

Foreign-Trade Zone No. 36
Zone Schedule No. 5



GALVESTON WHARVES

Effective October 15, 2013

**Foreign-Trade Zone No. 36
Schedule 5**

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INTRODUCTION

This Zone Schedule (Schedule) has been adopted by the Board of Trustees of the Galveston Wharves, also known as the Port of Galveston ("POG"), a separate utility of the City of Galveston. The Board of Trustees was created by ordinance of the City and operates under the authority of Article XII of the City Charter and Chapter 54 of the Texas Transportation Code, and is responsible for the management, control, maintenance and operation of the port improvements and facilities under its jurisdiction. The Board of Trustees was officially approved to be Grantee of Foreign-Trade Zone (FTZ) No. 36 through Foreign-Trade Zone Board Order No. 1080 issued February 22, 2000 and on October 18, 2012 FTZ No. 36 was reorganized under Alternative Site Framework (ASF) (15 CFR Sec. 400.2) with a designated service area of Galveston County.

Foreign-Trade Zone No. 36 Zone Schedule No. 5

This Schedule is intended to conform to 15 CFR Part 400.44 Zone Schedule and supersedes all previously published Zone Schedules. This schedule contains the internal rules and regulations governing FTZ activities in Foreign-Trade Zone No. 36 by Operators, Subzone Operators and all other persons or entities. The Schedule may also contain Rates and Charges provided by approved Zone Operators for their assigned Sites; however, the User should always contact the Operator directly for current quotes of rates and rules relating to the User's cargo to be handled by that Operator.

Subject to the Foreign-Trade Zone Act and FTZ Regulations, this Schedule may be modified, amended or replaced by the POG at any time, if determined to be necessary or appropriate. POG at its sole discretion will interpret the provisions of the Schedule and determine the applicability of any of its provisions. The POG shall also have complete authority governing the imposition of the Grantee Rates and Charges herein including the decision to waive any such rate or charge in whole or in part.

Doing Business in the Zone

Qualifications

Persons or business entities shall be considered for Operators or Uses of the Zone provided they have:

1. Satisfied all requirements imposed by the U.S. Customs and Border Protection (CBP) including without limitation securing an FTZ Operator Bond in form and substance as required by law; properly secured their activated zone area; properly designated the site with signage and boundaries; prepared a procedures manual; and obtained letters of support or non-opposition from the appropriate taxing agencies.

2. Executed the necessary Operating Agreement with the Grantee; provided a schedule of rates and charges for the Grantee Zone Schedule
3. Conformed to all federal, state and municipal statutes and regulations whether operating on or off property owned by the Grantee, as well as the local laws, including local zoning ordinances that are required.

Tax Policy: The Grantee will not issue a letter of support for an FTZ application until the Operator has provided a letter of support or non opposition from all impacted taxing entities.

- All applicants for Sites/Subzones or new/expanded operations within the Zone service area must first obtain a letter from the taxing entities impacted by the proposed Zone.
- All applicants will be required to comply with each Payment in Lieu of Taxes (PILOT) Agreement the applicant has executed with respect to the Zone.

The Grantee must act in the public interest and is not willing to support a zone site or subzone that will result in any loss of existing tax revenue, without the express concurrence from the affected tax entity.

Operators and Users whether operating on or off property owned by the Grantee, shall comply with all requirements of applicable local laws and ordinances.

Operators and Users shall comply with all laws, rules or regulations promulgated by agencies having jurisdiction of certain import and/or exports including but not limited to the Food and Drug Administration, Fish and Wildlife Commission, Environmental Protection Agency, Department of Defense, U.S. Census Bureau, Alcohol, Tobacco & Firearms and any other agencies related to the import and export of merchandise.

Use of Grantee Owned Facilities: In the event an Operator or User is utilizing a facility owned by the Grantee as a Zone Site, the Operator or User shall maintain that facility in a good state of repair and housekeeping in accordance with its Operating Agreement with the Grantee, any lease or other agreement with Grantee, and otherwise in accordance with the POG published tariff.

Retail Trade: No retail trade shall be conducted within the activated areas of the Zone except as may be approved by the FTZ Board and the CBP Port Director, with the concurrence from the Grantee.

