

STATE OF LOUISIANA

: SECOND SUPPLEMENTAL &

RECEIVED
AMENDING

PARISH OF CALCASIEU

: AGREEMENT FOR STEVEDORE

SERVICES
FEDERAL MARITIME
COMMISSION

KNOW ALL MEN BY THESE PRESENTS THAT:

OFFICE OF THE SECRETARY

This Second Supplemental and Amending Agreement for Stevedore Services is made and entered into as of the 1st day of February, 1998, by and between the LAKE CHARLES HARBOR & TERMINAL DISTRICT, acting by and through Glenwood Wiseman, Executive Director, duly authorized, hereinafter known as the "District"; and LAKE CHARLES STEVEDORES, INC., a Louisiana corporation, acting by and through its duly authorized representative, hereinafter known as the "Contractor".

W I T N E S S E T H :

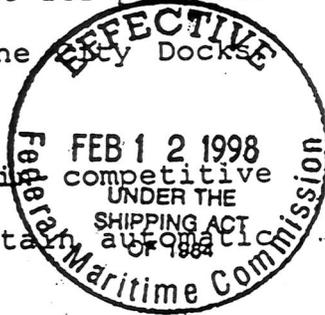
THAT,

WHEREAS, by agreement dated June 15, 1992, the Contractor entered into an agreement to provide stevedoring services to the District, hereinafter referred to as the "Agreement"; and

WHEREAS, under the terms of such agreement, the Agreement has been extended annually since June 15, 1992; and

WHEREAS, on June 15, 1994, the District and Contractor mutually agreed to supplement and amend the Agreement for purposes of adding switching services of rail cars within the City Docks and

WHEREAS, the District, in order to remain competitive in the bag goods cargo business, has purchased certain



bagging semi-automated bag loading equipment (the automated facility) at a cost of \$14,350,000 to be installed and erected within the City Docks; and

WHEREAS, Contractor has agreed to provide, at its cost, not to exceed \$5 million, the services to dismantle the equipment in Galveston, Texas where it is presently located; transport the equipment to City Docks and erect the equipment at the new Berth 9 expansion facility presently being designed and engineered by the District and to be constructed by the District in the near future; and

WHEREAS, the District desires to operate and maintain the automated facility through Contractor under the terms and conditions set forth in this Second Supplemental and Amending Agreement for Stevedore Services.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter stated, each party intending to be legally bound hereby, it is agreed as follows:

1. Definitions: As used in this Agreement, the following terms shall have the respective meanings indicated below:

a. "Automated Loading and Unloading Services" shall mean Unloading Services and Loading Services using the automated facility.

b. "Bagging Services" shall mean packaging of bulk cargoes using the automated facility.

c. "Cargo" shall mean all goods and products moving in domestic and international commerce utilizing waterborne transportation.

d. "City Docks" shall mean those facilities of the District as shown on Exhibit "1" attached hereto and made a part hereof.

e. "Inland Conveyance" shall mean any mode of transportation including but not limited to rail car or truck.

f. "Loading Services" shall mean the movement of cargo from public areas within the City Docks onto inland conveyance, together with any necessary clerking or checking services connected therewith.

g. "Public Areas" shall mean those areas within the City Docks which have not been exclusively leased by the District to another person.

h. "Unloading Services" shall mean the movement of cargo from inland conveyances to public areas within the City Docks as designated by the District, together with any necessary clerking or checking services connected therewith.

2. Services to be Provided by Contractor:

2.1 Contractor's Agreement to Provide Services: Upon the terms and conditions hereinafter set forth, and in consideration of the terms and conditions set forth herein and the prompt and efficient performance by the Contractor of the covenants and agreements to be kept and performed by the Contractor under this Agreement, the District contracts with Contractor to provide, on

an exclusive basis, all loading and unloading services of all cargo handled within the public areas of the City Docks. Such loading and unloading services shall be provided by Contractor at a rate not to exceed those rates established by the District in its tariff.

