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Original Title Page

PORT OF LONG BEACH
DATA SERVICES AGREEMENT

FMC NO. 201217

Expiration: See Section 4 August 23, 2013

EFFECTIVE
AUG 23 2012
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

FMC Agreement No.: 201217-001 Effective Date: Friday, August 23, 2013
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PORT OF LONG BEACH DATA SERVICES AGREEMENT

This **PORT OF LONG BEACH DATA SERVICES AGREEMENT** (the "Agreement"), is entered into this 10th day of July, 2012, by and among the City of Long Beach, acting by and through its Board of Harbor Commissioners (the "Port") on the one hand, and PierPass LLC and each of the marine terminal operators (the "MTOs") listed in Appendix A hereto (hereinafter referred to collectively as "PierPass"), on the other hand.

WHEREAS, the Port, as part of its Clean Air Action Plan, has adopted a Clean Trucks Program, and desires to monitor truck movements at the Port to evaluate the success of the program; and

WHEREAS, the Port wishes to obtain truck data from PierPass in order to monitor such movements, and PierPass is agreeable to providing such data and the MTOs consent to PierPass providing such data.

NOW THEREFORE, the parties, intending to be legally bound, hereby agree as follows:

SECTION 1. SERVICES TO BE PROVIDED BY PIERPASS.

1.1 PierPass agrees to provide the following data (the "Data") to the Port with respect to trucks moving through each of the MTOs' terminals: Port terminal ID, SCAC Code, RFID number, License Plate Number, move date/time, import/export, full/empty, in/out bound, Container Length. The Data will be provided for the period

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beginning January 1, 2012. It will be provided periodically to the Port in electronic form, in batch format, at such intervals as the parties may agree. The specific data to be provided, as well as the timing and format, may be modified by the parties from time to time as they may so agree.

1.2 PierPass may, at its discretion, fulfill its obligations under this Agreement directly, through the use of one or more contractor(s), or through a combination thereof.

1.3 PierPass shall provide such Data as exists in the relevant MTOs' database, and does not warrant to the Port as to the accuracy of any individual Data. The Port acknowledges and agrees that any and all work product, including all Data provided hereunder, and including proprietary or customized software of PierPass or the MTOs, or any of their contractors, and all component parts and codes thereof, is and shall remain exclusively the property of PierPass or the MTOs, as the case may be.

1.4 During the term of this Agreement, PierPass LLC (not the individual MTOs) shall maintain insurance in substance as described in Appendix B hereto.

1.5 The Port shall have the right to use the Data for purposes, including environmental planning, emissions inventory and transportation planning.

SECTION 2. COMPENSATION TO PIERPASS

In exchange for the services provided by PierPass under this Agreement, the Port shall compensate PierPass in the amount of $1,500 for its startup costs, payable within thirty (30) days after the effective date of this Agreement, and $4,000 per

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calendar month for the first 12 months and, as long as both the Port of Long Beach and the Port of Los Angeles are contracting with PierPass to provide data, reduced to $3500 per calendar month for the subsequent 24 months thereafter, payable within thirty (30) days after the close of each month.

SECTION 3. REPRESENTATIONS AND WARRANTIES.

3.1 PierPass hereby represents and warrants to the Port that:

(a) It is duly organized and validly existing under the laws of the jurisdiction in which it is incorporated and has all requisite power, capacity, and authority to enter into this Agreement and perform its obligations hereunder.

(b) This Agreement has been duly executed and delivered by it or on its behalf and constitutes the legal, valid, and binding obligation of PierPass enforceable against it in accordance with its terms, subject to bankruptcy, insolvency and other similar laws relating to or affecting the enforceability of creditors' rights generally, and to general principles of equity.

(c) The execution, delivery and performance of this Agreement it will not violate any agreements or instruments to which PierPass is a party, and does not require the consent of any third party.

3.2 The Port hereby represents and warrants to PierPass that:

(a) This Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Port, enforceable against the Port in accordance with its terms.

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(b) The execution, delivery and performance of this Agreement by the Port will not violate any agreement or instrument to which it is a party, and does not require the consent of any third party.

(c) The Port has complied with all applicable laws, ordinances and regulations applicable to procurement, approval and execution of this Agreement.

(d) The Port is not immune from suit for claims arising under this Agreement providing any claimant complies with the procedures set forth in California Government Code Section 900 and following.

SECTION 4. EFFECTIVE DATE, DURATION AND TERMINATION

4.1 This Agreement shall become effective on the date it becomes effective pursuant to the Shipping Act of 1984, as amended ("Shipping Act"), and shall remain in effect thereafter for a term of three (3) years.

4.2 Either party may terminate this Agreement on not less than twenty (20) days written notice.

SECTION 5. RELATIONSHIP BETWEEN PARTIES

PierPass acts as an independent contractor. Nothing herein is intended to create or shall be interpreted as creating any other relationship between the Port and PierPass. No party to this Agreement has authority to bind any other party with respect to any matters whatsoever.

