off, neo-bulk, break-bulk and other uses which support the vessel operations of Tenant's invitees and which are not incompatible with the use of the Premises as a container terminal. A portion of the Premises not to exceed twenty-five (25) acres may be used for receiving, handling and distributing domestic cargo and container equipment moving by rail or motor carriage in U.S. domestic commerce, which cargo and equipment shall not be subject to Tariff No. 4 or its successors. Notwithstanding the foregoing, and subject to the provisions of Section 2(b), as to parcel numbers 6, 7 and 8, only, the foregoing uses are strictly and expressly prohibited and, in their stead, replaced by the following: (i) parcel number 6 shall be used as a non-exclusive right-of-way for the maintenance of an optical character recognition system, only, and for no other use; (ii) parcel number 7 shall be used to accommodate a secondary radiation portal monitor system, which further tests those containers having a positive reading at the primary radiation portal monitor system located at the terminal exit gate, and a guard booth to house U.S. Customs and Border Protection Agency personnel operating the entire radiation portal monitor system located on the Premises, only, and for no other use; (iii) parcel number 8 shall be used for the operation of a Main Gate Security I.D. Checkpoint Pedestal Project, only, and for no other use. Tenant shall not use or permit the

Premises or any part thereof to be used for any other purpose without the prior written approval of Board, and subject to such restrictions, limitations and conditions as may be imposed by Board.

4. Section 4(o). A new Section 4(o) is hereby added as follows:

“(o) Rent for Ancillary Area.

For Ancillary Area, Tenant shall pay to City rent in the following amounts: Six Thousand Seven Hundred Eighty-Eight Dollars and Ninety-Seven Cents (\$6,788.97) to be paid each month, in advance, adjusted (a) effective January 1, 2021 and thereafter annually, by the CPI Adjustment Factor in the manner set forth in Section 4(m), and (b) effective January 1, 2022 in the manner described in Section 4(m)(1) of this Agreement. For the avoidance of doubt, neither adjustment mechanism is a substitute for the other, and both shall occur on the timeframes so stated.

5. Section 11(c)-11(e). Section 11(c)-11(e) are hereby deleted in their entirety, and are hereby replaced with the following:

“(c) Insurance. In addition to, and not as a substitute for, or limitation of, any of the indemnity obligations imposed by this Agreement, Tenant shall procure and maintain at its expense and keep in force at all times during the term of this Agreement the types and amounts of insurance specified on Insurance, Exhibit “K,” attached hereto and incorporated by reference herein. The specified insurance shall also, either by provisions in the policies, by City’s endorsement form or by other endorsement attached to such policies, include and insure City, its Harbor Department, its Board and all of City’s officers, employees, and agents, their successors and assigns, as additional insureds, against the areas of risk described in Exhibit “K” and below, with respect to Tenant’s acts or omissions in its operation, use and occupancy of the Premises or other related functions performed by or on behalf of Tenant in, on or about the Harbor District. The types of insurance which are required must meet the following conditions during the term of this Agreement and any holdover periods:

(1) Commercial General Liability. Commercial general liability insurance, including contractual liability and property damage insurance written by an insurance company authorized to do business in the State of California, or approved by the California Department of Insurance as a surplus lines insurer eligible to do business in California, rated VII, A- or better in Best’s Insurance Guide (or an alternate guide acceptable to City if a Best’s Rating is not available) with Tenant’s normal limits of liability, but not less than set forth in Exhibit “K” for each accident or occurrence. Where Tenant owns watercraft, liability coverage for such craft must be provided as follows:



(i) Hull and machinery coverage for the value of each vessel which will call at the Premises during the term of this Agreement, if any; and

(ii) Protection and indemnity coverage with combined single limits as set forth in Exhibit "K" per occurrence for bodily injury, illness, death, loss of or damage to the property of another, Jones Act risks or equivalent thereto internationally, and pollution liability to which it is agreed that the additional insured provisions as required and described below must be included. Pollution liability shall include coverage for bodily injury, including death and mental anguish, property damage, defense costs and cleanup costs. Such coverage shall contain a defense of suits provision and a severability of interest clause.