Contractor shall place the cargo as directed by the District and Contractor shall document, as reasonably directed by the District, all cargo loaded or unloaded as directed by the District. Contractor shall be solely responsible for billing and collecting from cargo shippers for any unloading and loading services provided by the Contractor. The District shall not be liable for the cost of any such services unless specifically assumed by the District in writing.

2.2 Contract Equipment; Maintenance, etc.: Contractor shall furnish all necessary equipment, materials and supplies required for all loading and unloading services and Contractor shall perform and furnish all labor and clerical work incidental to such loading and unloading services.

Contractor shall keep and maintain its equipment, materials or supplies in good working order and repair. Contractor shall take all necessary action to prevent oil leaks or other nuisances related to Contractor's equipment, materials or supplies from occurring. Contractor shall store its equipment, materials and supplies while not in use in areas designated by the District.

Contractor shall supply adequate switching services for the switching and spotting of rail cars within the City Docks. Contractor shall supply such locomotive service, personnel, materials, supplies or other equipment as may be adequate and necessary to efficiently and properly provide for the switching and spotting of rail cars to allow for the unloading of cargo from rail cars into the District's transit sheds. Contractor shall be compensated for such services in accordance with the provisions of the District's tariff.

2.3 Additional Services to be Provided by Contractor:

In addition to the services to be provided by Contractor pursuant to paragraph 2, Contractor will supply all labor to properly operate and maintain the automated facility and provide the automated loading and unloading services, as well as conveyance of cargo from the automated facility to ocean-going vessels calling at the automated facility. Such automated loading and unloading services and bagging services shall be provided by Contractor at a rate not to exceed those rates established by the District in its tariff. For the use of the automated facility, Contractor agrees to pay the District 9% of such rate as established herein for such automated loading and unloading services or other services and 14% of such rate as established herein for such bagging services.

2.3.1 Adjustment of Rate: Contractor and District acknowledge that the rates established in paragraph 2.3 are preliminary and based upon the best estimates of tonnages and costs available at the signing of this agreement. Further, due to

changing market conditions, the parties acknowledge that the above rates may periodically need to increase or decrease to meet market demands. Therefore, the parties agree to renegotiate the rates fixed herein six (6) months from the date loading operations or bagging operations commence and each six (6) months thereafter. If the parties cannot mutually agree, after good faith efforts to renegotiate the above rates, then either party may elect, at its option, to cancel this Second Supplemental and Amending Agreement for Stevedoring Services without either party being responsible to the other for any damages, losses, costs or penalty (including but not limited to the liquidated damages provided for in paragraph 3.1) of any sort being owed to the other party.

2.4 Compliance with Laws: Contractor shall, in supplying the services contemplated herein, at all times comply with all federal, state and local laws, rules or regulations.

3. Term: The term of this Agreement shall be one (1) year from the date of this Agreement. The Agreement may be extended for additional one (1) year periods by mutual agreement of the parties. The District reserves the right to annually seek proposals from other stevedoring companies and to cancel this Agreement if any such new proposals are in the best interest of the District. However, if the District desires to select another stevedore to perform the services provided for herein, then the District must give Contractor notice sixty (60) days prior to the annual termination date of this Agreement and, except as specifically provided for in this Agreement, neither party shall

be responsible for any damages, losses or costs to the other party. Otherwise, this Agreement shall automatically renew for a one (1) year period of time.

Further, during the term of this Agreement, either party may, for any reason, cancel this Agreement upon thirty (30) days written notice to the other party and, except as specifically provided for in this agreement, neither party shall be responsible for any damages, losses or costs to the other party.

