

MIAMI MARINE TERMINAL CONFERENCE AGREEMENT

FMC Agreement No. 012442

A Marine Terminal Conference Agreement

Expiration Date: None

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ARTICLE 1: FULL NAME OF THE AGREEMENT

The full name of this Agreement is the Miami Marine Terminal Conference Agreement (“Agreement”).

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to permit the Parties to: (a) establish and maintain terminal rates, charges, classifications, rules, regulations, and practices at terminals owned and/or operated by them at the Port of Miami (“Port”), and (b) meet, discuss, and agree on issues regarding their respective operations, facilities, and services at the Port, in order to improve service, reduce costs, increase efficiency, and otherwise optimize conditions at the Port to better serve the interests of the shipping public at the Port.

ARTICLE 3: PARTIES TO THE AGREEMENT

The parties to this Agreement (“Parties”) are:

- (a) South Florida Container Terminal, LLC
2299 Port Boulevard
Miami, FL 33132
- (b) Port of Miami Terminal Operating Company, L.P.
635 Australia Way
Miami, FL 33132

ARTICLE 4: SCOPE

The geographic scope of the Agreement is the area in and around the Port, covering the Parties’ activities at their respective marine terminal facilities which handle cargo transported in the foreign and/or foreign and domestic commerce of the United States.

ARTICLE 5: AGREEMENT AUTHORITY

5.1 Conference Authority.

(a) The Parties are authorized to meet, discuss, collect and exchange information and agree on matters relating to the establishment, maintenance, revision, cancellation, and/or expiration of the following: rates, charges, rules and regulations to be applied by any of the Parties through their individual marine terminal operator schedules or through a joint schedule as provided for in Article 5.1(b) below, in connection with marine terminal services and facilities at the Port, including wharfage, dockage, sheddage, interchange of equipment, free time, demurrage, detention, usage, rents, storage or handling of freight and containers, loading/unloading of cargo onto and from trucks, lighters, barges and railroad cars, licenses, and berth assignments.

(b) The Parties shall be authorized to establish, publish and maintain a common rate schedule containing any matter agreed upon pursuant to Article 5.1(a).

5.2. Cooperative Working Authority. The Parties are authorized to meet, discuss, collect and exchange information, and agree on matters relating to the following:

(a) Cargo handling practices and terms, cargo handling areas, the operation of gates at the Port, terms and conditions of gate access to the Parties' facilities, efficient use of the wharves and berths, terminal utilization levels, hours of operation, turn times, appointment systems, staffing, technology, architecture, and infrastructure improvements.

- (b) Use or non-use of the Parties' respective facilities, including sharing of space at, or rationalization of, those facilities.
- (c) Matters pertaining to Verified Gross Mass, including the use, operation, and individual or joint acquisition of, scales and related equipment, and charges associated with such equipment;
- (d) Development, individual or joint acquisition, testing, deployment, and use of container handling equipment and technologies relating to the safe, secure, efficient, and environmentally sensitive operation of marine terminals, including wireless systems (e.g., Wi-Fi, WLAN, etc.), gate technologies, Differential Global Positioning System ("DGPS") technologies, and radio-frequency identification ("RFID") technologies.
- (e) Nothing in this subparagraph 5.2 is intended to permit the Parties to take collective action. The Parties understand that any agreement that they may desire to implement regarding any of the matters set forth in this subparagraph 5.2, if subject to the jurisdiction of the Federal Maritime Commission, shall be filed with the Commission and become effective in accordance with the provisions of the Shipping Act of 1984, as amended, prior to such implementation.

5.3. The Parties are authorized to meet, individually or as a group, with one or more users (including inland carriers, ocean common carriers, intermediaries, and/or cargo interests), federal, state and local government agencies and officials, the Port, equipment manufacturers, and equipment providers to discuss any of the matters set forth in Articles 5.1 and 5.2.

5.4. Nothing in this Agreement shall be construed to alter or supersede the rights and obligations of any Party under any applicable collective bargaining agreement.

5.5. (a) The Parties are authorized to obtain, compile, maintain, exchange, and discuss information, records, statistics, studies, agreements, and data, pertaining to productivity related metrics, turn times, gate utilization, container yard utilization, equipment utilization, utilization or deployment of technology, and potential operational benefits or efficiencies that could be obtained in connection with their operations at the Port, whether prepared by one or more of the Parties or obtained from outside sources, relating to or for purposes of carrying out the authorities provided by Articles 5.1 and 5.2.

(b) Unless otherwise agreed, all information exchanged by the Parties that is clearly labeled or identified as confidential information shall be treated as confidential, proprietary and/or trade secrets by the Parties, and shall not be disclosed to any unaffiliated third party without the express written consent of the Party that provided the information. Such information may be disclosed to an affiliate of a Party, but only upon agreement of such affiliate to be bound to the same level of confidentiality as is required of the Parties under this Agreement. It shall not be a violation of this section to disclose information pursuant to lawful government requests or court orders.

5.6. The Parties may hire and retain consultants, or contractors to carry out any matters or responsibilities discussed, established or agreed to under

this Agreement, subject to the involved Parties' agreement regarding costs in connection with such hiring.