Responsibilities of the Grantee

In general Zones shall be operated by or under the general management of zone Grantees, subject to the requirements of the FTZ Act and regulations of other federal, state, and local agencies having jurisdiction over the sites and operations. A zone Grantee shall ensure that the reasonable zone needs of the business community are served by their zones. CBP officials with oversight responsibilities for a port of entry represent the Foreign-Trade Zones Board with regard to the zones adjacent to the port of entry in question and are responsible for enforcement, including physical security and access requirements, as provided in 19 CFR Part 146. In order to commence operation in an FTZ the Grantee shall submit the Zone Schedule to the Executive Secretary, as provided in 15 CFR Sec. 400.44. Approval or concurrence from the Grantee and

approval from CBP are required prior to the activation of any portion of an approved zone. Prior to activation of a zone the Operator shall obtain all necessary permits from federal state and local authorities and except as otherwise specified in the Act shall comply with the requirements of those authorities.

- (a) The Grantee shall have the primary responsibility for filing applications with the Board and requesting modifications. Requests for modification to the Zone may include expansion of the Zone, Zone boundary modifications, Subzone applications and or changes in the scope of authority.
- (b) Whenever interpretations of the provision of this Schedule become necessary, such interpretations shall be made by the Grantee in accordance with the Regulations and the laws of the state of Texas, as they apply to the Operator's activities in the Zone. However, any matter involving interpretation or action by the CBP or another agency of U.S. Government will be determined by the CBP Port Director or his duly appointed representative.
- (c) In accordance with Section 14 of the Foreign-Trade Zones Act a Grantee shall afford to all who may apply to make use of or participate in the uniform treatment under like conditions. Treatment of zone participants within the zone including application of rates and charges should be fair and reasonable. Agreements shall be made in writing. Any agreement or contract related to one or more Grantee functions and involving a zone participant (e.g. agreement with property owners and agreements with zone operators) must be in writing.
- (d) A grant of authority per se shall not be construed to make the zone Grantee liable for violations by zone participants. The role of the zone Grantee under the FTZ Act and the Board's regulations is to provide general management of the zone to ensure that the reasonable needs of the business community are served.
- (e) Zone records and reports shall be prepared and maintained in accordance with the requirements of CBP and the Board, consistent with documents issued by the Board specific to the zone in question and the zone Grantee shall retain copies of the application/requests it submits to the Board in electronic and paper format. Grantees and/or Operators shall keep current layout drawings of approved sites showing activate portions and a file showing required activation approvals the Grantee shall furnish maps to CBP. Grantees shall submit a complete and accurate annual report to the Board within 90 days after the end of the calendar year.

Responsibilities of the Operator

Operator must operate the Premises in strict compliance with the terms of a written agreement, the Act, and the Regulations. Without limiting the generality of the foregoing requirement, the Operator must, at its sole cost:

- (a) Supervise all admissions, transfers, removals, recordkeeping, manipulations, manufacturing, destruction, exhibition, physical and procedural security, and conditions of storage at the Premises.
- (b) Pay required fees stipulated in this agreement and the current Zone Schedule
- (c) Prepare a written application to the CBP Port Director (as defined in the Regulations) for activation of the Premises and provide Grantee copies.
- (d) Make written application to the CBP Port Director for approval of any alteration of an activated area in the Premises and provide Grantee copies.
- (e) Maintain in full force and effect during the term of this Agreement and file with the Port Director the requisite CBPF 301, Foreign-Trade Zone Operator's Bond, in the amount required by the Regulations.
- (f) Sign or transmit electronically each CBPF 214 required to permit merchandise to be placed onto the Premises.
- (g) Prepare a Procedures Manual outlining the inventory control system and recordkeeping system to be followed at the Premises.
- (h) Prepare a CBP reconciliation report within 90 days after the end of the accounting year for the Premises.
- (i) Perform an annual internal review of the inventory control and recordkeeping system for the Premises and report discrepancies to the Port Director and provide Grantee copies.
- (j) Maintain admission documentation for the Premises including CBPF 216 required for permission to manipulate, manufacture, exhibit, or destroy merchandise on the Premises and CBPF 3461; CBPF 7501 or CBPF 7512 to remove or transfer cargo from the zone
- (k) Collect all in-bond documentation.
- (l) Report shortages and overages to the CBP and provide Grantee copies.
- (m) Submit annual report information to Grantee and file information on OFIS website
- (n) Properly prepare and report Harbor Maintenance Fee Quarterly Summary forms as required

Limitation of Liability of City and Members of the Board of Trustees

The City of Galveston shall never be liable to respond in damages or make indemnity or compensation of any character from any source other than the income and revenues arising from the operation of the property operated by the Board of Trustees of the Galveston Wharves by reason of, or due to, or caused by the operation of the Galveston Wharves. The members of the Board of Trustees of the Galveston Wharves, either singularly or collectively, shall not be personally liable to anyone by reason of, or due to, or caused by the management of Galveston Wharves.

