

FIRST AMENDMENT TO AGREEMENT NO. 2606
BETWEEN THE CITY OF LOS ANGELES AND
NIPPON EXPRESS U.S.A. INC.

THIS FIRST AMENDMENT to Agreement No. 2606 is made between the CITY OF LOS ANGELES, a municipal corporation (hereinafter called "City"), acting by and through its Board of Harbor Commissioners (hereafter called "Board"), and NIPPON EXPRESS U.S.A. INC. (hereafter called "Operator").

WHEREAS, City and Operator wish to extend the Term of Agreement No. 2606 an additional five (5) years with three five year extensions; and

WHEREAS, City and Operator also agree to add and update provisions to this Agreement;

NOW, THEREFORE, BE IT RESOLVED, that Agreement No. 2606 between the CITY OF LOS ANGELES and NIPPON EXPRESS U.S.A. INC., be hereby amended as follows:

1. TABLE OF CONTENTS, ARTICLE VI. – ADMINISTRATION AND OPERATION OF ZONE, a new section title is added to read the following:

"6.04 Wilmington Truck Route"

2. TABLE OF CONTENTS, ARTICLE XIV. - INDEMINIFICATION, INSURANCE, BONDING AND PAYMENT OF OBLIGATIONS, section 14.01 Indemnification and 14.02 Notification of Miscellaneous Obligations have been changed and shall be replaced with the following Article and section titles and new section titles 14.03 to 14.13 as set forth below are hereby added:

"ARTICLE XIV. - INDEMINIFICATION AND INSURANCE

- 14.01 Indemnity for General Liability
- 14.02 Back-to-back Bond
- 14.03 General Liability Insurance
- 14.04 Automobile Liability Insurance
- 14.05 Workers' Compensation
- 14.06 Carrier Requirements
- 14.07 Notice of Cancellation
- 14.08 Copies of Policies
- 14.09 Modification of Coverage
- 14.10 Renewal of Policies
- 14.11 Right to Self-Insure
- 14.12 Accident Reports
- 14.13 Notification of Miscellaneous Obligations"

3. TABLE OF CONTENTS, ARTICLE XVI. – MISCELLANEOUS PROVISIONS, a new section title is added to read the following:

“16.19 Small Business Development Program”

4. ARTICLE II. AUTHORITY GRANTED/ACCEPTED, TERM AND AGREEMENT, Section 2.03 Term of Agreement, subsection A. Term and Renewal, the initial term of this Agreement shall be extended an additional five (5) years with three five year extensions to begin on August 1, 2012 and ending on July 31, 2017.

5. ARTICLE VI. ADMINISTRATION AND OPERATION OF ZONE shall include the following section and language:

“6.04 Wilmington Truck Route

It is recognized by both parties that the Operator does not directly control the trucks serving the Port. However, the Operator shall notify truck drivers, truck brokers and trucking companies that trucks serving FTZ warehouses and originating in the Port of Los Angeles must confine their route to the designated Wilmington Truck Route of Alameda Street and “B” Street; Figueroa Street from “B” Street to “C” Street; and Anaheim Street east of Alameda Street. A copy of the Wilmington Truck Route is attached as Exhibit C, which may be modified from time to time at the sole discretion of the Executive Director with written notice to Operator.”

6. ARTICLE XIV. INDEMNIFICATION AND INSURANCE, sections 14.01 Indemnification and 14.02 Notification of Miscellaneous Obligations are deleted in its entirety and shall be replaced to include the following sections and language:

“14.01 Indemnity for General Liability

Except for the sole negligence or willful misconduct of City, Operator shall at all times indemnify, protect, defend, and hold harmless City and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the City, its boards, officers, agents, and/or employees by reason of any damage to property, injury to persons, or any action that may arise out of the performance of this Agreement that is caused by any act, omission, or negligence of Operator, its boards, officers, agents, employees, or subcontractors regardless of whether any act, omission, or negligence of City, its boards, officers, agents, or employees contributed thereto; provided that (1) if the City contributes to a loss, Operator’s indemnification of the City for the City’s share of the loss shall be limited to One Million Dollars (\$1,000,000.00), (2) notwithstanding the limitation in (1), Operator shall

remain responsible for one hundred percent (100%) of any loss attributable to it, and (3) the provisions in (1) and (2) apply on a per-occurrence basis.

14.02 Back-to-Back Bond

Operator shall, if requested to do so by the Grantee, furnish and pay the premium for a bond in a sum equal to the amount of the Customs Form 301 Foreign-Trade Zone Operator's bond required by Customs pursuant to the Regulations, conditioned upon the full, faithful and prompt performance of and compliance with, on the part of the Operator, all the covenants, terms and conditions of this Agreement on its part to be fulfilled, kept, performed and observed. The bond so furnished shall be in a form acceptable to the Grantee, and shall be effective throughout the term of this Agreement and shall be made either by a surety company or companies qualified to carry on a surety business in the State of California and satisfactory to the Grantee.

