



FMC Agreement No. 201132-003

Port Authority Lease No. L-PN-264
Supplement No. 3

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made as of March 25, 2002, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority") and PORT NEWARK CONTAINER TERMINAL LLC (hereinafter called "the Lessee"),

WITNESSETH, That:

WHEREAS, heretofore and as of December 1, 2000, the Port Authority and the Lessee entered into an agreement of lease (hereinafter, as the said agreement of lease has been heretofore amended, modified and supplemented, called "the Lease") covering premises at Port Newark, in the City of Newark, County of Essex and State of New Jersey; and

WHEREAS, the Port Authority and the Lessee desire to amend the Lease;

NOW, THEREFORE, for and in consideration of the foregoing and the agreements hereinafter contained the Port Authority and the Lessee hereby agree as follows:

1. Subject to all of the provisions of this Agreement, the Port Authority and the Lessee agree that the Port Authority shall perform on behalf of the Lessee the "Specific Work Items", as that term is defined in Section 8(a)(1) of the Lease, described in subdivisions (viii) and (ix) of said Section 8(a)(1) respectively as "the dredging of approximately one thousand eight hundred seventy-five (1,875) linear feet of the berthing area eastward from Station 31+50 to forty-nine (49) feet below mean low water" and "the dredging of approximately one thousand eight hundred seventy-five (1,875) linear feet of the berthing area eastward from Station 31+50 to fifty-two (52) feet below mean low water" (hereinafter collectively called "the Berths 57, 59 and 61 Dredging"). The Lessee acknowledges that "the Added Space", as that term is defined in Section 44 of the Lease, has not been added to the premises under the Lease and that as a result, and in accordance with the provisions of Section 8(a)(7) of the Lease, the Lessee does not have the right to perform the "Additional Specific Work Items", as that term is defined in said Section 8(a)(7), described in subdivisions (dd) and (ee) of said Section 8(a)(7) respectively as "the dredging of approximately four hundred twenty-five (425) linear feet of the berthing area

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eastward from Station 50.75 to forty-nine (49) feet below mean low water" and "the dredging of approximately four hundred twenty-five (425) linear feet of the berthing area eastward from Station 50.75 to fifty-two (52) feet below mean low water" (hereinafter collectively called "the Berth 63 Dredging"). Notwithstanding the matters set forth in the immediately preceding sentence, the Lessee has requested that the Port Authority perform the Berth 63 Dredging on behalf of the Lessee, and the Port Authority and the Lessee agree that the Port Authority shall perform the Berth 63 Dredging in conjunction with the Berths 57, 59 and 61 Dredging (which two dredgings are hereinafter collectively called "the Fifty-two Foot Dredging"), subject to all of the terms and conditions of this Agreement including, without limitation, the payment by the Lessee of the cost of the Berth 63 Dredging as part of "the Port Authority's Costs of the Fifty-two Foot Dredging", as that term is defined in paragraph 3 hereof, in accordance with the provisions of said paragraph 3. The parties agree that this Agreement is being entered into solely for the purpose of facilitating the performance of certain of "the Lessee's Construction Work", as that term is defined in Section 8(a)(1) of the Lease, and except to the extent that any provision of this Agreement is specifically inconsistent with the provisions of the Lease, nothing contained in this Agreement shall increase, expand, alter, or limit any of the rights or obligations of either party as set forth in the Lease. Without limiting the generality of the provisions of the immediately preceding sentence, the parties agree that nothing contained in this Agreement shall create or be deemed to create any right on the part of the Lessee to have the Added Space added to the premises under the Lease as herein amended.

2. The Port Authority shall provide the Lessee with ten (10) days' prior written notice of the commencement of the Fifty-two Foot Dredging or any portion thereof, and if a portion thereof, a description of the berthing area to be dredged. Upon giving the aforesaid notice(s), and subject to the provisions of Section 36 of the Lease entitled "Force Majeure", the Port Authority shall proceed to deepen the berthing area to be dredged as specified in said notice (or such portion thereof as may be necessary), either directly or through a contractor, to a depth of fifty-two (52) feet below mean low water to such sloped depths as are deemed appropriate by the Port Authority, and which shall include normal overdraft amounts. The term "mean low water" as used in this paragraph shall mean mean low water as most recently at the time of execution of this Agreement determined by observations of the United States Coast and Geodetic Survey. Notwithstanding the foregoing, any dredging required under this

Agreement shall be only such as shall produce (or leave in place) such depths and slopes as may be required in the opinion of the Port Authority for underwater support of structures, which opinion shall be controlling. The Port Authority's obligation to perform the Fifty-two Foot Dredging shall be conditioned upon all necessary permits and governmental authorizations for said dredging having been obtained, including any such permits and governmental authorizations regarding the dredging, transportation or disposal of dredged material.