The submitted policy shall, in addition, provide the following coverage either in the original policy or by endorsement substantially as follows:

"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 City, Board, 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 Permit No. 733, and under any amendments, modifications, extensions or renewals of said Permit regardless of whether such operations, uses, occupations, acts and activities occur on the Premises or elsewhere within the Harbor District.

"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;

"In the event of one of the named insureds incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability; and

"Notice of occurrences or claims under the policy shall be made to the Risk Manager of City's Harbor Department with copies to the City Attorney's Office."

(2) Fire Legal Liability. In addition to and concurrently with the aforesaid insurance coverage, Tenant shall also secure and maintain, either by an endorsement thereto or by a separate policy, fire legal liability insurance

in the amounts set forth in Exhibit "K," covering legal liability of Tenant for damage or destruction to the works, buildings and improvements owned by City provided that said minimum limits of liability shall be subject to adjustments by the Executive Director to conform with the deductible amount of the fire insurance policy maintained by the Board, with waiver of subrogation in favor of Tenant so long as permitted by the Board's fire insurance policy.

(3) Automobile Liability. Where Tenant utilizes any vehicles, Tenant shall procure and maintain automobile insurance with limits of liability not less than set forth in Exhibit "K" covering injuries or death resulting from each accident or claim arising out of any one claim or accident. This insurance shall cover all owned, non-owned, and/or hired automobiles.

(4) All Risk Insurance. Fire and extended coverage insurance covering a percentage of the replacement value, as set forth in Exhibit "K," of the works, buildings and improvements erected or owned by Tenant on the Premises, with such provision in the policies issued to cover the same, or in riders attached thereto, as will provide for all losses the amount stated in Exhibit "K" to be payable to Board to be held in trust for reconstruction. In the event of loss or damage by fire to any of such buildings or improvements, Tenant shall commence replacement or reconditioning of such items within ninety (90) days following any such loss. Tenant shall proceed diligently and with reasonable dispatch to take all steps and do all work required to replace or recondition such items. In the event Tenant commences such replacement or reconditioning within said period of ninety (90) days, such proceeds shall be released by Board to Tenant as payments are required for said purpose. Upon the completion of such replacement or reconditioning to the satisfaction of the Executive Director, any balance thereof remaining shall be paid to said Tenant forthwith. In the event Tenant fails to undertake such replacement or reconditioning within said period of ninety (90) days, such proceeds may be retained by City.

(5) Environmental Impairment Liability Insurance. Should Tenant's operations involve the storage or use of any type of hazardous materials or pollutants, the Tenant shall be required to maintain environmental impairment liability insurance which shall include coverage for bodily injury, property damage, including third-party claims for on-site and off-site bodily injury and property damage, clean-up and defense, with a limit of at least the amount set forth in Exhibit "K" per occurrence, which is to remain in effect at least five (5) years after the termination of the Agreement.

(6) Workers' Compensation. Tenant shall secure the payment of compensation to employees injured while performing work or labor necessary for and incidental to performance under this Agreement in accordance with

Section 3700 of the Labor Code of the State of California. Tenant shall file with the City one of the following: 1) a certificate of consent to self-insure issued by the Director of Industrial Relations, State of California; 2) a certificate of Workers' Compensation insurance issued by an admitted carrier; or 3) an exact copy or duplicate thereof of the policy certified by the Director or the insurer. Such documents shall be filed prior to delivery of Premises. Where Tenant has employees who are covered by the United States Longshore and Harbor Workers' Compensation Act, Tenant shall furnish proof of such coverage to the City. It is suggested that Tenant consult an insurance professional of its choosing to determine whether its proposed operation methods will render its employees subject to coverage under such Act. All Workers' Compensation insurance submitted to City shall include an endorsement providing that any carrier paying benefits agrees to waive any right of subrogation it may have against City.

(7) Insurance Features. Such insurance procured by Tenant shall include the following features:

(i) Notice of Cancellation. For each insurance policy described above, Tenant shall give to the Board of Harbor Commissioners a ten (10) days' prior written notice of cancellation or reduction in coverage for nonpayment of premium, and a thirty (30) days' written notice of cancellation or reduction in coverage for any other reason, by written notice via registered mail and addressed to the City of Los Angeles Harbor Department, Attn: Risk Manager and the City Attorney's Office, 425 S. Palos Verdes Street, San Pedro, California 90731.