ARTICLE 6: ADMINISTRATION AND DELEGATION OF AUTHORITY

6.1. This Agreement shall be administered by the Parties and/or their duly authorized representatives. The activities authorized in this Agreement

may be carried out through meetings, telephone communications, video conferences, electronic mail or other electronic communications, writings and/or such other means of communications as the Parties may deem appropriate. The Parties may establish such standing, advisory, and ad hoc committees as they deem desirable for the furtherance of the purposes of this Agreement. The Parties are authorized to share administrative and other costs as they may agree from time to time.

6.2. The Parties are authorized (but not required) to retain a Secretary and/or any other administrative officials to administer the Agreement as they may deem necessary and appropriate. Subject to the direction of the Parties, such Secretary shall have general responsibility for supervising and monitoring day-to-day activities under the Agreement, including maintaining all records of the Agreement and administering all documentation and reporting requirements applicable to or under the Agreement. The Secretary, if any, shall make reports to the Parties as required or directed from time to time, and shall take any other actions as directed by the Parties to further the purposes of the Agreement.

6.3. The following are authorized to subscribe to and file this Agreement and any accompanying materials, and any subsequent amendments to this Agreement with the Federal Maritime Commission: (i) Any authorized officer of each of the Parties; and (ii) legal counsel for each of the Parties.

ARTICLE 7: MEMBERSHIP

Membership is limited to the Parties, except that any other marine terminal operator (within the meaning of the Shipping Act of 1984, as amended,

codified at 46 U.S.C. § 40101 et seq.) at the Port may be admitted by unanimous vote of the Parties.

ARTICLE 8: VOTING

Except as otherwise provided herein, decisions hereunder shall be reached by unanimous agreement of the Parties.

ARTICLE 9: DURATION, TERMINATION, AND WITHDRAWAL

9.1. The effective date of this Agreement shall be the date it becomes effective under the U.S. Shipping Act of 1984, as amended, and it shall remain in effect until terminated by agreement of the Parties or until all but one of the Parties withdraws.

9.2. Any Party may withdraw from the Agreement at any time by giving ninety (90) days written notice to the other Party or Parties (or to the Secretary if one is retained); provided, however, that such withdrawal shall not relieve a Party (i) of any obligations for its share of Agreement administrative expenses for the period prior to the effective date of its withdrawal, or (ii) of its share of any existing Agreement financial obligation to a third party (e.g., a contract with a vendor), and provided further that neither withdrawal nor termination shall have any effect on the Parties' rights, obligations and/or liabilities vis-à-vis another Party that previously accrued under the Agreement.

ARTICLE 10: LAW AND ARBITRATION

10.1. This Agreement shall be governed by and construed in accordance with U.S. maritime law, including the Shipping Act of 1984, as amended,

codified at 46 U.S.C. § 40101 et seq., and where U.S. maritime law is silent on a question, the laws of the State of Florida, without regard to provisions regarding conflicts of law.

10.2. Except as the Parties to a particular dispute may otherwise agree, any dispute or difference arising out of or in connection with this Agreement which cannot be amicably resolved between or among any Parties shall in all cases be referred for resolution to a single arbitrator in Miami familiar with corporate and/or maritime matters, and the type of business conducted by the Parties, who shall have no financial or personal interest whatsoever in or with any Party and shall not have acquired a detailed prior knowledge of the matter in dispute. The arbitrator shall be appointed by the mutual agreement of the parties to the arbitration or, failing such agreement and upon application by any party to the arbitration, 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 arbitrator's decision, including the written findings of fact and conclusions, shall be final and conclusive; judgment may be entered on the award and the award shall be enforceable in any court of competent jurisdiction; the arbitrator may allocate the cost of arbitration to one or more participating Parties in a manner consistent with the award; the arbitrator may not award exemplary or punitive damages.

ARTICLE 11: NON-ASSIGNMENT

Except as otherwise unanimously agreed in writing by the Parties, no Party shall assign its rights or delegate its obligations under or pursuant to this Agreement to any other person or entity.

ARTICLE 12: CONFIDENTIALITY

Each of the Parties for itself and on behalf of its employees, agents and subcontractors hereby undertakes to the others, during the currency of this Agreement, as well after its termination or expiry, to keep confidential the contents of all information (written or oral, except for information already in its possession other than as a result of a breach of this Article, or in the public domain) concerning the business and affairs of the others that it shall have obtained or received as a result of the discussions leading up to or the entering into or performance of this Agreement, subject to applicable governmental or court requirements and Article 5.5(b) regarding information exchanges and disclosure to affiliates.

ARTICLE 13: INVALIDITY AND SEVERABILITY

Each term and provision of this Agreement shall be valid and enforceable to the full extent provided by law. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

ARTICLE 14: AMENDMENT

This Agreement may not be amended, modified, or rescinded except in

writing and duly signed by authorized signatories of each of the Parties, and subject to any applicable governmental filing requirements. Any amendment, addendum and appendix so signed shall constitute part and parcel of this Agreement.

ARTICLE 15: NOTICES

All notices pertaining to this Agreement, except as the Parties may otherwise agree, shall be sent by hand delivery or email, and shall be confirmed by mail or courier, to a senior executive of the Party at the address set forth in Article 3.

ARTICLE 16: COUNTERPARTS

This Agreement and any future amendment hereto may be executed in counterparts. Each such counterpart shall be deemed an original, and all together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized representatives as of this ___ day of November, 2016. .

South Florida Container Terminal, LLC



By: MARK T BAKY 11-12-16

Title: Director

Port of Miami Terminal Operating Company, L.P.



By: FRANCES I ARONSON 11/10/16

Title: Chief Operating Officer / Sr. Vice President