SECTION 6. CONFIDENTIALITY

The Port shall keep confidential any and all Data provided to it by PierPass under this Agreement, except (1) with the prior written consent of PierPass, (2) as provided in the California Public Records Act as determined by the Office of the City

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Attorney, or (3) to the extent necessary to accomplish the purposes of this Agreement. The Port may disclose Data received by it to any employee, officer, director, attorney, auditor, accountant, contractor, service provider, agent or representative ("Recipient") who has a legitimate need to know the information in question for the purposes of this Agreement. Any Recipient to whom information is disclosed shall be advised of this confidentiality provision and shall secure and protect such information from unauthorized use or disclosure using at least the same degree of care as the Recipient employs to avoid unauthorized use or disclosure of its own confidential information, but in no event less than reasonable care.

SECTION 7. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any conflict of law principles, and shall be subject to Federal law to the extent applicable. The venue of any dispute between the parties to this Agreement shall be the appropriate federal court having personal and subject matter jurisdiction in Los Angeles, CA (or state court, if the otherwise appropriate federal court lacks jurisdiction) or the appropriate federal agency having jurisdiction over any dispute arising under applicable Federal law.

SECTION 8. MISCELLANEOUS

8.1 This Agreement may not be amended or modified, nor may any provision hereof be waived, except pursuant to an instrument in writing signed by each of the parties hereto.

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8.2 This Agreement, together with the documents contemplated hereby, sets forth the entire understanding between the parties relating to the subject matter hereof.

8.3 No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver and delivered to the other party.

8.4 Except as otherwise provided in this Agreement, no party hereto shall be liable for failure or delay in carrying out its obligations under this Agreement when such failure or delay results from any cause which is beyond the reasonable control of the party including, but not limited to, work stoppages, strikes, accidents, casualties, labor disputes, fire, road, marine or rail disasters, acts of God, governmental restraints, war or hostilities, acts of terrorism, embargoes or other similar conditions beyond the control of the affected party.

8.5 Any notice required or permitted to be given under this Agreement shall be in writing and shall be sent by a recognized reputable private courier company or by United States or other national mail system, return receipt requested, or by e-mail or facsimile transmission followed by such means, to:

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If to the Port:

City of Long Beach
Long Beach Harbor Department
P.O. Box 570
Long Beach, California 90801
Attention: Executive Director
Fax: (562) 901-1733

with a copy to:

City of Long Beach
Office of the City Attorney
City Hall, 8th Floor
333 West Ocean Boulevard
Long Beach, California 90801
Attention: Harbor Division
Fax: (562) 570-2232

If to PierPass:

c/o Mr. Bruce Wargo, President
100 Ocean Gate, Suite 600
Long Beach, CA 90802
Fax: (562) 437-9960

With a copy to:

David Smith/Wayne Rohde
Cozen O'Connor
The Army & Navy Club Bulding
1627 I Street NW, Suite 1100
Washington, D.C. 20006
Fax: (202) 478-5005

8.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

THE CITY OF LONG BEACH, acting by and through its Board of Harbor Commissioners

By: _____

APPROVED AS TO FORM

7-22, 2013

Charles Parkin
~~ROBERT E. SHANNON~~, City Attorney

By _____ (for)
Dominic Holzhaus, Principal Deputy

PIERPASS LLC

By: _____
Name: Barnes C. Wars.
Title: President

LONG BEACH CONTAINER TERMINAL, INC.

By: _____
Name: Anthony Otto
Title: President

SSA TERMINAL (LONG BEACH) LLC

By: _____
Name: John DiBernardo
Title: V.P.

INTERNATIONAL TRANSPORTATION SERVICE, INC.

By: _____
Name: PHIL FERDHUS
Title: SVP Operations/L.R.

PACIFIC MARITIME SERVICES, L.L.C.

By: _____
Name: John D. Bernardo
Title: V.P.

SSA TERMINALS, LLC

By: _____
Name: John DiBernardo
Title: V.P.

TOTAL TERMINALS LLC

By: _____
Name: Larry Bennett
Title: VP.

