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OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMM

Port of Long Beach Data Services Agreement  
FMC No. 201217-001  
First Revised Page No. 1

**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, ~~Inc.~~ 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

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 ~~Inc.~~ 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

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.

(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 ~~one (1) year~~ 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

**APPENDIX B TO DATA DELIVERY AGREEMENT**

**Insurance to be Maintained By PierPass ~~Inc~~ 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.