3.1 Liquidated Damages: The parties recognize that, in order to adequately provide the automated loading and unloading services, Contractor is making a significant capital investment by providing transportation services from Galveston, Texas for certain equipment, hiring additional personnel and acquiring certain other mobile equipment. Consequently and conditioned upon Contractor providing a minimum of \$5,000,000 toward relocating costs and other capital improvements associated with the automated facility, Contractor and District agree that if District elects, without cause, to cancel this agreement as it relates to automated loading and unloading services, then liquidated damages, as set out below, shall be paid by the District to Contractor:

	<u>Liquidated Damage</u> <u>Amount</u>
a. Cancellation without cause prior to first 350,000 tons of bagged cargo being loaded through the automated facility	\$5,000,000

b.	Cancellation without cause prior to first 700,000 tons of bagged cargo being loaded through the automated facility	\$4,650,000
c.	Cancellation without cause prior to first 1,050,000 tons of bagged cargo being loaded through the automated facility	\$4,300,000
d.	Cancellation without cause prior to first 1,400,000 tons of bagged cargo being loaded through the automated facility	\$3,950,000
e.	Cancellation without cause prior to first 1,750,000 tons of bagged cargo being loaded through the automated facility	\$3,600,000
f.	Cancellation without cause prior to first 2,100,000 tons of bagged cargo being loaded through the automated facility	\$3,250,000
g.	Cancellation without cause prior to first 2,450,000 tons of bagged cargo being loaded through the automated facility	\$2,900,000
h.	Cancellation without cause prior to first 2,800,000 tons of bagged cargo being loaded through the automated facility	\$2,550,000
i.	Cancellation without cause prior to first 3,150,000 tons of bagged cargo being loaded through the automated facility	\$2,200,000
j.	Cancellation without cause prior to first 3,500,000 tons of bagged cargo being loaded through the automated facility	\$1,850,000
k.	Cancellation without cause prior to first 3,850,000 tons of bagged cargo being loaded through the automated facility	\$1,500,000

- l. Cancellation without cause prior to first 4,200,000 tons of bagged cargo being loaded through the automated facility \$1,150,000
- m. Cancellation without cause prior to first 4,550,000 tons of bagged cargo being loaded through the automated facility \$ 800,000
- n. Cancellation without cause prior to first 4,900,000 tons of bagged cargo being loaded through the automated facility \$ 450,000

4. Responsibility for Loss or Damage; Indemnification; Care, Custody and Control:

4.1 Contractor's General Agreement to Indemnify. The Contractor releases the District, its officers, representatives, employees, agents, successors and assigns, (individually and collectively, "District Indemnatee") from, assumes any and all liability for, and agrees to indemnify the District Indemnatee against all claims, liabilities, obligations, damages, penalties, litigation, costs, charges, and expenses (including, without limitation, reasonable attorney fees and the costs and expenses of appellate action, if any), for both personal injury of any person and property loss of any property, imposed on, incurred by or asserted against the District arising out of (i) any claim connected with the unloading or loading services or automated loading and unloading services provided by Contractor or other actions or inactions by the Contractor associated with this Agreement or (ii) any claim arising out of the use or occupancy of

District owned facilities or property or (iii) any activities on or about District owned property or facilities by Contractor, its officers, representatives, agents or employees, of any nature, whether foreseen or unforeseen, ordinary or extraordinary, in connection with the use or occupancy of District owned property or facilities by the Contractor, its officers, representatives, employees, agents, successors and assigns, provided, however, that any such claim, liability, obligation, damage or penalty arising solely as a result of the negligence or willful misconduct of the District shall be excluded from this indemnity. Additionally, any property damage caused to any cargo loaded or unloaded by Contractor as a result of rodent or other vector infestation or caused as a result of the defective condition of the property or facilities of the District shall be excluded from this indemnity. Unless specifically excluded in this section, the indemnity provided in this section shall include within its scope any liability imposed by law on the District Indemnitee (negligence or strict liability) and, further, shall include within its scope but not be limited to any and all claims or actions for wrongful death and claims relating to any local, state or federal environmental statute or regulation.