7. ARTICLE XIV. INDEMNIFICATION AND INSURANCE shall include new sections and language 14.03 to 14.13 as set forth below:

14.03 General Liability Insurance

Operator shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the City, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverages written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Operator's normal limits of liability but not less than One Million Dollars (\$1,000,000.00) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Operator. The insurance provided shall contain a severability of interest clause and shall provide that any other insurance maintained by Department shall be excess of Operator's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision. Each policy shall contain an additional insured endorsement naming the City of Los Angeles Harbor Department, its boards, officers, agents, and employees and a 30-day notice of cancellation by receipted mail as shown in Exhibit "D."

14.04 Automobile Liability Insurance

Operator shall procure and maintain at its expense and keep in force at all times during the term of this Agreement automobile insurance written by an insurance company authorized to do business in the State of California

rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Operator's normal limits of liability but not less than One Million Dollars (\$1,000,000.00) covering injuries or death resulting from each accident or claim arising out of any one claim or accident. Each policy shall contain an additional insured endorsement naming the City of Los Angeles Harbor Department, its board, officers, agents, and employees and a 30-day notice of cancellation by receipted mail as shown in Exhibit "E."

14.05 Workers' Compensation

Operator shall certify that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that the Operator shall comply with such provisions before commencing the performance of the tasks under this Agreement. Operator shall submit Workers' Compensation policies, whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City in any circumstance in which it is alleged that actions or omissions of the City contributed to the accident. See Exhibit "F."

14.06 Carrier Requirements

All insurance which Operator is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

14.07 Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

14.08 Copies of Policies

Two certified copies of each policy containing the additional insured and 30-day cancellation notice language shall be furnished to Executive Director. Alternatively, two duplicate original additional insured endorsements on forms provided by the Department, as indicated above, may be submitted. The form of such policy or endorsement shall be subject to the approval of the Risk Manager of the Port.

14.09 Modification of Coverage

Executive Director, at his or her discretion, based upon recommendation of independent insurance Operators to City, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Operator.

14.10 Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Operator shall furnish to Executive Director a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If Operator neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance will be deducted from the next payment due Operator.

14.11 Right to Self-Insure

Upon written approval by the Executive Director, Operator may self-insure if the following conditions are met:

A. Operator has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Operator must have a formal resolution of its board of directors authorizing self-insurance.

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

C. Operator agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.

D. Operator agrees that any insurance carried by Department is excess of Operator's self-insurance and will not contribute to it.

E. Operator provides the name and address of its claims administrator.

F. Operator submits a Financial Statement or Balance Sheet prior to Executive Director's consideration of approval of self-insurance and annually thereafter evidence of financial capacity to cover the self-insurance.

G. Operator agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.

H. Operator has complied with all laws pertaining to self-insurance.

14.12 Accident Reports

Operator shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Operator's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Operator, its officers or managing agents.

14.13 Notification of Miscellaneous Obligations

Operator shall be liable and responsible for satisfaction where applicable of assessments, charges, fees, damages, penalties or fines imposed by the Foreign-Trade Zones Board, or any federal, state or local agency resulting from any activity, act or omission to act in the maintenance and operation of the foreign-trade zone at the Zone Site of same. The Operator shall advise the Grantee within three (3) days of any investigations commenced or reports requested by any government agency that pertain to the operation of the Zone Site, other than routine requests for information received from the U.S. Customs Service. Where requested to do so by Grantee, Operator shall provide to Grantee a copy of any report or notice issued by a government agency that pertains to an investigation by that agency of the operations of the Zone Site."

8. ARTICLE XVI. – MISCELLANEOUS PROVISIONS, the following new section and language have been added to read:

"16.19 Small Business Development Program

It is the policy of the Department to provide Small Business Enterprises (SBE) and Minority-Owned, Women-Owned and all Other Business Enterprises (MBE/WBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Operator shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for SBE's, MBEs, WBEs, and OBEs to achieve participation in subcontracts

where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBE's, MBEs, WBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement."

Except as amended herein, all remaining terms and conditions of Agreement No. 2606 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Agreement No. 2606 on the date to the left of their respective signatures.

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


Dated: _____, 2012

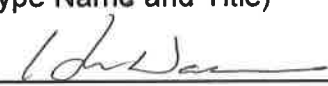
By _____
Executive Director

Attest _____
Board Secretary

NIPPON EXPRESS U.S.A. INC.

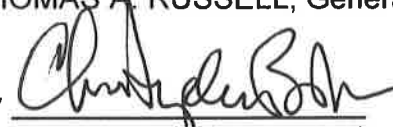
Dated: June 22, 2012

By 
Masato Nakagawa / GM
(Print/Type Name and Title)

Attest 
HIROSHI NAKAJIMA / S. Supervisor
(Print/Type Name and Title)

APPROVED AS TO FORM AND LEGALITY

, 2012
CARMEN A. TRUTANICH, City Attorney
THOMAS A. RUSSELL, General Counsel

By 
CHRISTOPHER B. BOBO, Assistant

CBB:aeb/jpr
06/22/12
Attachments