(ii) Acceptable Evidence and Approval of Insurance. Electronic submission is the required method of submitting Tenant's insurance documents. Tenant's insurance broker or agent shall obtain access to KwikComply at <http://kwikcomply.org> and follow the instructions to register and submit the appropriate proof of insurance on Tenant's behalf.

(iii) Renewal of Policies. Prior to the expiration of each policy, Tenant shall show through submitting to KwikComply that the policy has been renewed or extended or, if new insurance has been obtained, submit the appropriate proof of insurance to KwikComply. If Tenant neglects or fails to secure or maintain the required insurance, or if Tenant fails to submit proof of insurance as required above, the City's Harbor Department may, at its option and at the expense of Tenant, obtain such insurance for Tenant.

(iv) Certified Copies of Policies. Upon request by Executive Director, Tenant must furnish a copy of the binder of insurance and/or



full certified copies of any or all policies of insurance required herein. Tenant's obligation to provide such copies shall survive the Expiration Date regardless of whether Executive Director's request is made prior to or after the Expiration Date.

(v) Modification of Coverage. The Executive Director, or designee, at the Executive Director's discretion, may require that Tenant increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Tenant. The modification of coverage shall occur no less than every five (5) years of the term to insure that the coverage amounts are consistent with industry standards at the time of the modification for the Permitted Uses of the Premises.

(vi) Accident Reports. Tenant shall report in writing to Executive Director within fifteen (15) days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Fifty Thousand Dollars (\$50,000) to property, occurring upon the Premises, or elsewhere within the Harbor District, if Tenant's officers, agents or employees are involved in such an accident or occurrence while undertaking the Permitted Uses. Such report shall contain to the extent available: (1) the name and address of the persons involved; (2) a general statement as to the nature and extent of injury or damage; (3) the date and hour of occurrence; (4) the names and addresses of known witnesses; and (5) such other information as may be known to Tenant, its officers or managing agents.

(8) Right to Self-Insure. The required coverage above shall provide first dollar coverage except that the Executive Director may permit a self-insured retention or self-insurance in those cases where, in the Executive Director's judgment, such retention or self-insurance is justified by the net worth of Tenant. The retention or self-insurance shall provide that any other insurance maintained by the Department shall be excess of Tenant's insurance and shall not contribute to it. In all cases, regardless of any deductible, retention, or self-insurance, Tenant shall have the obligations of an "insurer" under the California Insurance Code and said insurance shall be deemed to include a defense of suits provision and a severability of interest clause. Upon written approval by the Executive Director, Tenant may self-insure if the following conditions are met:

(i) Tenant has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Tenant must have a formal resolution of its board of directors authorizing self-insurance;

(ii) Tenant agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement;

(iii) Tenant agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier;

(iv) Tenant agrees that any insurance carried by Department is excess of Tenant's self-insurance and will not contribute to it;

(v) Tenant provides the name and address of its claims administrator;

(vi) Tenant submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to the Executive Director's consideration of approval of self-insurance and annually thereafter;

(vii) Tenant agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance; and

(viii) Tenant has complied with all laws pertaining to self-insurance.

(d) Increased Insurance Risks. Following the Effective Date, should an event occurring in or about the Premises cause either cancellation or increased rates with respect to any insurance that City may have on the Premises or on adjacent premises, or cause either cancellation or increased rates with respect to any other insurance coverage for the Premises or adjacent premises, upon receipt of written notice from City that cancellation of insurance or increased insurance rates is threatened or has occurred, Tenant immediately shall take appropriate steps to ensure that City is not adversely affected. In City's sole reasonable discretion, such steps may include Tenant: correcting the condition; providing any necessary insurance; paying the increased cost of City's insurance; and/or indemnifying City against any uninsured or underinsured loss on a claim.

(e) Other. City agrees to cause insurance policies covering City-owned property to be endorsed with a waiver of subrogation against Tenant and Tenant's parent and affiliates, for any loss or damage to such property arising from Tenant's operations or activities under this Agreement."