4.2 Care, Custody and Control: It is agreed and understood that Contractor shall have the full care, custody and control of the cargo involved in any unloading services performed by Contractor from the time that the cargo is removed from the inland conveyance by Contractor until such cargo is tendered by

Contractor to the vessel stevedore or removed from its point of rest to be loaded onto outward bound ocean going vessels by the vessel stevedore or otherwise transshipped from public areas. It is also agreed and understood that Contractor shall have the care, custody and control of any cargo involved in any loading services from the time such cargo is placed at its point of rest by the vessel unloading stevedore until placed by Contractor on the inland conveyance or otherwise transshipped from public areas. It is also agreed and understood that Contractor shall have the care, custody and control of any cargo involved in any automated loading and unloading services from the time such cargo is received into the automated facility until discharged from the automated facility to either ocean-going vessels or inland conveyance. Damage occurring to any cargo while in the care, custody and control of Contractor, regardless of fault, shall be the responsibility of Contractor unless Contractor can prove that such damage resulted solely from the action or inaction of a vessel stevedore, or was caused solely by the negligence of the District, or was caused solely by the defective condition of the District's property or facilities or was caused solely by rodent or vector damage. It is understood that Contractor will not be considered a bailee of the cargo.

4.3 Demurrage Liability: Contractor shall be responsible for any demurrage resulting from the failure to load or unload cargo unless such demurrage was caused solely by the District's action of over booking cargo such that storage space is

not available for the Contractor to properly place cargo within the public areas of the District, (in the case of unloading), or inland conveyance is not available because of the actions of the District (in the case of loading).

4.4 Survival of Indemnities: The foregoing indemnities and agreements shall survive the term of the Agreement and shall be in addition to any obligations of the District or Contractor for breach of any term or condition of this Agreement.

5. Insurance:

5.1 Public Liability: Contractor agrees to carry or cause to be carried public liability insurance with respect to its activities and liabilities arising under this Agreement in the minimum combined single limit amount of One Million dollars (\$1,000,000) for the death of or personal injury to one or more persons and for property damage for each occurrence in connection with the Contractor's activities and liabilities arising under this Agreement, and same shall include the District as an additional insured with respect to any liability exposure of the District by virtue of its ownership of the properties upon which Contractor shall conduct its activities, or of any activities of the District which are required or permitted hereunder. Such insurance policy shall contain a provision or be accompanied by a certificate or endorsement to the effect that the insurance company shall not cancel or materially modify such policy without first giving written notice thereof to the District at least thirty (30) days in advance of such cancellation to material

modification. At the District's request, Contractor shall promptly provide to District certificates evidencing such insurance and shall furnish copies of such policies to the District. The District may change by reasonable amounts, consistent with prevailing commercial practices in Southwest Louisiana, the limits of insurance coverage required by this Section 5.1 upon ninety (90) days written notice to the Contractor stating such changed limits of coverage and the reasons for the change. Further, such insurance coverage shall provide for a waiver of subrogation by the insurer against any claim for subrogation which may be asserted against the District.

5.2 Workers' Compensation or Longshoremen Harbor Workers Act Benefits: Contractor further covenants and agrees, at its expense, to take out and maintain at all times, all necessary workers' compensation or longshoremen harbor workers act insurance covering all persons employed by Contractor to the extent required by applicable laws.

5.3 Qualification for Insurer: All insurance policies required above shall be issued by companies authorized to do business within the State of Louisiana, and be rated no less than "B" as to management, and no less than "Class V" as to financial strength by the latest edition of Best's Insurance Guide, published by A. M. Best Company, Oldwick, New Jersey, or an equivalent rating agency, subject to the approval of the District.

Alternatively, Contractor may elect to be self-insured subject to the approval of the District, which approval shall not be unreasonably withheld.

6. Notices:

6.1 Addresses: All notices, demands, and requests which may or are required to be given hereunder shall be in writing, delivered by personal service, or shall be sent by facsimile, United States registered or certified mail, return receipt requested, postage prepaid, to the parties at the following numbers and addresses:

To the Contractor: Lake Charles Stevedores, Inc.
 P.O. Box 111
 Lake Charles, LA 70602

 Facsimile No. 318-433-5111

To the District: Executive Director
 Lake Charles Harbor & Terminal
 District
 150 Marine Street
 Post Office Box 3753
 Lake Charles, Louisiana 70602

 Facsimile No. (318) 493-3523

or to such other numbers or addresses as either party may from time to time designate by written notice to the other party hereto at least fifteen (15) days in advance of an effective date stated therein.

