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TERMINAL OPERATOR AGREEMENT

THIS AGREEMENT entered into this 6th day of October, 1992, between the SAN DIEGO UNIFIED PORT DISTRICT (Port of San Diego) and Metropolitan Stevedore Company (Terminal Operator).

I. OBJECTS AND PURPOSES

In consideration of the benefits to be derived from this agreement, the parties hereto have entered into this agreement in order to define the scope of terminal operator services to be performed upon the marine terminal facilities owned by the Port of San Diego; to promote fair business practices among those engaged in the performance of terminal operator services upon facilities of the Port of San Diego; to more adequately serve the interests of the shipping public utilizing the facilities of the Port of San Diego; to encourage just and reasonable rates, charges, classifications, rules, regulations and practices for such services for or in connection with interstate or foreign commerce at the facilities of the Port of San Diego; to provide for the publishing of tariffs relating to such rates and charges, classifications, rules, regulations and practices, and to provide for the collection of any payment to the Port of San Diego of Wharf Demurrage and Wharf Storage charges in accordance with the provisions of any Port of San Diego Tariff by the Terminal Operator, and to provide compensation to the Terminal Operator for such services. Further, the parties hereto desire to provide the means for cooperation with each other to achieve the objects and purposes set forth above.

II. EXCLUSIONS

Nothing contained herein shall relate to Wharfage, Dockage or other rates, charges, classifications, rules, regulations or practices contained in any Port of San Diego Tariff. It is expressly understood by the parties hereto that items presently contained in or hereinafter included in any Port of San Diego Tariff, including without limitation items relating to Wharfage, Dockage, and other rates, charges, classifications, rules, regulations and practices are controlling and are solely under the jurisdiction of the Port of San Diego.

III. CANCELLATION

This agreement may be cancelled by either party by the giving of Thirty (30) days written notice to the other party.

IV. TERMINAL OPERATOR DEFINED

For the purpose of this agreement, Terminal Operator shall be a person offering to perform for the general public the following services in connection with a common carrier by water in interstate or foreign commerce at the facilities of the Port of San Diego:

A. The handling, storing and delivering of merchandise and cargoes;

B. Such additional accessorial services as may be required in connection with such merchandise and cargoes.

V. TERMINAL OPERATOR OBLIGATIONS

As express conditions precedent to Terminal Operator performing services upon the marine terminal facilities owned by the Port of San Diego, as such services are hereinabove defined, Terminal Operator shall:

A. Maintain a permanent office upon Port of San Diego marine terminal facilities;

B. Be prepared at all times to provide sufficient personnel to perform such terminal operator services as may be required by the general public;

C. Maintain adequate equipment to perform such terminal operator services for the general public;

D. At all times, offer and be prepared to perform terminal operator services for the general public without discrimination or preference;

E. Defend, indemnify and hold harmless the Port of San Diego, its officers and employees against all liability, damage, and expense, including reasonable attorneys' fees, for damage to property of any kind whatsoever and to whomever belonging, including Terminal Operator, or injury to or death of any person or persons, including employees of Terminal Operator, resulting directly or indirectly from the performance of services under this agreement or arising from the use of the premises, facilities, equipment, gear, machinery or services of the Port of San Diego, its officers or employees provided however, nothing herein shall be deemed to relieve or exculpate the Port of San Diego from liability for its own negligence;

F. As a condition precedent to the effectiveness of this agreement, and in partial performance of Terminal Operator's obligations under Paragraph V., Subparagraph E, herein, Terminal Operator shall procure and maintain in full force and effect, while this agreement shall remain in effect, a policy or policies of public liability and property damage insurance from a company or companies authorized to do business in the State of California, with minimum coverages of:

One Million Dollars (\$1,000,000.00) for death or bodily injury or loss sustained by any one person in any one occurrence;

Three Million Dollars (\$3,000,000.00) for death or bodily injury or loss sustained by more than one person in any one occurrence;

Five Hundred Thousand Dollars (\$500,000.00) for damages to or loss of property sustained in any one occurrence; or

Three Million Five Hundred Thousand Dollars (\$3,500,000.00) combined single limit for death, personal injury, bodily injury or loss sustained by any one occurrence, and for damage to or loss of property sustained in any one occurrence; and

One Million Five Hundred Thousand Dollars (\$1,500,000.00) for damage to or loss of property of the Port of San Diego caused by fire and explosion (Fire Legal Liability).

The policy or policies shall provide as follows:

1. That the Port of San Diego, the Board of Port Commissioners, and their officers and employees, while acting within the scope of their authority, shall be additional named assureds, such insurance to be primary and not contributing with any other insurance maintained by said additional named assureds.
2. That in the event of one assured's incurring liability as to any other of the assureds, the policy shall cover the assured against whom claim is or may be made in the same manner as if separate policies had been issued to each assured, and the policy shall contain a waiver of subrogation rights as to each assured.
3. That said policy or policies shall either contain a broad form of contractual liability coverage, including agreements, or there shall be attached to said policy or policies an endorsement providing that such insurance as

is provided for therein shall apply to the obligations assumed by Terminal Operator under Paragraph V, Subparagraph E, of this agreement.