6. No Changes Except as Stated Herein. Except as expressly amended herein, all remaining terms and conditions of Permit No. 733, as amended, shall remain unchanged.

7. Effective Date. The effective date of this Eleventh Amendment shall be upon execution by the Executive Director and Secretary of City's Board of Harbor Commissioners after approval of the City Council of the Resolution approving this Eleventh Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this Eleventh Amendment to Permit No. 733 on the date to the left of their signatures.

THE CITY OF LOS ANGELES, by its  
Board of Harbor Commissioners


Dated: \_\_\_\_\_

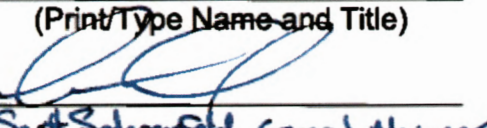
By: \_\_\_\_\_  
Executive Director

Attest: \_\_\_\_\_  
Board Secretary

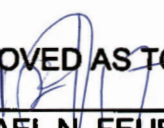
FENIX MARINE SERVICES, LTD.

Dated: December 17, 2020

By:   
Sean Pierce CEO  
(Print/Type Name and Title)

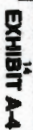
Attest:   
Scott Schoenfeld General Manager  
(Print/Type Name and Title)

APPROVED AS TO FORM AND LEGALITY

  
\_\_\_\_\_, 2020  
MICHAEL N. FEUER, City Attorney  
JANNA B. SIDLEY, General Counsel

By:   
STEVEN Y. OTERA, Assistant

(SYO/1A 12/14/20)







## INSURANCE ASSESSMENT REQUEST FORM

Send completed form in Word format to [polariskmgmt@portla.org](mailto:polariskmgmt@portla.org) for processing. Please allow up to 10 business days for completed IAR to be returned. For status inquiries, contact Risk Management at 310-732-3758.

This section to be completed by Risk Management

- ☐ No insurance required, only indemnification  
☐ Amendment does not require change to existing contract's insurance requirements

INSURANCE REQUIREMENTS	LIMITS (Per Occurrence)
<input checked="" type="checkbox"/> General Liability <input type="checkbox"/> Deletion of railroad exclusion <input type="checkbox"/> Terminal Operator's Liability <input type="checkbox"/> Garage keepers Legal Liability <input type="checkbox"/> Host Liquor Liability <input type="checkbox"/> Explosion, collapse and underground hazards <input checked="" type="checkbox"/> Fire Legal Liability (Limits \$250K per occ)	\$5M
<input checked="" type="checkbox"/> Auto Liability (all autos) <input type="checkbox"/> On Hook Coverage	\$5M
<input checked="" type="checkbox"/> Workers' Compensation/Employer's Liability <input checked="" type="checkbox"/> USL&H (required when work is near navigable waters) <input checked="" type="checkbox"/> Waiver of Subrogation	STATUTORY
<input type="checkbox"/> Professional Liability <input type="checkbox"/> Medical Malpractice <input type="checkbox"/> Law Enforcement Legal Liability <input type="checkbox"/> Technology Errors & Omissions (E&O)	\$
<input type="checkbox"/> Railroad Protective Liability naming Pacific Harbor Line as the named insured	\$
<input checked="" type="checkbox"/> Ocean Marine Liability (required when vessel is used/operated) <input checked="" type="checkbox"/> Protective & Indemnity <input checked="" type="checkbox"/> Jones Act <input checked="" type="checkbox"/> Hull & Machinery <input type="checkbox"/> Ship Builders/Repairers Liability	\$5M
<input checked="" type="checkbox"/> Property/All Risk Insurance	100% replacement value over \$250K
<input type="checkbox"/> Environmental Impairment Liability	\$
<input type="checkbox"/> Builder's Risk (Reference Specification for exclusions)	Value of the project
<input type="checkbox"/> Fine Arts Insurance	Actual cash value
<input type="checkbox"/> Aviation/Airport Liability <input type="checkbox"/> Aircraft Liability (passenger liability per seat) <input type="checkbox"/> Unmanned Aircraft Systems Liability	\$

Date Reviewed: 12/14/2020

By: Marie Gutierrez for:  
Risk Manager

RM Staff: GT

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Form IAR05082020

**EXHIBIT K**