7. Force Majeure: Either party hereto shall be excused from performing any of its respective obligations or undertaking provided in this Agreement, for so long as the

performance of such obligations are prevented or significantly delayed, retarded or hindered by act of God, fire, flood, hurricane, acts of war (declared or undeclared), invasion, or insurrection, if such party hereto gives written notice of such delay to the other party within twenty (20) calendar days of the occurrence of such event.

8. Successors: The covenants, agreements, terms, provisions, and conditions contained in this Agreement shall apply to and inure to the benefit of and be binding upon the District and the Contractor and their respective successors and assigns, except as expressly otherwise herein provided, and shall be deemed covenants running with the respective interests of the parties hereto.

9. Surviving Covenants: Each provision of this Agreement which may require performance in any respect by or on behalf of either the Contractor or the District after the expiration of the term hereof or its earlier termination shall survive such expiration or earlier termination.

10. Provisions Deemed Conditions and Covenants: All of the provisions of this Agreement shall be deemed and construed to be "conditions" and "covenants" as though the words specifically expressing or importing covenants and conditions were used to each separate provision hereof.

11. Headings: The headings and section captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect this Agreement as to matters of interpretation or otherwise.

12. No Oral Change or Termination: This Agreement and the exhibits appended hereto, if any, and incorporated herein by reference contain the entire agreement between the parties hereto with respect to the subject matter hereof, supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof, and no change, modification, or discharge hereof in whole or in part shall be effective unless such change, modification, or discharge is in writing and signed by the party against whom enforcement of the change, modification, or discharge is sought. This Agreement cannot be changed or terminated orally.

13. Governing Law; Severability: This Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana. To the extent permitted by law, the parties hereto shall be deemed to have waived to the maximum extent possible all legal provisions to the end that this Agreement shall be enforceable in accordance with its terms. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remaining provisions of this Agreement or the application of such term or provision to persons or circumstances

other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. Counterparts: This Agreement may be executed in or more counterparts, each of which so executed shall be deemed to be an original and all of which together shall constitute but a single document.

15. Litigation: In case of any litigation between the parties hereto regarding the subject matter hereof, the losing party shall pay all reasonable costs and expenses (including reasonable attorney fees) of the prevailing party.

16. Gender of Words: Words of any gender in this Agreement shall be held to include masculine or feminine and words denoting a singular number shall be held to include the plural, and plural shall include the singular, whenever the sense requires.

17. Sovereign Immunity; Statutory Authority: The District represents and warrants that it has the statutory authority to enter into this Agreement, that, when executed, this Agreement shall be binding and enforceable in accordance with its terms, and that it is not immune from suit or judgment resulting from any claim or action brought against it by the Contractor pursuant to the express terms of this Agreement.

18. Legal Relationships: This Agreement shall not be interpreted or construed as establishing a partnership or joint venture or Principal/Agency relationship between the District and the Contractor and neither party shall have the right to make any representations or be liable for the debts or obligations of the other. Neither party is executing this Agreement as an agent for an undisclosed principal. No third party is intended to be benefited by this Agreement. Contractor shall at all times be deemed to be an independent contractor and not the agent of the District.

19. Applicable Areas of Agreement: This Agreement shall be applicable to all cargoes loaded or unloaded for or from storage in the public areas of the City Docks of the District or for or from the automated facility. This Agreement shall not be applicable to cargoes loaded or unloaded onto or from property leased by the District to others.

Further, the District reserves the right, at its option and at its sole cost, expense and risk, to load or unload, or to contract with others to load or unload materials and supplies consigned to or destined for use by the District.

20. Compliance with Tariff: It is agreed between the parties that Contractor will observe and obey all of the rules, regulations and charges governed by the District's Tariff 011, as supplemented and amended from time to time.