4. That the same shall not be cancelled or reduced in coverage until a Thirty (30) day written notice of such cancellation or reduction has been served upon the Port Director of the Port of San Diego by registered or certified mail.

The Port of San Diego, the Board of Port Commissioners, and their officers and employees, shall not be liable for the payment of any premiums or assessments on said policy or policies. Such insurance may provide for such deductibles or self-insured retention as shall be acceptable to the Port Director of the Port of San Diego.

Terminal Operator shall deliver said policy or policies of insurance, or certified or photostatic copies thereof, or a certificate thereof, to said Port Director for approval as to sufficiency and the Port Attorney for approval as to form. At least Fifteen (15) days prior to the expiration of any such coverage is cancelled or reduced, Terminal Operator shall, within Ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the Port Director a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies, and said policy shall be submitted for approval as herein provided. Terminal Operator agrees to suspend and cease all operations under this Terminal Operator Agreement during such periods of time as the required insurance coverage is not in effect.

The procuring of such policy or policies of insurance shall not be construed to be a limitation in any respect upon Terminal Operator's obligations under Paragraph V, Subparagraph E, herein.

#### VI. TARIFFS

The Terminal Operator shall adopt a schedule or tariff of all rates, charges, classifications, rules, regulations and practices relating to or connected with the performance of terminal operator services upon the facilities of the Port of San Diego for the general public, as such terminal operator services are defined herein. In no instance shall such rates, charges, classifications, rules, regulations and practices be subject to approval by the Port of San Diego.

VII. TARIFF PUBLICATIONS

Terminal Operator shall publish any tariff required by Paragraph VI, above, on behalf of the Terminal Operator and, if required, file and submit such tariff to the Federal Maritime Commission. The Terminal Operator shall pay all costs for the printing of said tariff and such distribution costs as may be incurred.

VIII. CONFORMANCE WITH LAWS, RULES AND REGULATIONS

Terminal Operator shall abide by and conform to all applicable laws, rules and regulations prescribed by the San Diego Unified Port District Act, any ordinances of the City in which activities and services are performed, including the Fire and Building Code thereof, any ordinances and general rules of the Port of San Diego, including tariffs, and any applicable laws of the State of California, the Federal Government, and the Federal Maritime Commission, as any of the same now exist or may hereafter be adopted or amended.

IX. TARIFF CHANGES

The Terminal Operator agrees that no change shall be made in the rates, charges, classifications, rules, regulations or practices contained in its tariffs without first notifying the Port of San Diego. The purpose of such notification is for information only.

X. DESIGNATION OF OFFICIAL REPRESENTATIVE

Each party to this agreement shall notify the other party in writing of the name and address of the person designated as official representative to receive all notices and other communications which may be required as a result of this agreement.

XI. PAYMENT OF WHARF STORAGE AND WHARF DEMURRAGE

The Terminal Operator guarantees payment to the Port of San Diego of all Wharf Storage and Wharf Demurrage charges in accordance with any Port of San Diego Tariff which may be applicable to all merchandise and cargoes handled by Terminal Operator upon the facilities of the Port of San Diego. The Terminal Operator shall issue and process all bills or invoices in connection with such charges. In consideration for the performance of the above services, the Terminal Operator shall be allowed to

retain a sum equal to Fifteen per Cent (15%) of all charges due and payable to the Port of San Diego. All payments to the Port of San Diego shall be made monthly. The Terminal Operator shall maintain such records in connection with the charges which are to be paid to the Port of San Diego in such form as may be acceptable to the Port of San Diego. Said records shall be made available in San Diego County for audit by the Port of San Diego.

#### XII. FEDERAL MARITIME COMMISSION

This agreement and any amendment hereto shall not become effective until filed with the Federal Maritime Commission pursuant to Section 15, Shipping Act, 1916, and Section 5 (a) of the Shipping Act of 1984.

#### XIII. NON-DISCRIMINATION

In the performance of this agreement, Terminal Operator will not discriminate against any employee or applicant for employment because of race, sex, color, religion, ancestry, or national origin to the extent Terminal Operator may have any employees during the term hereof. Terminal Operator will take affirmative action to ensure that applicants are employed, and that employees are treated during the term hereof. Terminal Operator will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, ancestry, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. Terminal Operator shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Fair Employment Practices paragraph.

XIV. LAW GOVERNING

This agreement shall be governed by the laws of the State of California, both as to interpretation and performance.

SAN DIEGO UNIFIED PORT DISTRICT

By \_\_\_\_\_

  
Port Director

METROPOLITAN STEVEDORE CO.

By \_\_\_\_\_





Joseph D. Patello  
Port Attorney