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Original Title Page

BEFORE THE
FEDERAL MARITIME COMMISSION

Second Edition

NAME	:	**Port of NY/NJ Sustainable Services Agreement**
FMC NO.	:	**201175-002**
CLASSIFICATION	:	**A Cooperative Working Agreement**
ORIGINAL EFFECTIVE DATE	:	**December 6, 2007**

EFFECTIVE
DEC 13 2010
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

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ARTICLE I. FULL NAME OF AGREEMENT.

The agreement established hereby shall be entitled the "Port of NY/NJ Sustainable Services 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, as well as those subsequently joining this Agreement, to meet and discuss, and possibly agree to the extent permitted by the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998 (the "Shipping Act"), re-codified at 46 U.S.C. §§ 40101, *et seq.*, and regulations promulgated by the Federal Maritime Commission ("FMC"), 46 C.F.R. §§ 501, *et seq.*, and this Agreement on matters that relate to promoting environmentally sensitive, efficient, and secure marine terminal operations in the Port of New York and New Jersey. "Environmentally sensitive, efficient, and secure marine terminal operations in the Port of New York and New Jersey" (hereafter collectively referred to as the "Discussion Subjects") include the subjects enumerated below:

(i) investigating environmental concerns raised by port operations including, but not limited to, air emissions from port-related operations (for the purposes of this Agreement, discussions of "air emissions from port-related operations" include discussing marine terminal facility-specific or port-wide compliance with federal, state, or local clean air quality standards; quantifying and assessing air emissions from port-related operations; investigating and assessing potential emissions mitigation measures; investigating the potential utilization of alternative or retro-fitted cargo-handling equipment; and analyzing marine cargo handling practices, terms, and other conditions of service that involve or might involve or affect the relationship between marine terminal operators and other cargo transportation providers to determine whether environmentally-sensitive alternatives are viable);

(ii) enhancing operational efficiencies and reducing operational costs, which may include procedures relating to the interchange of cargo and equipment with motor carriers and rail carriers; implementing extended or off-peak marine terminal operations or facility access control procedures; implementing a collective purchasing program for equipment or spare parts; and developing and using systems related to the safe, secure, and efficient transportation of cargo;

(iii) maximizing port land availability for maritime operations attendant with the transportation of cargo in international commerce;

(iv) seeking federal, state, and local cooperation in enhancing existing, developing, or removing impediments to port-related transportation infrastructure, including, but not limited to, port access roadways, rail improvements, and air-draft issues;

(v) enhancing on-dock rail capabilities and operations;

(vi) enhancing the awareness of the general public as well as federal, state, and local policy-makers and legislators of the capabilities, efficient operations, and public service provided by marine terminal operators in the Port of New York and New Jersey; and

(vii) complying with statutes and regulations, including, but not limited to, Federal Motor Carrier Safety Regulations; state motor vehicle safety regulations approved by the Department of Transportation; the Maritime Transportation Security Act of 2002; the Security and Accountability for Every Port Act of 2006 (SAFE Port Act); and Department of Homeland Security (including Customs and Border Protection, Coast Guard, and Transportation Security Administration) rules and regulations (for the purposes of this Agreement, complying with Customs and Border Protection, Coast Guard and Transportation Security Administration rules and regulations may include but is not limited to operational and equipment-related issues involved with the implementing the Transportation Worker Identification Credential (TWIC) Program).

(B) IMPLEMENTATION OF AUTHORITY. In order to implement the authorities contained in Article II(A), the parties are authorized to:

(i) enter into an agreement with the Port Authority of New York and New Jersey to meet and discuss, and agree to the extent permitted by the

Shipping Act on subjects relating to environmentally sensitive, efficient, and secure marine terminal operations in the PONYNJ;

(ii) seek, obtain, and administer grants from federal, state and local governments, government agencies, quasi-governmental entities and other sources to fund or otherwise help fund technology-related activities;

(iii) meet individually or collectively, with users (including inland carriers, ocean common carriers and/or cargo interests), government agencies and officials and others to discuss and attempt to reach a consensus with respect to the development, implementation and administration of the authorities contained in Article II(A).

