

224-200962

**AGREEMENT**

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THIS AGREEMENT is made and entered into by and between the Board of Trustees of the Galveston Wharves, a separate utility of the City of Galveston created in accordance with Tex. Rev. Civ. Stat. art. 1187f ("Wharves") and Suderman Contracting Stevedores, Inc., a Texas corporation ("Suderman").

WHEREAS, the Wharves operates the facility known as the East End General Marine Terminal ("Terminal") located in Galveston, Galveston County, Texas; and

WHEREAS, Suderman provides labor of the nature needed by the Wharves to operate the Terminal; and

WHEREAS, the parties have deemed it advantageous for Suderman to provide such labor to the Wharves as is necessary to repair and maintain cranes and other container yard equipment at the Terminal;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

**1. TERM AND TERMINATION**

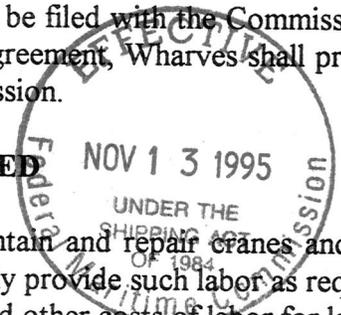
This Agreement commences on the Effective Date and continues in effect until it has been terminated by either party giving 30 days written notice to the other party. This Agreement and any amendments or modifications thereto shall be submitted to the Federal Maritime Commission (the "Commission"), pursuant to 46 U.S.C. §814. The effective date of this Agreement shall be such date as shall be designated by the Commission, or if the Commission declines to do so, such effective date shall be November 3, 1995, at 12:01 a.m. (the "Effective Date"). Any extension to this Agreement, and the terms and conditions thereof, will promptly be filed with the Commission for its review and approval, if required. Upon execution of this Agreement, Wharves shall promptly file it with the Commission for appropriate action by the Commission.

**2. SERVICES TO BE PROVIDED**

Suderman agrees to provide all labor necessary to maintain and repair cranes and other container yard equipment at the Terminal. Suderman will promptly provide such labor as requested by the Wharves. Suderman will pay all taxes, insurance, wages and other costs of labor for laborers providing services under this Agreement. Suderman and the laborers it provides will perform their duties in a safe, good and workmanlike manner and will comply with all State, Federal and Municipal laws, ordinances and regulations.

**3. FEES**

The Wharves will pay Suderman for labor it provides under this Agreement at the hourly rates set forth on Exhibit "A" attached hereto and incorporated herein by reference. Suderman will invoice the Wharves on a weekly basis for labor charges under this Agreement. Suderman will issue invoices to Wharves each Monday for the labor that was provided by Suderman for the preceding



week. Wharves will pay Suderman amounts owed for labor actually provided within 14 days of the date an invoice is received. Rates paid for labor provided by Suderman include all costs of taxes, insurance, pension, severance, welfare, labor relations, administration and vacation. Should the Wharves require additional services not included in this Agreement, the fees for such additional services will be negotiated and paid separately.

#### **4. EQUIPMENT**

Wharves will provide all equipment necessary to provide the services to be performed under this Agreement.

#### **5. INSURANCE AND INDEMNIFICATION**

Suderman shall be responsible for maintaining liability insurance for all risks (commercially available) in the amount of at least \$5,000,000.00 for each occurrence. Such liability insurance policies shall contain a clause stating that such policies shall not be cancelled or changed without giving Wharves 30 days prior written notice, and shall either waive subrogation against Wharves or name Wharves as an additional insured and shall contain a cross-liability endorsement. Suderman shall further maintain employer's liability and statutory workers' compensation coverage (where applicable), longshoremen and harbor workers' coverage (where applicable) and Jones Act coverage (where applicable). Suderman shall furnish Wharves with the proof of required insurance as requested by Wharves, and coverage shall be with insurers and be in a form reasonably acceptable to Wharves.

Suderman shall INDEMNIFY and HOLD Wharves, and its officers, agents and employees, HARMLESS from any liability whatsoever for bodily injury or property damage (including, without limitation, bodily injuries resulting in death), arising out of any action or inaction of Suderman, its officers, agents, employees, laborers, contractors or subcontractors.