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APPENDIX A TO DATA DELIVERY AGREEMENT

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

TOTAL TERMINALS LLC
1999 Harrison St., Suite 550
Oakland, CA 94612-3520

PACIFIC MARITIME SERVICES, L.L.C.
1131 SW Klickitat Way
Seattle, WA 98134

SSA TERMINAL (LONG BEACH), LLC
1131 SW Klickitat Way
Seattle, WA 98134

SSA TERMINALS, LLC
1131 SW Klickitat Way
Seattle, WA 98134

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APPENDIX B TO DATA DELIVERY AGREEMENT

Insurance to be Maintained By PierPass LLC

Commercial General Liability:

Commercial General Liability insurance shall be provided on Insurance Services Office (ISO) CGL Form No. CG 00 01 or the equivalent, including provisions for defense of additional insureds and defense costs in addition to limits. Policy limits shall be no less than one million dollars ($1,000,000) per occurrence for all coverage provided and two million dollars ($2,000,000) general aggregate. The policy shall not limit coverage for the additional insured to "ongoing operations" or in any way exclude coverage for completed operations. Coverage shall be included on behalf of the insured for claims arising out of the actions of independent contractors. The policy shall contain no provisions or endorsements limiting coverage for contractual liability or third party over action claims, and defense costs shall be excess of limits. If Consultant is using subcontractors the policy must include work performed "by or on behalf' of the Consultant. Coverage shall apply on a primary noncontributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any employee or agent of City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall not exclude contractual liability, restrict coverage to the sole liability of Consultant or contain any other exclusion contrary to this contract.

If this coverage is written on a claims-made basis, the retroactive date shall precede the effective date of this contract with the City and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this contract.

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The policy of insurance required above shall be endorsed as follows:

Additional Insured: The City of Long Beach, its Board of Harbor Commissioners, employees and agents shall be added as additional insured on a primary non-contributing basis with regard to liability and defense of suits or claims arising from the operations and activities performed by or on behalf of the Named Insured using ISO Forms CG 20 10 (2004) and CG 20 37 (2004) or their equivalent. Additional Insured endorsements shall not: 1) be limited to "on-going operations", 2) exclude "Contractual Liability", 3) restrict coverage to the sole liability of the contractor, or 4) contain any other exclusion contrary to this contract.

Cancellation: The policy shall not be cancelled or the coverage reduced by endorsement until a thirty (30) day written notice of cancellation has been served upon the Executive Director of the Harbor, except ten (10) days shall be allowed for nonpayment of premium.

Business Automobile Insurance:

Automobile Liability Insurance shall be written on ISO Business Auto Coverage Form CA 00 01 or the equivalent, including symbol (1) (any Auto). Limit shall be no less than five hundred thousand dollars ($500,000) combined single limit per accident. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any employee or agent of City. If Consultant does not own any vehicles, this requirement may be satisfied by a non-owned vehicle endorsement to the general and umbrella liability policies provided that a separate policy limit is provided for this coverage as required by this contract.

The policy of insurance required above shall be endorsed as follows:

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Additional Insured: The City of Long Beach, its Board of Harbor Commissioners, employees and agents shall be added as additional insured on a primary and non-contributory basis with regard to liability and defense of suits or claims arising from the operations and activities performed by or on behalf of the Named Insured. Additional Insured endorsements shall not: 1) be limited to "on-going operations", 2) exclude "Contractual Liability", 3) restrict coverage to the sole liability of the contractor, or 4) contain any other exclusion contrary to this contract.

Cancellation: The policy shall not be cancelled or the coverage reduced by endorsement until a thirty (30) day written notice of cancellation has been served upon the Executive Director of the Harbor, except ten (10) days shall be allowed for nonpayment of premium.

Workers' Compensation:

Workers' Compensation Insurance, as required by the State of California, and Employer's Liability Insurance with a limit of not less than one million dollars ($1,000,000) per accident for bodily injury and disease. The policy of insurance required above shall be endorsed, as follows:

Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its Board of Harbor Commissioners, employees and agents.

Cancellation: The policy shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Executive Director of the Harbor, except ten (10) days shall be allowed for non-payment of premium.

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Deductible/Self-Insured Retention:

Any deductible or self-insured retention must be approved in writing by the Executive Director and shall protect the City, its Board of Harbor Commissioners, agents and employees in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. Any deductible or self-insured retention must be disclosed on the insurance documents provided and must be approved in writing in accordance with City insurance guidelines.

Evidence of Insurance:

The Consultant, concurrently with the execution of this contract, and as a condition precedent to the effectiveness of this contract, shall, for all insurance policies written on an occurrence basis, deliver each required certificate of insurance, additional insured endorsement, notice of cancellation and waiver of subrogation containing the terms and conditions required by this contract to the Executive Director for approval as to sufficiency and to the City Attorney for approval as to form. The Port reserves the right to require complete certified copies of policies. For insurance policies written on a claims-made basis, a certified copy of the policy that complies with the terms and conditions of this contract or Port Special Endorsement form shall be provided.

At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance has been renewed or extended shall be filed with the Executive Director. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the Executive Director evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

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Failure to Maintain Coverage:

Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been approved by the City. The City shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this contract.

Acceptability of Insurers:

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII, and authorized to do business in the State of California or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing in accordance with the City insurance guidelines.

Contractual Liability:

The coverage provided shall apply to the obligations assumed by the Consultant under the indemnity provisions of this contract but this insurance provision in no way limits the indemnity provisions and the indemnity provisions in no way limit this insurance provision.

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