Insurance and Indemnity Requirements. Each Operator of the Zone must strictly comply with the insurance and indemnity requirements set forth on Exhibit D, which is attached and incorporated by reference. Insurance on merchandise at the Zone must be carried by and at the expense of Operator, or owner of the merchandise. Merchandise stored, manipulated or

transferred within the Zone is not insured by Grantee and the Tariff rates do not include insurance on merchandise.

Liability of Grantee. Grantee shall not be liable and shall not assume responsibility for any loss or damage to freight, cargo or merchandise or to any person or property within the Zone, or for any loss or damage arising from acts of commission or omission of Operators, tenants, occupants, or Users of the Zone.

Payment of Fees and Charges

Rates: Operators and Users shall pay the Port of Galveston for services rendered at the published rates on Exhibit A, Exhibit B, and Exhibit C attached to this Schedule. Any invoice issued by the Galveston Wharves, which is unpaid 30 days after the date the invoice is issued, shall become delinquent.

Late Fee Assessment: As to any fees which are or shall become delinquent, interest shall be charged at the lesser of (i) the rate contained in the then current tariff circular governing the Port, as it may from time to time be amended (the "Tariff"), or (ii) the maximum nonusurious rate allowed by law.

Fee Assessed by Operators: All Operators shall publish its own schedule of services offered to and fees to be charged to Users. Such schedule must be available at the Operator's Zone Site and at the Office of the Grantee. Such fees shall be uniform and reasonable but shall not preclude any Operator from entering into agreements with Users based on time volumes and other considerations.

Definitions

Words and terms used in this FTZ Schedule are defined as follows:

Act- Foreign-Trade Zones Act of June 18, 1934 as amended

Activation- After approval by the FTZ Board, a site Operator will submit a written request for activation to the local CBP office with the written concurrence of the Grantee. Activation generally includes, identification of a primary person responsible for zone activities; background checks; preparation of a Zone procedures manual; posting a bond with CBP; security of the site and the inventory control methods to be used in the site.

Adjacency- According to Section 400.21 General Purpose zone sites must be within 60 miles or 90 minutes of a U.S. Customs and Border Protection Port of Entry

Admission- The U.S. Customs and Border Protection terms describing the shipment of merchandise into U.S. foreign-trade zones under CBP supervision

Alternative Site Framework (ASF)- An optional approach to designation and management of zone sites allowing greater flexibility and responsiveness to business needs of the region.

Board- U.S. Foreign-Trade Zones Board of the U.S. Department of Commerce, as established by the Act.

CBP- U.S. Customs and Border Protection of the Department of Homeland Security

CBPF- Customs forms as used in the Regulations which will typically be paired with a specific number used by USCBP to stipulate the use of the form.

Deactivate- A previously activated general purpose zone or subzone site which no longer has local CBP authorization for activity under FTZ procedures

Domestic Merchandise- Merchandise which has been (1) produced in the United States and not exported or (2) previously imported into the Customs Territory of the US and properly released from USCBP custody. Foreign merchandise on which all necessary and applicable duties and taxes have been paid and upon which no drawback has been claimed is considered Domestic Merchandise when admitted to an FTZ.

Exports- Merchandise that is forwarded from zone sites to destination in foreign countries.

Foreign-Trade Zone (FTZ)- Includes one or more restricted access sites including subzones, in or adjacent to a CBP port of entry, operated as a public utility under the

sponsorship of a zone grantee authorized by the Board with zone operations under the supervision of CBP.

Foreign-Trade Zones Board- Consists of the Secretary of Commerce (chairman) and the Secretary of Treasury or their designated alternates.

Foreign-Trade Zone Regulations- Title 15, Code of Federal Regulations (CFR), Part 400, as presently constituted and as amended from time to time, which governs the grant of authority, the establishment and maintenance of FTZ's by Grantees.