3. Upon completion of the Fifty-two Foot Dredging, the Port Authority shall by written certification notify the Lessee that the said dredging work has been completed and set forth the items of cost described below in this paragraph with respect to said work. Within sixty (60) days of its receipt of said certification, the Lessee shall pay to the Port Authority "the Port Authority's Costs of the Fifty-two Foot Dredging", as that term is hereinafter defined in this paragraph. "The Port Authority's Costs of the Fifty-two Foot Dredging" shall mean all payments by the Port Authority made on account of the performance by the Port Authority of the Fifty-two Foot Dredging, with said dredging to be calculated from the difference in bottom elevations as determined by pre-dredge soundings and the bottom elevations (including normal overdredge amounts) called for hereunder, and with such costs to include, but not be limited to, payments on account of dredging, transportation, processing (including amendment, separation, removal, transportation and disposal of trash and debris), disposal (including mobilization at disposal sites) of any dredged material, insurances, compliance with environmental laws (including any required testing) and obtaining necessary permits, work to address unanticipated site conditions, and an amount equal to one hundred fifteen percent (115%) of all of the direct staff costs to the Port Authority attributable to all of the foregoing, with such direct staff costs to include, without limitation, planning and engineering work relating to the Fifty-two Foot Dredging.

4. The provisions of Sections 8(c), 8(e), and 8(o) of the Lease shall not be applicable to the Fifty-two Foot Dredging if performed under this Agreement.

5. Section 8(a)(3) of the Lease shall be amended as follows: in lieu of the Lessee's being entitled to receive the credit set forth therein commencing on the first day of the first full calendar month following the delivery to the Lessee by the Port Authority of the certificate of final completion referred to in the eleventh through the thirteenth lines of said Section 8(a)(3), the Lessee shall be entitled to receive the credit set forth in said Section 8(a)(3) commencing on the first day of the

first full calendar month following the payment to the Port Authority by the Lessee of the Port Authority's Costs of the Fifty-two Foot Dredging in accordance with the provisions of paragraph 3 of this Agreement.

6. As hereby amended, all the terms, provisions, covenants and conditions of the Lease shall continue in full force and effect.

7. The Lessee represents and warrants that no broker has been concerned in the negotiation of this Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Lessee shall indemnify and save harmless the Port Authority of and from all claims for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation or execution of this Agreement.

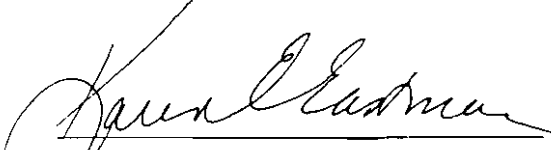
8. Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Lessee with any liability, or held liable to the Lessee under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach thereof.

9. This Agreement, together with the Lease (to which it is supplementary) constitutes the entire agreement between the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended except by instrument in writing duly executed on behalf of both the Port Authority and

the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in the Lease or in this Agreement.


IN WITNESS WHEREOF, the Port Authority and the Lessee have executed these presents as of the date first above written.

ATTEST:



SECRETARY,

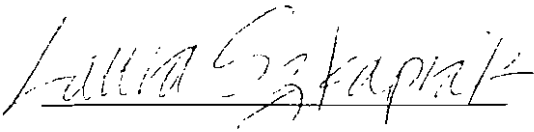
THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

By 


RICHARD M. LARRABEE
(Title) DIRECTOR, PORT COMMERCE DEPT.

(Seal)



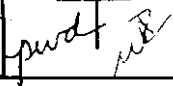
WITNESS:



PORT NEWARK CONTAINER TERMINAL LLC

By 

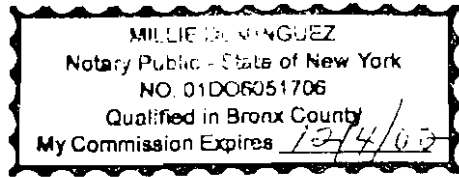
(Title) _____ Manager

 APPROVED:
FORM _____ TERMS _____
 

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the 15th day of Nov. in the year 2002, before me, the undersigned, a Notary Public in and for said state, personally appeared **RICHARD M. LARRABEE**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

DIRECTOR, PORT COMMERCE DEPT.



