BEFORE THE

FEDERAL MARITIME COMMISSION

NO 201143

WEST COAST MTO DISCUSSION AGREEMENT

A Marine Terminal Discussion Agreement as defined in 46 C.F.R. 535.307(c)

May 9, 2003

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UNDER THE SHIPPING ACT OF 1984
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ARTICLE I. FULL NAME OF THE AGREEMENT.

The Agreement established hereby shall be entitled the "West Coast MTO Discussion Agreement" (hereinafter "Agreement").

ARTICLE II. PURPOSE AND AUTHORITY OF THE AGREEMENT.

(a) **GENERAL.** It is the purpose of this Agreement to enable the marine terminal operators that are parties hereto, to meet and discuss, and possibly agree on, all matters related to motor carriers and rail carriers to the extent authorized under Federal Maritime Commission (hereinafter "FMC" or "Commission") regulations, 46 C.F.R. §§ 501 *et seq.* For the purposes of this Agreement, "matters related to motor carriers and rail carriers" shall include rates, charges, rules, regulations, practices, terms and other conditions of service that involve or affect the relationship between marine terminal operators and motor carriers and/or rail carriers (hereinafter "the Discussion Subjects").

(b) **DISCUSSION SUBJECTS.** The Discussion Subjects may include all matters involving or affecting the interchange of cargo, chassis and containers between marine terminal operators and motor carriers and/or rail carriers including: (A) terminal rules, regulations, procedures, practices, terms and conditions for motor and rail carriers involving security, access control, gate rules, demurrage, detention, billing; compliance with interchange/leasing agreements, indemnification and limitations of liability, and the resolution of disputes and complaints; and (B) compliance with statutes and regulations, including the Federal Motor Carrier Safety Regulations, state motor vehicle safety regulations approved by the Department of Transportation, and the Maritime Transportation Security Act of 2002, Coast Guard rules and regulations, and other current or future regulations.

LIMITATIONS: The 'inland division' or 'inland portion' of through rates shall not be discussed.

(c) **MEETINGS AND DISCUSSIONS.** The parties hereto are authorized to conduct meetings and hold discussions related to the Discussion Subjects, either as the entire group or though subcommittees or subgroups.

(d) **INFORMATION EXCHANGE.** The parties hereto are authorized to obtain, compile, maintain and exchange information, whether past, current or anticipated, including records, statistics, studies, data and documents of any kind or nature, whether prepared by the parties or obtained from outside sources, to allow the development of additional agreement(s) and understanding(s); PROVIDED such information is related to the Discussion Subjects. All information exchanged by the parties shall be treated as confidential, proprietary and/or trade secrets by the members of the Agreement and shall not be disclosed to any third party without the express consent of the party that provided the information.

(e) **ADDITIONAL AGREEMENT(S) AND UNDERSTANDING(S).**

(1) The parties hereto are authorized to reach additional agreement(s) and understanding(s) related to the Discussion Subjects.

(2) Any additional agreement(s) or understanding(s) reached as a result of meetings, discussions or exchanges of information under this Agreement shall be subject to consideration and adoption by the parties hereto.

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(3) Any agreement(s) or understanding(s) reached as a result of the meetings, discussions or exchanges of information had under this Agreement shall be filed with the Commission as provided in Shipping Act of 1984, as amended (hereinafter "the Act"), and FMC regulations, and shall not become effective except as provided by the Act and FMC regulations.

(f) **NOT BOUND.**

(1) Nothing in this Agreement shall be construed to bind any party hereto to any additional agreement(s) or understanding(s) reached as a result of meetings, discussions or exchanges of information under this Agreement.

(2) Only those parties that individually subscribe to such additional agreement(s) or understanding(s) shall be bound, and then only to the extent provided for in such additional agreement(s) or understanding(s) once such additional agreement(s) or understanding(s) have taken affect as provided by law.

ARTICLE III. PARTIES TO THE AGREEMENT.

(a) **CURRENT MEMBERS.** The current parties to this Agreement are set forth in Appendix A annexed hereto.

(b) **ADDITIONAL MEMBERS.** Additional marine terminal operator shall be allowed to join this Agreement in accordance with the requirement of the Act and FMC regulations, PROVIDED a majority of the current members vote in favor of the application for membership.

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(c) **WITHDRAWAL.** Any party may withdraw from the Agreement at any time by giving written notice to the Secretary.

(d) **REVOCATION.** A party's membership may be revoked by a majority vote of the current members.

(e) **PROCEDURE.** Any addition to the membership, withdrawal or revocation shall require the parties to amend or modify this Agreement. Such amendment or modification shall be filed with the FMC and shall become affective in accordance with the Act and FMC regulations.

ARTICLE IV. GEOGRAPHIC SCOPE.

This Agreement shall apply to all of the ports within the States of California, Oregon, and Washington in which the parties hereto are engaged in activities involving or relating to ocean transportation of cargo in the foreign commerce of the United States.