Foreign Status Merchandise- Zone merchandise admitted to a zone site under CBP supervision that is normally of foreign origin without being subject to formal customs entry procedures and payment of duties unless and until the foreign merchandise enters the customs territory for domestic consumption.

Grant of Authority- A document issued by the Board that authorizes a zone grantee to establish, operate and maintain a zone, subject to limitations and conditions specified in 19 CFR Part 146. The authority to establish a zone includes the responsibility to manage it.

Grantee- Corporate recipient of a grant of authority for a zone project. The Grantee for Foreign-Trade Zone No. 36 is the Board of Trustees of the Galveston Wharves, also known as the Port of Galveston

Land Owner Agreement- An agreement between a private land owner and a Grantee designating the property as part of an FTZ to be developed for FTZ activity.

Lapse Provision- A grant of authority for a zone or a subzone shall lapse unless the zone project or subzone facility is activated pursuant to 19 CFR Part 146, and in operation not later than five (5) years from the date of the Board order.

Magnet Site- Site intended to serve or attract multiple operators or users under the ASF

Modification- A major modification is a proposed change to a zone that requires action by the FTZ Board; a minor modification is a proposed change to a zone that may be authorized by the Executive Secretary.

Operator- A company or other entity that operates a zone site or subzone under a written Operating Agreement with the Grantee that sets forth rules, procedures and requirements to properly maintain and operate a zone under the concurrence of CBP.

Operating Agreement- a written agreement between the grantee and nay Operator utilizing the Zone that establishes the rules, procedures and other requirements for zone operations.

Operating Procedures- The inventory and record keeping system that will be used in the Zone specified in writing and certified by the Operator to USCBP and the grantee to meet the requirements of Subchapter B 19 CFR Part 146.

Port Director- The local CBP Port Director with jurisdiction over the Galveston area port of entry and the Zone.

Port of Entry- A port of entry in the United States as defined by part 101 of the regulations of U.S. Customs and Border protection (19 CFR Part 101) or a user fee airport authorized under 19 USC 58b and listed in part 122 of the regulations of CBP

Production- Activity involving the substantial transformation of a foreign article resulting in a new and different article having a different name, character, and use, or activity involving a change in the condition of the article which results in a change in the customs classification and its eligibility for entry for consumption.

Service Area- The jurisdiction within which a Grantee proposes to be able to designate sites via minor boundary modification under ASF

Subzone- A site established for a specific use that cannot be accommodated as a general purpose use within the Zone

Sunset Provision- Magnet sites have a rolling five (5) year sunset provision where at least a portion of the magnet site must be activated. A usage-driven site must demonstrate actual zone activity within three (3) years or lose zone status.

Usage-driven Site- A site designated to a single Operator or User under ASF

User- A party using a zone under agreement with a zone Operator

Zone Schedule- A document created by the Grantee that includes the internal rules and regulation of the zone management, rates and fees charged to zone users.

Zone Status- Merchandise can enter the zone in either domestic or foreign status

Privileged Foreign Status is the status that will be given to foreign merchandise or non-tax paid domestic merchandise upon which the duty and applicable taxes have been determined at the time the status is approved according to a CBPF 214. Once determined the duty rate and taxes are not subject to future fluctuation. Once established, Privileged Foreign status given to merchandise cannot be changed. Application for Privileged Foreign status must be filed prior to manipulating or manufacture of any merchandise.

Non-Privileged Foreign Status is status that will be given to foreign merchandise or non-tax paid domestic merchandise upon which the duty and applicable taxes will be

determined at the time the merchandise enters the Customs Territory from the Zone for consumption.

Domestic Status is the status that will be given to merchandise that is comprised of (i) U.S. products on which all internal revenue taxes have been paid; or (ii) imported merchandise on which all duty and/or taxes have been paid; or (iii) imported merchandise which is free of duty and tax.