Millie Benitez
(notarial seal and stamp)

STATE OF NEW JERSEY)
) ss.
COUNTY OF HUDONSEX)

On the 18th day of July in the year 2002, before me, the undersigned, a Notary Public in and for said state, personally appeared personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Susan Aglipay
(notarial seal and stamp)

SUSAN AGLIPAY
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JAN 20, 2003

**UNANIMOUS WRITTEN CONSENT
OF MANAGERS OF
PORT NEWARK CONTAINER TERMINAL L.L.C.**

The undersigned, being all of the managers of Port Newark Container Terminal L.L.C., a Delaware limited liability company (the "Company"), acting in lieu of a meeting pursuant to Article 9.8 of that certain Limited Liability Agreement dated as of August 1, 2000, by and among P&O Ports North America Inc., P&O Nedlloyd B.V., and the Company, hereby consent to the adoption of the following resolutions and actions set forth herein as of the date and year set forth below:

WHEREAS, there has been presented to the managers for their consideration a substantially final draft of a certain supplement no. 3 (the "Lease Supplement") to the Lease Agreement dated December 1, 2000 (No. L-PN-264) (the "Lease") between the Port Authority of New York and New Jersey (the "Port Authority") and the Company, relating to the performance of certain dredging activities required under the Lease, as more fully described in the Lease Supplement.

NOW, THEREFORE, it is

RESOLVED, that the form, terms and provisions of the Lease Supplement be, and hereby are, authorized, adopted and approved, in such form and containing such terms and conditions, with such changes, additions, deletions, amendments or modifications, as the manager executing the same deems necessary, proper or advisable; and it is further

RESOLVED, that all actions taken by the managers of the Company prior to the date of this Unanimous Written Consent which are within the authority conferred hereby are ratified and approved; and it is further

RESOLVED, that the managers and officers of the Company be, and they hereby are, authorized and directed to take such action and execute and deliver on behalf of the Company such documents and/or instruments as may be necessary to accomplish the intent of the resolutions herein; and it is further


RESOLVED, that the managers and officers of the Company be, and each of them acting alone hereby is, authorized, empowered and directed to execute, deliver and cause the performance of the Lease Supplement, in the name and on behalf of the Company, with such changes therein, deletions therefrom or additions thereto as the manager or officer executing the same shall approve, the execution and delivery thereof to be conclusive evidence of the approval and ratification thereof by such manager or officer and by the Board of Managers; and it is further

RESOLVED, that the managers and officers of the Company be, and each of them acting alone hereby is, authorized and empowered to take, from time to time in the name and on behalf of the Company, such actions and execute and deliver such certificates, instruments, notices and documents, including amendments thereto, as may be required from time to time or as such manager or officer may deem necessary, advisable or proper in order to carry out and perform the obligations of the Company under the Lease Supplement, or any other instrument or documents executed pursuant to or in connection with the Lease Supplement; all such certificates, instruments, notices and documents to be executed and delivered in such form

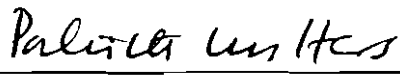
as the manager executing the same shall approve, the execution and delivery thereof by such manager to be conclusive evidence of the approval and ratification thereof by such manager or officer and by the Board of Managers of the Company.

The actions taken by the execution of this Unanimous Written Consent shall have the same force and effect as if taken at a meeting of the Board of Managers of the Company duly called and constituted in accordance with the laws of the State of Delaware.

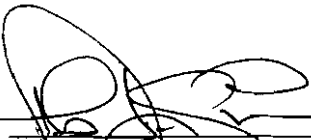
IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent as of this 3rd day of June, 2002.



Rob Scavone



Patrick Walters

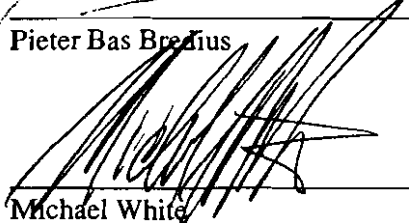


Thomas J. Simmers

Rutger van Slobbe



Pieter Bas Bredius



Michael White