ARTICLE V. MEMBERSHIP ELIGIBILITY.

Only marine terminal operators whose business involves ocean transportation in the foreign commerce of the United States within the geographic scope of this Agreement are eligible to become parties to this Agreement.

ARTICLE VI. DELEGATION OF AUTHORITY.

The law firm of Carroll & Froelich, PLLC, is authorized by the parties listed in Appendix A annexed hereto to execute this Agreement and any subsequent modifications or amendments hereto on their behalf, to file this Agreement and any modifications or amendments hereto with the Commission on their behalf, and to make all other filings on

their behalf with the Commission relating to this Agreement, including the filing of minutes required by 46 C.F.R. § 535.706.

ARTICLE VII. ADMINISTRATION OF AGREEMENT.

(a) **CHAIRMAN.** The parties to this Agreement shall select a Chairman to preside at all meetings held pursuant to this Agreement. The initial Chairman is John Miller whose address is International Transportation Services, Inc., 1281 Pear J Ave, Long Beach, CA 90802.

(b) **SECRETARY.** The parties to this Agreement shall select a Secretary to be responsible for all administrative tasks as directed by the vote of the parties hereto. The initial Secretary of this Agreement is Mark Johnson whose address is 1850 M Street, NW, Suite 910, Washington, DC 20036. The Secretary shall schedule meetings upon receiving a request for a meeting, giving all parties hereto a minimum of seven days' notice and distributing a proposed meeting agenda. The Secretary shall be responsible for recording the minutes of all meetings held pursuant to this Agreement.

(c) **FUNDING.** The members to this Agreement shall have the power to impose and collect membership fees to pay the costs and expenses incurred in the administration of this Agreement, including the fees and charges of counsel and other service providers, provided that such costs and expenses have been approved by the members in accordance with the terms of this Agreement.

(d) **TIME AND PLACE.** The members may meet from time to time and at such places as they may decide to hold meetings, discussions and exchange information as authorized by this Agreement.

(e) **ONE CLASS.** The membership under this Agreement shall consist of one class.

(f) **REPRESENTATIVES.** Each member shall designate a representative and may designate an alternate who shall be authorized to vote on its behalf on any matter coming before a meeting of the parties to this Agreement.

(g) **QUORUM.** A quorum for a valid meeting shall require that a majority of the members be in attendance.

(h) **ATTENDANCE.** Attendance at meetings under this Agreement may be by telephone, by video conference, or other means agreed to by the members.

(i) **VOTING.** Each member shall be entitled to one vote. All actions taken shall be authorized by majority vote of the members present and voting.

ARTICLE VIII. DURATION, MODIFICATION AND TERMINATION.

(a) **DURATION.** This Agreement shall become effective when permitted by 46 U.S.C. app. § 1705 and continue until terminated.

(b) **MODIFICATION.** The terms of this Agreement may be amended or modified by majority vote of the members.

(c) **TERMINATION.** This Agreement shall continue in effect indefinitely until terminated by a majority vote of the members.

(d) **PROCEDURE.** Copies of any modification, amendment or termination of this Agreement shall be filed with the Federal Maritime Commission and shall become effective as provided in the Act and FMC regulations.

IN WITNESS WHEREOF the undersigned have executed this Agreement on this 9th day of May, 2003 on behalf of all the parties listed in Appendix A.

Charles T. Carroll, Jr.
Carroll & Froelich, PLLC
2011 Pennsylvania Ave, NW
Suite 301
Washington, DC 20006

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SECOND REVISED APPENDIX A

APM TERMINALS PACIFIC
2500 Navy Way
Terminal Island, CA

CALIFORNIA UNITED TERMINALS, INC.
1200 Pier E Street
Long Beach, CA 90802

EAGLE MARINE SERVICES, LTD
1111 Broadway
Oakland, CA 94607

HUSKY TERMINALS, INC.
710 Port of Tacoma Rd.
Terminal 7-D
Tacoma, WA 98421

INTERNATIONAL TRANSPORTATION SERVICE, INC.
1281 Pier J Avenue
Long Beach, CA 90802-6393

LONG BEACH CONTAINER TERMINAL, INC.
1171 Pier F Avenue
Long Beach, CA 90802

MARINE TERMINALS CORP.
1999 Harrison St., Suite 550
Oakland, CA 94612-3520

METROPOLITAN STEVEDORE COMPANY
720 East E Street
Wilmington, CA 90744

PASHA STEVEDORING & TERMINALS, L.P.
802 S. Fries Ave.
Wilmington, CA 90744

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SSA MARINE
1131 SW Klickitat Way
Seattle, WA 98134

TRANS BAY CONTAINER TERMINAL, INC.
2500 7th Street.
Oakland, CA 94607

TRANS PACIFIC CONTAINER SERVICE CORPORATION
920 West Harry Bridges Boulevard
Wilmington, CA 90744-5230

YUSEN TERMINALS, INC.
701 New Dock Street
Terminal Island, CA 90731

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