Zone Restricted Status is the status that will be given to merchandise entering the Zone for the purpose of exploitation or destruction (other than alcoholic spirits or beverages)

FOREIGN-TRADE ZONE NO. 36

Exhibit A Schedule of Rates and Fees

Users of the Zone are responsible and liable for payment of any duties, taxes, fines, penalties, or liquidated damages due any agency of the federal, state, or local government arising from use of the Zone, including liabilities on merchandise which is not accounted for to the satisfaction of CBP in addition to the fee enumerated below. In the event the Grantee is required to pay any duty or tax to CBP under conditions of the U.S. CBP Service bond maintained by the Grantee, the person responsible for payment of the duty or tax will immediately reimburse the Grantee for all costs, expenses and attorney fees which may be incurred or sustained by the Grantee by reason of collection of such duties or taxes. Any sums due to the Grantee under the provision of the paragraph shall constitute a lien against the interest of the User in the Zone and all properties situated in the Zone to the same extent and the same condition as delinquent rent would constitute a lien on such premises and property.

I. Magnet Site

1.* Application fee for New Magnet Site	\$2,500-\$7,500
2. Application for New Operator/User within Magnet Site	\$1,000
3. Application for Manufacturing Authority per Operator/User within Magnet Site	\$4,000
4. Request for Change in Scope of Authority	\$1,000
5. Activation Fee Per Site	No Charge
6. **Grantee Annual Fee per Operator/User within Magnet Site	\$3,000
7. Site without an Operator	\$ 1,500

II. Usage-Driven Site

1. Application for Usage Driven Site (Non-manufacturing)	\$1,000
2. Application for Usage Driven Site (Manufacturing)	\$5,000
3. Request for Change in Scope of Authority	\$1,000
4. Request for Boundary Modification	\$1,000
5. Activation Fee per Site	No charge
6. **Grantee Annual Fee per Site	\$3,000

III. Sub-Zone (Manufacturing-Distribution)

1. *Application for Sub-Zone	\$2,500-\$7,500
2. Request for Change in Scope of Authority	\$1,000
3. Request for Boundary Modification	\$1,000
4. Activation Fee Per Site	No Charge
5. **Grantee Annual Fee per Sub-Zone	\$10,000

*Application fees may vary and will be determined by Grantee on complexity of application including legal consultation as necessary

**Grantee annual fee are due and payable upon first day of site activation for approved FTZ use and annually thereafter in accordance with Grantee/Operator Agreement

IV. Other Approval Fee & Charges

Any other fees, charges or expenses incurred by Grantee for the purpose of obtaining FTZ Board approval and/or U.S. CBP approval on behalf of the client, and not specifically listed herein, will be provided on a case by case basis following consultation with grantee for services requested.

FOREIGN-TRADE ZONE NO. 36

Exhibit B Other FTZ Rates and Fees

Users of the Zone are responsible and liable for payment of any duties, taxes, fines, penalties, or liquidated damages due any agency of the federal, state, or local government arising from use of the Zone, including liabilities on merchandise which is not accounted for to the satisfaction of CBP in addition to the fee enumerated below. In the event the Grantee/Operator is required to pay any duty or tax to CBP under conditions of the USCBP Service bond maintained by the Grantee, the person responsible for payment of the duty or tax will immediately reimburse the Grantee/Operator for all costs, expenses and attorney fees which may be incurred or sustained by the Grantee/Operator by reason of collection of such duties or taxes. Any sums due to the Grantee/Operator under the provision of the paragraph shall constitute a lien against the interest of the User in the Zone and all properties situated in the Zone to the same extent and the same condition as delinquent rent would constitute a lien on such premises and property.

All Users utilizing the services of the Grantee/Operator are required to hold a back to back FTZ Operators bond with the Grantee/Operator.

The Grantee/Operator reserves the right to change or waive any fee or charge if, in the Grantee's determination, it is in the best interest of the welfare of the community to do so.

General Purpose Zone

A.	Minimum Monthly Fee (4 transactions)	\$ 280.00
B.	Transaction* Fee	\$ 70.00
C.	Hourly Fee**	\$ 70.00

Zone Users utilizing the Grantee as Operator of the General Purpose Zone will pay a minimum monthly charge noted above. Each transaction over the minimum per month will be charged according to the price listed above.

*Transaction- Processing of a CF214, CF 216, CF 3641, 7501, 7512 or any other CBP form or back up for said forms required by CBP for the operation of the zone.

**Hourly Fees will be charged for CBP Compliance Reviews or CBP Audits

FOREIGN-TRADE ZONE NO. 36

Exhibit C

Other Rate Information

Lease/Rental/Purchase Rates

In order to lease property owned by the Grantee, all Users of FTZ services must have already selected an Operator recognized by USCBP, unless the User is acting as its own operator under its own Bond and Procedures Manual accepted by USCBP. Lease contract and FTZ Operator Agreements will always be separate, stand-alone documents.