(iv) agree upon and undertake the formation, management, supervision, contracting with and/or dissolution of one or more non-profit, for profit, and/or limited liability companies, to implement and administer some or all agreements reached under Article II(A) or (B) hereof, with such legal entities also having the authority to: act as agent(s) for the Agreement and/or the parties; publish, administer, and enforce any marine terminal operator schedule that may be adopted hereunder. These separate legal entities may enter into contracts and agreements with one another, with the parties, or with third parties, implementing authorities set forth herein;

(v) agree upon and establish procedures for implementing and administering any agreement reached hereunder with respect to the authorities contained in Article II(A), which procedures may be set forth in an appendix hereto and/or one or more marine terminal schedule(s);

(vii) subject to the requirements of the Shipping Act, agree upon and establish procedures for monitoring compliance with agreements entered into hereunder and remedies for breach of such agreements.

(C) MEETINGS AND DISCUSSIONS. The parties hereto are authorized to hold meetings and engage in discussions, including discussions and negotiations with government agencies, related to the Discussion Subjects, either as a full membership group or through committees or subgroups.

(D) INFORMATION EXCHANGE. The parties 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, that may allow the development of additional agreements and understandings; PROVIDED such information is related to the Discussion Subjects authorized by this Agreement. Unless otherwise agreed, all information obtained or exchanged by the parties that is clearly labeled or identified as confidential, proprietary or trade secrets shall be treated as confidential by the members of the Agreement and shall not be disclosed to any unaffiliated third party without the express consent of the party that provided the information. It shall not be a violation of this section to disclose information pursuant to lawful government requests or court orders or to file minutes with the FMC.

(E) LIMITED PARTICIPATION OF NON-MEMBERS TO THE AGREEMENT. Individuals and entities may from time to time be invited to attend Agreement meetings to consult with or otherwise provide input, information, or expertise on subjects related to the Discussion Subjects as permitted by FMC regulations and

practice. However, such individuals and entities shall not participate in the deliberations or decision making process permitted by this Agreement.

(F) ADDITIONAL AGREEMENTS AND UNDERSTANDINGS. Except as otherwise expressly provided hereunder or with respect to any amendment to this Agreement, a party shall be bound by a proposed agreement, decision or action reached or to be taken hereunder ("Agreement Action") only if it affirmatively states by vote taken pursuant to the procedures set forth in Article VII or by affirmatively stating its intention to be bound in writing (including e-mail) that it agrees to be bound. In stating that it agrees to be bound by all or part of any Agreement Action, a party may establish limitations on the extent to which it is so bound. A party may thereafter choose not to be bound by any Agreement Action in accordance with the provisions of Article III(F) and Article X.

Any new agreement or understanding reached under this Agreement shall be filed with the FMC to the extent required by the Shipping Act, as amended, and shall not become effective except as provided by said Act, as amended.

ARTICLE III. PARTIES TO AGREEMENT.

(A) PARTIES. A list of the parties to this Agreement is set forth in Appendix A annexed hereto.

(B) MEMBERS. Commencing with the first meeting held pursuant to this Agreement, the parties to this Agreement shall thereafter be referred to as "members."

(C) ONE CLASS. There shall be only one class of members to this Agreement.

(D) 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 for membership pursuant to this Agreement.

(E) ADDITIONAL MEMBERS. Any marine terminal operator conducting marine terminal operations within the geographic scope of this agreement shall be allowed to join this Agreement in accordance with the requirements of the Shipping Act and FMC regulations.

(F) WITHDRAWAL FROM MEMBERSHIP. Any member may withdraw from the Agreement at any time by giving written notice to the Secretary; provided, however, that such withdrawal shall not relieve a party (i) of its obligations for its share of Agreement administrative expenses for the period prior to the effective date of its withdrawal or (ii) for its share of an existing Agreement financial obligation to a third party (e.g. a contract with a vendor), if that party's withdrawal from the Agreement would directly increase the cost obligation of the remaining parties for such Agreement financial obligation, with respect to the portion of the current term (exclusive of extensions) of such obligation remaining at the time the party's withdrawal becomes effective, or for a period of one (1) year after the effective date of withdrawal, whichever is shorter; provided, however, that a party will not be liable for any financial obligation that may arise under Article II(B)(ii) or (iv) hereof if it affirmatively stated in accordance with Article II(F) its intention not to be bound by all or part of any Agreement Action .

