

BOARD OF TRUSTEES
OF THE GALVESTON WHARVES
Tariff Circular No. 6
Original Page 32

ISSUED: May 24, 2002

EFFECTIVE: July 1, 2002

SECTION 600 – INDEMNIFICATION AND INSURANCE

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Except as otherwise provided in any written agreement between the User and the Galveston Wharves, every User of Galveston Wharves Property must, to the fullest extent allowed by law, indemnify, defend, and hold harmless the Galveston Wharves as follows:

(a) Marine Terminal Operations. When the Galveston Wharves is performing marine terminal operations (as defined by federal law), each User INDEMNIFIES and HOLDS HARMLESS the Galveston Wharves, its trustees, officers, agents and employees, and the City of Galveston, its officers, agents and employees (collectively, the "Indemnified Persons"), against all costs and expenses, including, without limitation, attorneys' fees and costs of investigation and defense, as well as legal liability, whether from suit, judgment, settlement or otherwise arising out of any or all claims for injury to any Person or property, including but not limited to injuries resulting in death, arising from, or caused by, or incident to any wrongful or negligent act or omission of the User, its agents, invitees, servants and employees upon Galveston Wharves Property, or arising or resulting from any defective or unsafe condition for which the User is responsible, or of any apparatus, equipment or other property of the User, or in any other manner arising out of any action or inaction of the User.

(b) Other Operations. In all situations other than when the Galveston Wharves is performing marine terminal operations (as defined by federal law), each User INDEMNIFIES and HOLDS HARMLESS the Indemnified Persons, against all costs and expenses, including, without limitation, attorneys' fees and costs of investigation and defense, as well as legal liability, whether from suit, judgment, settlement or otherwise arising out of any or all claims for injury to any Person or property, including but not limited to injuries resulting in death, arising from, or caused by, or incident to any wrongful or negligent act or omission of the User, its agents, invitees, servants and employees upon Galveston Wharves Property, or arising or resulting from any defective or unsafe condition for which the User is responsible, or of any apparatus, equipment or other property of the User, or in any other manner arising out of any action or inaction of the User. **IN ADDITION THE COVENANTS AND AGREEMENTS CONTAINED IN THIS PARAGRAPH ARE VALID AND ENFORCEABLE REGARDLESS OF WHETHER ANY INDEMNIFIED PERSON IS NEGLIGENT OR WHETHER ANY INDEMNIFIED PERSON WAS IN ANY MANNER RESPONSIBLE FOR THE NEGLIGENT OR WRONGFUL ACT OR OMISSION OR THE DEFECTIVE OR UNSAFE CONDITION WHICH MAY HAVE CAUSED THE INJURY OR CLAIM.**

(c) Indemnity for Noncompliance with Insurance Requirements. User INDEMNIFIES and HOLDS HARMLESS the Galveston Wharves from any loss it may suffer due to User's failure to comply with any insurance requirements contained in this Tariff or any other agreement between User and the Galveston Wharves, including the requirement for obtaining waivers of subrogation, and due to any insurance coverage being invalidated because of User's failure to comply with the terms, conditions and warranties of any Required Policy (defined in Item 610 below).

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INSURANCE REQUIREMENTS FOR ALL USERS

(N)

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Except as otherwise provided in any written agreement between the User and the Galveston Wharves, every User of Galveston Wharves Property must comply with the following insurance requirements when present on Galveston Wharves Property:

(a) Commercial General Liability Insurance. User must maintain Commercial General Liability Insurance, including Pollution Liability coverage, covering the Galveston Wharves and User for liability for property damage, bodily injury, personal injury and death. The insurance provided under this section must be in the amount of not less than \$1,000,000 per occurrence for property damage and pollution, and not less than \$1,000,000 per occurrence for personal injury, bodily injury or death. In the event that User is engaged in any way in the performance of stevedoring services on or in connection with the facilities of the Galveston Wharves, User must, in addition to the above noted Pollution Liability coverage, maintain General Liability/Premises Operations Insurance covering the Galveston Wharves and User for liability for property damage, bodily injury, personal injury and death. The insurance provided under this section must be in the amount of not less than \$5,000,000 combined single limits per occurrence for property damage, personal injury, bodily injury or death. Such policy must name the Galveston Wharves (and any successor or assign designated by the Galveston Wharves) and the City of Galveston as additional insureds. Additionally, each policy must contain an endorsement waiving all rights of subrogation against the Galveston Wharves and the City of Galveston, and their respective agents and employees.

(b) Workers Compensation. User must maintain Workers Compensation Insurance to protect against claims under Texas Workers Compensation laws as well as all Federal acts applicable to User's operations on Galveston Wharves Property, including but not limited to U. S. Longshoremen and Harborworkers Act, Jones Act and Federal Employers' Liability Act (F.E.L.A.). The limit of liability for such coverage must at least meet applicable statutory requirements and, Alternate Employer endorsement for the Galveston Wharves and the City of Galveston must be included in each policy. Additionally, each policy must contain an endorsement waiving all rights of subrogation against the Galveston Wharves and the City of Galveston, and their respective agents and employees.