1. Short term rental/overflow refer to
Section 400 C-472 Warehouse Rental of the most current Port of Galveston Tariff Circular
or contact John Peterlin (409) 766-6112.
2. Long term rental/sale or property development,
contact Diane Falcioni (409) 766-6121.

To lease/purchase property not owned by the Grantee, but approved by the FTZ Board for FTZ activity, contact the following companies:

Scholes International Airport
Hud Hopkins (409) 741-4609

Pelican Island Property owned by Port of Houston
Shane Williams (713) 670-2604

Exhibit D
Insurance and Indemnity Requirements of Foreign Trade Zone Operator

1. Specific Insurance Requirements

The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement and thereafter as required:

Insurance	Coverage/Limits	Other Requirements
Commercial General Liability (Occurrence Basis)	<ul style="list-style-type: none"> ▪ \$1,000,000 Per Occurrence ▪ \$2,000,000 General Aggregate ▪ \$2,000,000 Products/Completed Operations Aggregate ▪ \$1,000,000 Personal And Advertising Injury 	<ul style="list-style-type: none"> ▪ Current ISO edition of CG 00 01 ▪ The personal injury contractual liability exclusion shall be deleted. ▪ Additional insured shall be provided in favor of Wharves Parties on ISO form CG 20 26 04 13. ▪ This coverage shall be endorsed to provide primary and non-contributing liability coverage. ▪ The following exclusions/limitations (or their equivalent(s), are prohibited: <ul style="list-style-type: none"> ○ Contractual Liability Limitation CG 21 39 ○ Any endorsement modifying or deleting the exception to the Employer's Liability exclusion ○ Any "Insured vs. Insured" exclusion ○ Any Punitive, Exemplary or Multiplied Damages exclusion
Excess/Umbrella Liability (Occurrence Basis)	\$1,000,000 Each Occurrence	<ul style="list-style-type: none"> ▪ Such insurance shall be excess over and be no less broad than all coverages described above. ▪ Such insurance shall be endorsed to be primary and non-contributing to any liability insurance, whether primary, umbrella or excess, held by the Wharves Parties. ▪ Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits and shall include a duty to defend any insured.

2. General Insurance Requirements

A. Definitions. For purposes of this Agreement:

- i. "ISO" means Insurance Services Office.
- ii. "Wharves Parties" means (a) Board of Trustees of the Galveston Wharves ("Wharves"), (b) the Galveston Port Facilities Corporation, (c) their respective trustees, officers, employees, and agents, and (d) their affiliates, subsidiaries, successors and assigns.
- iii. "Operator" means Foreign Trade Zone Operator identified in this Agreement.

B. Policies.

- i. Operator shall maintain such General Liability and Excess/Umbrella Liability at all times during the term of this Agreement.
- ii. It is the intent of the parties to this Agreement that all General Liability and Excess/Umbrella insurance coverage required herein shall be primary and non-contributory to any liability insurance, whether primary, excess or umbrella, held by the Wharves Parties. It is the specific intent that all insurance held by the Wharves Parties shall be excess, secondary and non-contributory.
- iii. All policies must:
 - a. Be written through insurance companies authorized to do business in the State in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide.
 - b. Provide a waiver of subrogation in favor of Wharves Parties on all insurance coverage carried by Operator, whether required herein or not
 - c. Contain an endorsement providing for thirty (30) days prior written notice to Wharves of cancellation.
 - d. Be provided to the Wharves Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of the Wharves.
- iv. Failure of any Wharves Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Wharves Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Operator's obligation to maintain such insurance.
- v. Operator shall provide to the Wharves a certified copy of all insurance policies required herein within ten (10) days of any such request. Renewal policies, if necessary, shall be delivered to the Wharves prior to the expiration of the previous policy.
- vi. Commencement of operations without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of this Agreement, shall not constitute a waiver by any Wharves Parties of any rights. The Wharves shall have the right, but not the obligation, of prohibiting the Operator from performing any operations until such certificate of insurance and/or required endorsements are received and approved by the Wharves.

C. Limits, Deductibles and Retentions

- i. The limits of liability may be provided by a single policy of insurance or by a combination of primary and excess/umbrella policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.