21. Approval of Federal Maritime Commission: This Agreement shall be effective February 1, 1998 and shall be subject to filing with the Federal Maritime Commission in accordance with applicable law. Should the Federal Maritime Commission disapprove this Agreement, this Agreement shall be cancelled effective as of the date any such action of the Federal Maritime Commission is deemed final.

22. Prior Agreements: This Second Supplemental and Amending Agreement for Stevedore Services supersedes and completely replaces the June 15, 1992 agreement and the June 15, 1994 Supplemental and Amending Agreement and as of the effective date of this Second Supplemental and Amending Agreement for Stevedore Services, such previous agreements are rescinded in their entirety and replaced by this agreement. The Second Supplemental & Amending Agreement for Stevedore Services is conditioned upon Contractor providing a minimum of \$5,000,000 toward relocation costs and other capital improvements associated with the automated facility.

THUS DONE AND SIGNED by the LAKE CHARLES HARBOR & TERMINAL DISTRICT, acting through its Executive Director, Glenwood Wiseman, on this 6th day of February, 1998.

WITNESSES:

Eva L. Frank
Sharon Edwards

LAKE CHARLES HARBOR & TERMINAL DISTRICT

BY: Glenwood Wiseman
Glenwood Wiseman,
Executive Director

THUS DONE AND SIGNED by LAKE CHARLES STEVEDORES, INC.,
acting through its duly authorized representative, on this ____
day of 2-6, 1998.

WITNESSES:

Lynn W B... ..
Richard Cornin

LAKE CHARLES STEVEDORES, INC.

BY: [Signature]

← CALCASIEU RIVER

SHIP BERTH NO. 3
SHIP BERTH NO. 2
SHIP BERTH NO. 1
SHIP BERTH 15B
SHIP BERTH NO. 15

TRANSIT SHED NO. 3
TRANSIT SHED NO. 2
TRANSIT SHED NO. 1
TRANSIT SHED 15D
TRANSIT SHED NO. 15

SHELL BEACH DRIVE

TRACK NO. 26

TRACK NO. 28
UNDEVELOPED PROPERTY

PLC ADMINISTRATION BUILDING

WOODED PROPERTY

HARBOR POLICE OFFICE

SEAFARER CENTER

GATE NO. 1
MAIN ENTRANCE
GATE NO. 2

GATE NO. 3
SALLIER STREET

Undeveloped
Wooded Property

WELL NO. 7
200,000 GAL.
ELEVATED WATER TANK

GRAIN SAMPLER

STABILIZED
OPEN STORAGE AREA

OPEN STORAGE

WOODCHIP AREA

UNDEVELOPED
DISTRICT PROPERTY

CONTRABAND BAYOU

SHIP BERTH NO. 10

SHIP BERTH NO. 4
SHIP BERTH NO. 5
SHIP BERTH NO. 6
SHIP BERTH NO. 7
SHIP BERTH NO. 8
SHIP BERTH NO. 9

TRANSIT SHED NO. 4
TRANSIT SHED NO. 5
TRANSIT SHED NO. 6
TRANSIT SHED NO. 7
TRANSIT SHED NO. 8
TRANSIT SHED NO. 9

WAREHOUSES
TRACK NO. 1
TRACK NO. 2
TRACK NO. 3
TRACK NO. 4
TRACK NO. 5
TRACK NO. 6
TRACK NO. 7
TRACK NO. 8
TRACK NO. 9
TRACK NO. 10
TRACK NO. 11
TRACK NO. 12
TRACK NO. 13
TRACK NO. 14
TRACK NO. 15

SMALL CRAFT DOCK

BULK TERMINAL
NO. 2 (LOAD)

TRANSIT SHED
NO. 7

TRACK NO. 23

TRACK NO. 24 =
OPEN BERTH

SHIP BERTH NO. 8

TRANSIT SHED
NO. 8

SHIP BERTH NO. 9

PROPOSED
STORAGE SHED

SHIP BERTH NO. 9.5

SCALE HOUSE

SHIP BERTH NO. 10

