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**BEFORE THE  
FEDERAL MARITIME COMMISSION**

**NAME :** Port of NY/NJ Sustainable Services Agreement

**FMC NO. :** 201175 - 000

**CLASSIFICATION :** A Cooperative Working Agreement

**ORIGINAL  
EFFECTIVE DATE :**



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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 retrofitted 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);

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- (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; 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 or developing port-related transportation infrastructure, including, but not limited to, port access roadway and rail improvements;
- (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) 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.

**(C) INFORMATION EXCHANGE.** The parties are authorized to obtain, compile, maintain and exchange information, whether past, current or anticipated,

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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.

**(D) 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.

**(E) ADDITIONAL AGREEMENTS AND UNDERSTANDINGS.** Any new agreements or understandings 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, and to the subsequent filing with the FMC, to the extent required by the Shipping Act. Nothing in this Agreement shall be construed to bind any party hereto to any understanding or agreement reached under this Agreement. Any new

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understanding or agreement shall be binding only upon those parties that individually subscribe to the new understanding or agreement.

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.

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

**(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 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 also has the authority, following approval of the parties to this Agreement, to sign bridge agreements on the parties' behalf.

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**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

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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.

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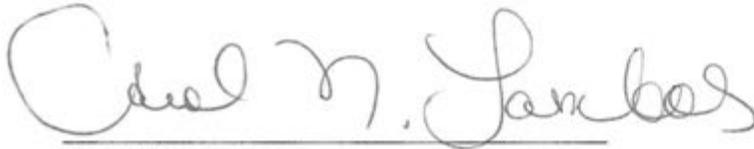
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(C) **PROCEDURE.** Copies of any modification, amendment, or termination of this Agreement shall be filed with the FMC and become effective as provided in the Shipping Act and FMC regulations.

**IN WITNESS WHEREOF** the undersigned has executed this Agreement on this 19th day of October, 2007 on behalf of all the parties listed in Appendix A annexed hereto.

*FILING REPRESENTATIVE*

A handwritten signature in cursive script that reads "Carol N. Lambos". The signature is written in black ink and is positioned above a horizontal line.

Carol N. Lambos  
The Lambos Firm  
29 Broadway—9<sup>th</sup> Floor  
New York, NY 10006  
212-381-9700  
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First Edition

<b>APPENDIX A to Port of NY/NJ Sustainable Services Agreement</b>	
<b>Full Legal Name of Entity</b>	<b>Principle Office Address</b>
American Stevedoring, Inc.	70 Hamilton Avenue Brooklyn, NY 11231
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	Four Hundred Connell Drive Berkley Heights, NJ 07922
New York Container Terminal, Inc.	300 Western Avenue Staten Island, NY 10303
Port Newark Container Terminal LLC	241 Calcutta Street Port Newark, NJ 07114