(c) Employers' Liability. User must maintain Employers' Liability Insurance in the minimum amount of \$1,000,000 per occurrence for personal injury, bodily injury or death to any employee of User who may bring a claim outside the scope of the Texas Workers Compensation laws or federal acts applicable to User's operations on Galveston Wharves Property. This insurance must contain all endorsements necessary to cover

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maritime operations and, where applicable, stevedore and longshore operations, including Original admiralty benefits and damages under the Jones Act and benefits and damages under the U. S. Longshoremen and Harborworkers Act, in the minimum amount of \$1,000,000 per occurrence. Additionally, each policy must contain Alternate Employer endorsement for the Galveston Wharves and the City of Galveston and an endorsement waiving all rights of subrogation against the Galveston Wharves and the City of Galveston, and their respective agents and employees.

(d) Automobile Insurance. User must maintain Automobile Liability Insurance coverage on all its owned or rented vehicles that enter Galveston Wharves Property in the minimum amount of (i) \$1,000,000 combined single limit coverage per occurrence for all vehicles used for commercial purposes, and (ii) the applicable statutory minimums for vehicles not used for commercial purposes. Such commercial policy must name the Galveston Wharves (and any successor or assign designated by the Galveston Wharves) and the City of Galveston as additional insureds. Additionally, each policy with respect to commercial vehicles must contain an endorsement waiving all rights of subrogation against the Galveston Wharves and the City of Galveston, and their respective agents and employees.

(e) Umbrella/Excess Liability Insurance. User must maintain Umbrella/Excess Liability Insurance. The insurance provided under this section must be in the amount of not less than \$5,000,000 per occurrence and be excess over all underlying insurance coverage in this Tariff. Such policy must name the Galveston Wharves (and any successor or assign designated by the Galveston Wharves) and the City of Galveston as additional insureds.

(f) Waiver of Subrogation. The Galveston Wharves and User agree to waive any and all rights of recovery, claims, actions or causes of action against the other, its agents, officers and employees for any injury, death, loss or damage that may occur to any Person or to Galveston Wharves Property, or any personal property of such party on Galveston Wharves Property, by reason of fire, windstorm, earthquake, flood or any other risks, or any other cause which is insured under the insurance policy or policies that either party is required to provide or maintain under this Tariff, to the extent and only to the extent of any proceeds actually received by the Galveston Wharves or User, respectively, with respect thereto, regardless of cause or origin, including negligence of either party hereto, its agents, officers or employees, and each party covenants that no insurer will hold any right of subrogation against the other. If such waiver is not obtained, the party failing to do so indemnifies the other party for any claim by an insurance carrier arising out of subrogation.

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<p>(g) <u>Insurance Requirements.</u> The phrase "<u>Required Policy</u>" means each policy of insurance required to be maintained by User under the terms of this Tariff. Each Required Policy must be placed in/written by a company or companies satisfactory to the Galveston Wharves, but in all events by a company or companies having a current A.M. Best Company General Policyholders Rating of A+ or A and with an A.M. Best Company Financial Rating of not less than XII (or a similar rating by a comparable service selected by the Galveston Wharves should A.M. Best Company cease providing such ratings) and be licensed to do business in Texas or, if the aforesaid is not available, by a company qualified to do business as a non-admitted insurer in Texas under current Texas surplus lines requirements. All Required Policies may contain a deductible of not more than \$25,000. Such policies must be endorsed so as to require 30 days prior written notice to the Galveston Wharves in the event of cancellation, material change or intent not to renew. Required Policies must contain cross-liability clauses, when applicable and available. User must deliver to the Galveston Wharves a Certificate of Insurance (evidence of coverage) for any Required Policy no later than the first date any insurance policy is required hereunder. <u>The required evidence of coverage must always be deposited with the Galveston Wharves.</u> If User fails to do so, such failure may be treated by the Galveston Wharves as a default by User and the Galveston Wharves, in addition to any other remedy under this Tariff, may purchase and maintain such Required Policy and User must immediately reimburse the Galveston Wharves for any premiums paid or costs incurred by the Galveston Wharves in providing such insurance.</p>	

All required Certificates of Insurance must be issued ("Policy Holder" endorsement) to:

The Board of Trustees of the Galveston Wharves and The City of
Galveston
P.O. Box 328
Galveston, Texas 77553

ADDITIONAL INSURANCE REQUIREMENTS FOR CERTAIN USERS (N) 615

Except as otherwise provided in any written agreement between the User and the Galveston Wharves, certain Users of Galveston Wharves Property must comply with the following insurance requirements:

(a) Liquor Liability Insurance. If User is engaged in any way in the sale of alcoholic beverages, either for consumption of alcoholic beverage on or off Galveston Wharves Property, User must maintain Liquor Liability Insurance with limits of not less than \$1,000,000 per occurrence. If written on a separate policy from the Commercial General Liability policy required in this Tariff, such policy must name the Galveston Wharves (and any successor or assign designated by the Galveston Wharves) as an additional insured. **Item No. 615 continued on the next page**

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(b) Garagekeeper's Liability Insurance. If User is engaged in any way in the performance of automobile valet services, User must maintain Garagekeeper's Legal Liability Insurance coverage in the minimum amount of \$1,000,000 combined single limit coverage per occurrence. Additionally, each policy must contain an endorsement waiving all rights of subrogation against the Galveston Wharves and the City of Galveston, and their respective agents and employees.