- ii. No deductible or self-insured retention shall exceed \$25,000 without prior written approval of the Wharves, except as otherwise specified herein. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Operator's sole risk. The Operator shall not be reimbursed for same

D. Forms

- i. If the forms of policies, endorsements, certificates or evidence of insurance required by this Exhibit are superseded or discontinued, the Wharves will have the right to require other equivalent forms.
- ii. Any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by the Wharves.
- iii. If the Additional Insured requirements are deemed to violate any law, statute or ordinance, the additional insured requirements, including any additional insured policy provision or endorsements procured pursuant to his Agreement, shall be reformed to provide the maximum amount of protection to the Wharves Parties as allowed under the law.

E. Evidence of Insurance. Insurance must be evidenced as follows:

- i. ACORD Form 25 Certificate of Liability Insurance, or any other form approved by the Texas Department of Insurance for liability coverages.
- ii. Evidence shall be provided to the Wharves prior to commencing Services and prior to the expiration of any required coverage.
- iii. Approved certificate form(s) shall specify:
 - a. Wharves Parties as certificate holder at Wharves' mailing address;
 - b. Insured's name, which must match that on this Agreement;
 - c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
 - d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
 - e. Additional Insured status in favor of Wharves Parties;
 - f. Amount of any deductible or self-insured retention in excess of \$25,000;
 - g. Primary and non-contributory status;
 - h. Waivers of subrogation; and
 - i. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- iv. Copies of the following policy provisions and/or endorsements shall also be provided:
 - Additional Insured status;
 - 30 Day Notice of Cancellation; and
 - Schedule of Forms and Endorsements pages applicable to the General Liability and Excess/Umbrella policies.

F. Operator Insurance Representations to Wharves Parties

- i. It is expressly understood and agreed that the insurance coverages required herein (a) represent Wharves Parties' minimum requirements and are not to be construed to void or limit the Operator's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages the Operator should or should not

maintain for its own protection; and (b) are being, or have been, obtained by the Operator in support of the Operator's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Operator, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Agreement.

- ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. If the Operator shall fail to remedy such breach within five (5) business days after notice by the Wharves, the Operator will be liable for any and all costs, liabilities, damages and penalties resulting to the Wharves Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Operator by the Wharves. In the event of any failure by the Operator to comply with the provisions of this Agreement, the Wharves may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Operator, purchase such insurance, at the Operator's expense, provided that the Wharves shall have no obligation to do so and if the Wharves shall do so, the Operator shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.
- iii. This Exhibit is an independent contract provision and shall survive the termination or expiration of the Consulting Agreement.

G. Release and Waiver

The Operator hereby releases the Wharves Parties from any and all claims or causes of action whatsoever which the Operator might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Operator pursuant to this Agreement.

3. INDEMNITY

TO THE FULLEST EXTENT PERMITTED BY LAW, BUT IN NO WAY IN CONTRAVENTION OF THE LAW, OPERATOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS WHARVES PARTIES, ANY OTHER PERSON OR ENTITY THAT OPERATOR IS REQUIRED TO DEFEND OR INDEMNIFY UNDER THE CONTRACT DOCUMENTS, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES (COLLECTIVELY, THE "INDEMNITEES"), FROM AND AGAINST ANY CLAIMS, SUITS, FINES, PENALTIES, LOSSES, COSTS, EXPENSES AND/OR DAMAGES (INCLUDING ATTORNEYS' FEES) (COLLECTIVELY, "LIABILITIES") ARISING OUT OF OR RELATED TO OR ALLEGED TO ARISE OUT OF OR RELATE TO THE CONTRACT OR THE PERFORMANCE THEREOF INCLUDING, WITHOUT LIMITATION, LIABILITIES ATTRIBUTABLE TO (1) PERSONAL/BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR (2) INJURY OR DAMAGE TO PROPERTY (INCLUDING ANY RESULTING LOSS OF USE OR ECONOMIC LOSS).

OPERATOR UNDERSTANDS THAT ITS DEFENSE AND INDEMNITY OBLIGATIONS IN THIS ADDENDUM EXTEND TO AND INCLUDE LIABILITIES CAUSED OR ALLEGED TO BE CAUSED BY THE SOLE OR PARTIAL NEGLIGENCE OR FAULT OF ANY OF THE INDEMNITEES.