#### **6. TARIFFS**

Activities of Suderman at the Terminal are subject to duly published tariffs of the Wharves in effect from time to time as filed with the Federal Maritime Commission.

#### **7. LIMITATION OF LIABILITY**

It is expressly agreed and understood that the City of Galveston will never be liable to respond in damages or make indemnity or contribution of payment of any character from any source other than income and revenues arising from the operation of the property operated by the Wharves by reason of, due to or caused by a breach of this Agreement. It is further understood and agreed that the members of the Board of Trustees of the Galveston Wharves, either singularly or collectively, will not be personally liable on this Agreement or any breach thereof.

#### **8. MISCELLANEOUS**

8.01 - Force Majeure. The Wharves and Suderman are excused from performing any of their respective duties, obligations or undertakings under this Agreement in the event and so long as the

performance of such duty, obligation or undertaking is prevented, delayed, retarded or hindered by an Act of God, epidemic, fire, earthquake, flood, explosion, action of civil commotion, sabotage, malicious mischief, strike, lockout, action of labor unions, condemnation, governmental restriction, order of civil or military or naval authorities, embargo, impossibility of obtaining materials, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the party in question. Either party entitled to such extension hereunder will give prompt written notice to the other party as soon as possible after the occurrence causing such delay asserting its claim of right to such extension and the reasons therefor.

8.02 - No Waiver. No waiver by the Wharves of any default or breach of any covenant, condition, or stipulation contained in this Agreement is a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation of this Agreement.

8.03 - Delivery of Notices. All sums, notices, demands, or requests from one party to another must be in writing and must be personally delivered or sent by mail, certified or registered, postage prepaid, to the addresses stated in this section, or to such other address as the party may request in writing, and are deemed to have been given at the time of receipt or delivery:

Board of Trustees of  
the Galveston Wharves  
123 Rosenberg, 8th Floor  
Galveston, Texas 77550  
Attn: General Manager-Port  
Director

Suderman Contracting Stevedores, Inc.  
P.O. Box 1252  
Galveston, Texas 77553  
Attn: Don Suderman

8.04 - Parties Bound. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

8.05 - Texas Law to Apply and Venue. This Agreement must be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Galveston County, Texas.

8.06 - Legal Construction. In case any one or more of the provisions contained in this Agreement is for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability does not affect any other provision hereof and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, if consistent with the overall intent of this Agreement.

8.07 - Prior Agreements Superseded. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties.

8.08 - Amendment. No amendment, modification, or alteration of the terms of this Agreement is binding unless in writing, dated subsequent to the Effective Date and executed by the Wharves and Suderman or their successors and assigns.

8.09 - Attorney's Fees. In the event the Wharves or Suderman breaches any of the terms of this Agreement and the party not in default employs attorneys to protect or enforce its rights and prevails, then the defaulting party agrees to pay the non-defaulting party's reasonable attorney's fees.

8.10 - Exhibits. All Exhibits attached to this Agreement are incorporated by reference.

8.11 - Compliance with Laws. Suderman must comply with all laws, ordinances, rules, regulations and codes governing or in any manner applicable to this Agreement.

8.12 - Counterparts. This Agreement may be executed in any number of counterparts, and each counterpart is deemed to be an original instrument, but all such counterparts together constitute but one Agreement. A photocopy or facsimile reproduction of an original signature of a party binds that party to the terms, covenants and conditions of this Agreement.

8.13 - Headings. The headings, captions, and arrangements used in this Agreement are for convenience only and do not affect the interpretation of this Agreement.

BOARD OF TRUSTEES OF  
THE GALVESTON WHARVES

By: Ernest Connor

Name: ERNEST CONNOR

Title: GENERAL MANAGER

SUDERMAN CONTRACTING STEVEDORES,  
INC., a Texas Corporation

By: A.D. Suderman III

Name: A.D. SUDERMAN III

Title: PRESIDENT

**SUDERMAN CONTRACTING STEVEDORES, INC.**

P. O. BOX 1252  
GALVESTON, TEXAS 77553  
(409) 762-8131

October 23, 1995

Mr. Ernest Connor  
General Manager  
Port of Galveston  
P.o. Box 328  
Galveston, TX 77553

Dear Mr. Connor:

Enclosed is the schedule for the listed crafts at the container terminal as per our conversation today.