(c) Protection & Indemnity Insurance. If User operates a vessel calling at Galveston Wharves Property, User must maintain Protection and Indemnity (P&I) Insurance coverage in form and substance acceptable to Wharves in the minimum amount of \$5,000,000 combined single limit coverage per occurrence. Additionally, each policy must contain an endorsement waiving all rights of subrogation against the Galveston Wharves and the City of Galveston, and their respective agents and employees.

(d) Property Insurance. If User is the sole occupant or user of any structure on Galveston Wharves Property, User must insure all structures so occupied or used, any other improvements, and any personal property (including, but not limited to, furniture and fixtures, Electronic Data Processing (EDP) equipment, inventory or stock) located or being constructed in the structure(s) against loss or damage by fire, hurricane, windstorm, flood, earthquake and all other risks with "all risks" endorsement or its equivalent. The insurance must be paid for by User and must be in amounts not less than the full actual replacement value of all the structure(s), any other improvements, and any personal property being insured, and must have a replacement cost endorsement or similar provision. The actual replacement value must be confirmed from time to time by the insurer, at the Galveston Wharves' request. User agrees to employ an appraiser approved by the Galveston Wharves to review, at least annually, the Property Insurance covering the structure(s), any other improvements, and any personal property located or being constructed in the structure(s) to determine the full replacement value thereof. User agrees to increase the policy limits, if necessary, to an amount equal to the full replacement value as determined by the appraiser. User is solely responsible for the payment of any appraiser fees and policy premium increases.

(e.) Stevedore's Legal Liability Insurance. If User is engaged in any way in the performance of stevedore services and/or operations on or in connection with the facilities of the Board of Trustees of the Galveston Wharves, User must maintain Stevedore's Legal Liability Insurance coverage in the minimum amount of \$5,000,000 combined single limit coverage per occurrence. Such policy must name the Galveston Wharves (and any successor or assign designated by the Galveston Wharves) and the City of Galveston as additional insureds. Additionally, each policy must contain an endorsement waiving all rights of subrogation against the Galveston Wharves and the City of Galveston, and their respective agents and employees.

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(f.) Longshore and Harborworkers Insurance. If User is engaged in any way in the performance of stevedore services and/or operations on or in connection with the facilities of the Board of Trustees of the Galveston Wharves, User must maintain Insurance to protect against claims under all Federal acts applicable to User's operations on Galveston Wharves Property, including but not limited to the U. S. Longshoremen and Harborworkers Act. The limit of liability for such coverage must at least meet applicable statutory requirements. Such policy must name the Galveston Wharves (and any successor or assign designated by the Galveston Wharves) and the City of Galveston as additional insureds. Additionally, each policy must contain an endorsement waiving all rights of subrogation against the Galveston Wharves and the City of Galveston, and their respective agents and employees.

(g.) Terminal Operators Liability Insurance. If User is engaged in any way in as an operator of Terminal Facilities on or in connection with the facilities of the Board of Trustees of the Galveston Wharves, User must maintain Terminal Operators Liability Insurance coverage in the minimum amount of \$1,000,000 combined single limit coverage per occurrence, and \$2,000,000 in General Aggregate. Such policy must name the Galveston Wharves (and any successor or assign designated by the Galveston Wharves) and the City of Galveston as additional insureds. Additionally, each policy must contain an endorsement waiving all rights of subrogation against the Galveston Wharves and the City of Galveston, and their respective agents and employees.

EXCEPTIONS TO INSURANCE REQUIREMENTS FOR CERTAIN USERS (N)
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The Board of Trustees of the Galveston Wharves reserves the right to make from time to time certain exceptions to the insurance requirements described in this Section. Without limiting the authority of the Board described in the previous sentence, the following Users of Galveston Wharves Property are permitted to carry the following insurance coverage in lieu of the coverage described in Item 610 and 615 of this Tariff, except as otherwise provided in any written agreement between the User and the Galveston Wharves:

(a) Office Users. Any User of Galveston Wharves Property used solely for office purposes is not required to insure the building in which the premises is located. However, Property Insurance covering loss or damage by fire, hurricane, windstorm, flood, earthquake and all other risk with "all risks" endorsement or its equivalent must be maintained on all of the User's personal property on the premises, including without limitation all furniture, fixtures, inventory, stock and equipment of every nature. The insurance must be paid for by the User and must be in amounts not less than the full actual replacement value of the personal property on the premises, and must have a replacement cost endorsement or similar provision. The actual replacement value must be confirmed from time to time by the insurer, at the Galveston Wharves's request. In addition, such Users are not required to carry Umbrella/Excess Liability Insurance of the type described in Item 610(e)

END OF SECTION 600