3.1 DEFENSE OBLIGATIONS

OPERATOR'S OBLIGATION TO DEFEND UNDER PARAGRAPH 3 ABOVE IS SEPARATE AND DISTINCT FROM ITS OBLIGATION TO INDEMNIFY. OPERATOR SHALL DEFEND THE INDEMNITEES EVEN IF LIABILITIES ARE CAUSED OR ALLEGED TO BE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR FAULT OF ANY INDEMNITEES, AND OPERATOR SHALL COMPLY WITH AND CONTINUE ITS DEFENSE OBLIGATIONS UNTIL THE UNDERLYING LIABILITY IS FINALLY ADJUDICATED OR SETTLED.

3.2 WORKER INJURIES

OPERATOR AGREES WITH RESPECT TO ANY PERSONS PERFORMING ANY PART OF THE CONTRACT THAT OPERATOR IS SOLELY RESPONSIBLE FOR: (1) PROVIDING ALL NECESSARY SUPERVISION, MONITORING, DIRECTION AND CONTROL, (2) COMPLYING WITH AND ENFORCING ALL SAFETY REQUIREMENTS REQUIRED BY THE CONTRACT AND APPLICABLE LAW, AND (3) PROVIDING ALL NECESSARY SAFETY EQUIPMENT, TRAINING AND SAFE WORKING CONDITIONS. ACCORDINGLY, AND NOTWITHSTANDING ANYTHING IN THIS ADDENDUM TO THE CONTRARY, IF ANY LIABILITIES ARE ATTRIBUTABLE TO ANY PERSONAL/BODILY INJURY, SICKNESS, DISEASE OR DEATH TO ANY AGENT, EMPLOYEE, BORROWED SERVANT OR REPRESENTATIVE OF OPERATOR OR ITS SUB-CONSULTANTS, SUPPLIERS OR VENDORS OF ANY TIER, THEN THE DEFENSE AND INDEMNITY OBLIGATIONS OF OPERATOR HEREIN SHALL EXTEND AND APPLY TO ALL LIABILITIES EVEN IF CAUSED OR ALLEGED TO BE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR FAULT OF ANY INDEMNITEES, AND OPERATOR AGREES TO DEFEND AND INDEMNIFY THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN PARTIAL OR SOLE NEGLIGENCE OR FAULT.

HOWEVER, IN NO EVENT SHALL OPERATOR BE REQUIRED TO INDEMNIFY THE INDEMNITEES TO THE EXTENT THAT ANY LIABILITIES ARE CAUSED BY THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

3.3 Architect/Engineer Exclusion

Notwithstanding anything in this Addendum to the contrary, in no event shall Operator be obligated to defend or indemnify Architect or any other registered architect or licensed engineer from Liabilities resulting from design defects or professional negligence to the extent prohibited by Section 130.001 et seq. of the Texas Civil Practice & Remedies Code, as the same may be amended or re-codified.

3.4 Compliance

Operator shall comply with its obligations under this Addendum upon notice of any Liability from any Indemnatee, with legal counsel reasonably acceptable to Wharves and any applicable Indemnatee. Operator shall not settle or compromise any Liability without the prior written consent of Wharves and any applicable Indemnatee. Operator shall comply with its obligations under this Addendum at its sole cost and expense. If Operator fails to fully comply, Wharves may, in addition to any other rights and remedies in the Contract, take all such action as it deems necessary in its sole discretion to protect itself and/or any other Indemnatee and defend, pay, discharge or otherwise settle any Liabilities, and Operator shall be liable for all resulting cost, damage, loss or expense (including attorneys' fees) incurred by Wharves. Operator agrees to pay all attorneys' fees, costs and expenses incurred by Wharves in enforcing this Addendum.

3.5 No Limitation

The rights and remedies of the Indemnitees in this Addendum are cumulative and in addition to other rights and remedies related to defense and indemnity elsewhere in the Contract or otherwise available at law or in equity. Operator's obligations under this Addendum shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable under workers' compensation, disability or other employee benefit acts, or by the scope or limits of insurance required of or otherwise maintained by Operator. The requirements of this Addendum shall survive completion of the obligations Operator under the Contract or any earlier termination and shall continue until barred by applicable law.

3.6 Definitions

Terms in this Addendum shall have the meaning assigned in the Contract unless otherwise defined in this Addendum.