(G) REVOCATION OF MEMBERSHIP. A member's membership may be revoked by a majority vote of the current members (including the party whose

membership is being revoked). If a member's membership is revoked for reasons other than a material failure to fulfill its obligations hereunder (including the payment of its share of Agreement expenses, adherence to the terms of any marine terminal operator schedule established pursuant to this Agreement, or cooperation with any contractor or agent publishing, administering or enforcing such schedule) or failure to continue to qualify for membership, it shall not be liable for any Agreement expenses or liabilities with respect to the period after the effective date of the revocation of its membership.

(H) 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 members of this Agreement.

(I) FILING NOTICE OF CHANGES TO MEMBERSHIP. Any addition to the membership, withdrawal, or revocation shall require the amendment or modification of this Agreement. Such amendment or modification shall be filed with the FMC and shall become effective in accordance with the Act and FMC regulations. Notice of the addition, withdrawal or revocation of a membership shall also be provided to the members of the Agreement.

ARTICLE IV. GEOGRAPHIC SCOPE.

The geographic scope of this Agreement covers the Port of New York and New Jersey.

ARTICLE V. DELEGATION OF AUTHORITY.

The Lambos Firm, LLP 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 FMC on their behalf, and to make all other filings on their behalf with the FMC relating to this Agreement, including the filing of minutes required by 46 C.F.R. § 535.704.

The Lambos Firm, LLP also has the authority, following approval of the parties to this Agreement, to sign bridge agreements on the parties' behalf.

ARTICLE VI. ADMINISTRATION OF AGREEMENT.

(A) CHAIRMAN. The members shall elect a Chairman to preside at all meetings held pursuant to this Agreement.

(B) SECRETARY. The members shall elect a Secretary. The Secretary shall be responsible for all administrative tasks as directed by the vote of the members. 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, and to oversee the filing such minutes in accordance with the regulations prescribed by the FMC.

(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, accountants, administrators, and other service providers. No costs or expenses shall be incurred on behalf of the members unless such costs or expenses have been approved, either individually or as part of a budget, by the members in accordance with the terms of this Agreement.

(D) AGREEMENT ADMINISTRATOR. The members of this Agreement shall have to power to appoint an Agreement Administrator to perform administrative and managerial functions and provide relevant subject-matter expertise relating to the Agreement as directed by the members. If the Agreement Administrator is not otherwise a member of the Agreement, then the Agreement Administrator shall only be empowered to provide administrative and managerial support and relevant subject matter expertise on Discussion Subjects but shall not participate in the decision-making authority granted by this Agreement.

ARTICLE VII. VOTING.

(A) MEETINGS. The members may meet from time to time and at such places as they may decide to hold discussions authorized by this Agreement.

(B) QUORUM. A quorum for any membership meeting shall require the attendance of a majority of the members. Inasmuch as committees or subgroups authorized by this Agreement act only in an advisory role to the full membership, there is no required quorum for committee or subgroups meetings.

(C) ONE VOTE. Each member shall be entitled to one vote. All actions taken shall be authorized by a majority vote of the members. A member unable to be present for a vote of the membership may provide another member its written revocable proxy that permits the voting member to act in its name at any or a particular meeting of the Agreement membership.

(D) ATTENDANCE. Attendance at meetings under this Agreement may be in person, by telephone, or by video conference.

ARTICLE VIII. DURATION, MODIFICATION, AND TERMINATION

(A) **DURATION.** This Agreement shall not become effective until permitted by 46 U.S.C. § 40304 and continue until terminated. This Agreement shall continue in effect indefinitely until terminated by a majority vote of the members.