We would like to offer the services of Suderman Contracting Stevedores, Inc. to supply the required personnel that will allow the Port of Galveston to operate the Pier 10 Container Terminal. However, it is not our intention to operate the facility only to be the means by which the Port of Galveston can access the I.L.A. labor required to function.

You will notice the schedule provided lists the cost of our taxes, insurance, labor relations cost and administration fee on a percentage basis. This percentage is applied to the wage rate set by the contract between the W.G.M.A. and the I.L.A. In addition to the wages, taxes and insurance, we would invoice the Port for the pension, welfare and vacation costs as outlined in the contract.

Also, in the contract are provisions regarding vacation payments along with severance agreements. These will also be the responsibility of the Port.

Below are examples by the different crafts using a wage rate of \$21.00 per hour.

<b><u>MECHANICS (7317E)</u></b>	<b>\$21.00</b>
Taxes & Insurance @ 39.34%	8.76
P.W&V	<u>8.41</u>
Total Cost Per hour	<b>\$37.67</b>
<b><u>CLERKS (8709E)</u></b>	<b>\$21.00</b>
Taxes & Insurance @ 32.08%	6.74
P.W&V	<u>8.41</u>
Total Cost Per hour	<b>\$36.15</b>
<b><u>WAREHOUSEMEN (7350E)</u></b>	<b>\$21.00</b>
Taxes & Insurance @ 47.99%	10.78
P.W&V	<u>8.41</u>
Total Cost Per hour	<b>\$40.19</b>

EXHIBIT "A"

Page Two  
Mr. Ernest Connor / Port of Galveston  
October 23, 1995

<b>CRANE OPERATORS (7327E)</b>	<b>\$21.00</b>
Taxes & Insurance @ 51.88%	10.89
P.W&V	<u>8.41</u>
Total Cost Per hour	<b>\$40.30</b>

We hope that this offer will provide the Port an opportunity to keep the Container Terminal in operation at this time.

Sincerely yours,

SUDERMAN CONTRACTING STEVEDORES, INC.



Don Suderman

DS/bkp

EXHIBIT "A"

PAGE 2

**TAXES & INSURANCE SCHEDULE  
FOR OPERATIONS AT PIER 10  
PORT OF GALVESTON**

<b><u>MECHANICS RATED AS 7317F</u></b>	15.71	
Increased Limits	.31	
Total W/C Insurance	<u>16.02</u>	
FICA	7.65	
State Unemployment Tax	3.84	
Federal Unemployment Tax	.08	
Labor Relations W.G.M.A.	1.50	
Liability Insurance \$5,000.00	8.75	
Administration & Payroll Expense	<u>1.50</u>	39.34%
<b><u>CLERKS RATED AS 8709F</u></b>	8.59	
Increased Limits	.17	
Total W/C Insurance	<u>8.76</u>	
FICA	7.65	
State Unemployment Tax	3.84	
Federal Unemployment Tax	.08	
Labor Relations W.G.M.A.	1.50	
Liability Insurance \$5,000.00	8.75	
Administration & Payroll Expense	<u>1.50</u>	32.08%
<b><u>WAREHOUSEMEN RATED AS 7350F</u></b>	24.19	
Increased Limits	.48	
Total W/C Insurance	<u>24.67</u>	
FICA	7.65	
State Unemployment Tax	3.84	
Federal Unemployment Tax	.08	
Labor Relations W.G.M.A.	1.50	
Liability Insurance \$5,000.00	8.75	
Administration & Payroll Expense	<u>1.50</u>	47.99%
<b><u>CRANE OPERATORS RATED AS 7327F</u></b>	28.00	
Increased Limits	.56	
Total W/C Insurance	<u>28.56</u>	
FICA	7.65	
State Unemployment Tax	3.84	
Federal Unemployment Tax	.08	
Labor Relations W.G.M.A.	1.50	
Liability Insurance \$5,000.00	8.75	
Administration & Payroll Expense	<u>1.50</u>	51.88%

EXHIBIT "A"