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

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

ARTICLE IX. PARTIES' OBLIGATIONS

(A) **ADHERENCE.** It shall be a breach of this Agreement for any member to provide marine terminal services with the geographic scope of this Agreement, or a portion thereof, upon terms and conditions inconsistent with those to which it is bound pursuant to the procedures set forth in Article II(F).

ARTICLE X. RIGHT OF DISASSOCIATION

(A) Except as provided by paragraph (B) below, any member may, on not less than five (5) business days' advance notice, elect not to be bound by all or any portion of an Agreement Action to which it had previously agreed to be bound by providing written notice of disassociation from that Agreement Action to the Chairman of the Agreement. Such notice shall include a description of the Agreement Action, or portion thereof, form which the member is disassociating itself. The Chairman shall promptly forward the notice to all other members. After a member has given notice of disassociation, the members are authorized, but not required, to confer regarding the disassociation and to

take action in response thereto, including action for the purposes of reaching a compromise.

(B) In the event a party disassociates itself from an Agreement Action by which it was previously bound, and such Agreement Action involves existing Agreement financial obligations to a third party, e.g. a contract with a vendor, and the cost obligation of the other members bound to such Agreement Action will increase as a direct result of the member's disassociation, the exercise of the right of disassociation shall not relieve the disassociating member from its obligation to pay its share of such financial obligation with respect to that portion of the current term, exclusive of extensions, of such obligation remaining at the time the member's disassociation becomes effective, or for a period of one (1) year after the effective date of the disassociation, whichever is shorter.

(C) A member may delay the effectiveness of a notice of disassociation or withdraw it at any time before the expiration of the notice period by providing written notice of delay or withdrawal to the Chairman. A member which has disassociated itself from an Agreement Action, or portion thereof, may reassociate itself with and become bound by such Agreement Action, or portion thereof, with immediate effect by so notifying the Chairman in writing, including email.

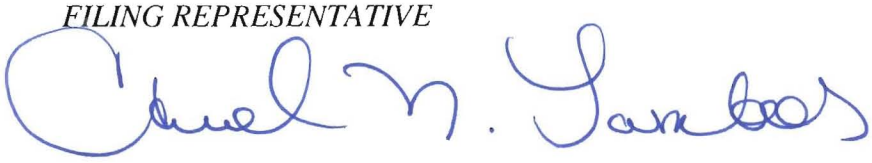
ARTICLE XI. ARBITRATION

Any dispute between or among the members concerning or based upon this Agreement shall in all cases be referred for resolution to a single arbitrator in either New York City or Newark, New Jersey, to appointed by the mutual agreement of the two sides in the arbitration or, failing such agreement and upon application by any member, by the American Arbitration Association (AAA). The arbitration will be conducted pursuant to

the commercial arbitration rules of the AAA. Except by agreement of the parties to the dispute, discovery shall be limited to the production of discoverable documents and the arbitrator shall have the power to subpoena same. The decision of the arbitrator shall be final, binding and not subject to further review and may be enforced by a prevailing party in any court of competent jurisdiction. The costs and expenses of such arbitration, including reasonable attorneys' fees and costs incurred by a party or parties, shall be borne by the non-prevailing party or as the arbitrator shall otherwise determine.

IN WITNESS WHEREOF the undersigned has executed this Agreement on this 8th day of November, 2010 on behalf of all the parties listed in Appendix A annexed hereto.

FILING REPRESENTATIVE



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APPENDIX A to
Port of NY/NJ Sustainable Services Agreement

Full Legal Name of Entity	Principle Office Address
APM Terminals North America, Inc.	6000 Carnegie Boulevard Charlotte, NC 28209
Global Terminal & Container Services LLC	302 Port Jersey Blvd. Jersey City, NJ 07305
Maher Terminals LLC	1210 Corbin Street Elizabeth, NJ 07201
New York Container Terminal, LLC	300 Western Avenue Staten Island, NY 10303
Port Newark Container Terminal LLC	241 Calcutta Street Port Newark, NJ 07114