

PUERTO NUEVO TERMINALS LLC
COOPERATIVE WORKING AGREEMENT

Agreement No. 201292

A Cooperative Working Agreement

TABLE OF CONTENTS

ARTICLE 1.	Purpose of the Agreement	2
ARTICLE 2.	Parties to the Agreement	<u>23</u>
ARTICLE 3.	Geographic Scope of the Agreement	3
ARTICLE 4.	Overview of Agreement Authority	3
ARTICLE 5.	Performance of Terminal and Stevedoring Activities	7
ARTICLE 6.	Delegations of Authority	<u>78</u>
ARTICLE 7.	Effective Date, Term and Termination	8
ARTICLE 8.	Miscellaneous	<u>89</u>

ARTICLE 1. Purpose of the Agreement.

1.1 ~~1.1~~—Luis A. Ayala Colón Sucrs., Inc. (Luis Ayala Colon or LAC) and Puerto Rico Terminals (PRT), an affiliate of Tote Maritime, ~~will form~~have formed Puerto Nuevo Terminals (PNT), a Puerto Rico limited liability company, to ~~operate~~serve as a ~~marine~~joint shared terminal management entity and ~~provide container stevedoring agent~~ for LAC and PRT. The purpose of PNT is to enable LAC and PRT to cooperate and coordinate their terminal facilities and related services operations in the Port of San Juan, Puerto Rico, through the use of a joint shared terminal management entity, in order to provide for more efficient terminal operations, maintenance, and repair, and facilitate joint investment in their infrastructure and equipment. The purpose of this agreement is to set forth the terms and conditions on which the parties will collaborate, including how PNT shall operate, as well as agreements of the parties on services to be provided to and by PNT in the endeavor by and to the other parties to this Agreement.

1.2 The purpose of the Amendment (002) is to clarify and revise the agreement to more clearly define and narrow certain authorities set forth herein, removing authorities that the parties have not utilized. The Amendment confirms and clarifies that the parties have not agreed to, and are not authorized to, effect a merger of PRT and LAC. Instead, they are authorized to enter into a cooperative working agreement, whereby LAC and PRT cooperate (through the use of PNT) to most efficiently rationalize and coordinate the shared use of LAC's and PRT's marine terminal facilities and equipment, so they are able to continue to invest in and provide high quality terminal facilities and services well into the future. At the same time, LAC and PRT will continue to operate other maritime and port-related businesses independent of PNT and each other as well.

ARTICLE 2. Parties to the Agreement.

2.1 The parties to this Agreement are as follows:

Luis A. Ayala Colón Sucrs., Inc.
San Juan, PR

Puerto Rico Terminals
Jacksonville, FL

~~Puerto Nuevo Terminals will be added as a party to this agreement upon its formation.~~

San Juan, PR

2.2 Additional parties may be added to this Agreement by unanimous vote of all current parties. Any new membership will be reflected in an amendment to this Agreement filed with the Federal Maritime Commission, and the membership of the new party shall not become effective unless and until said amendment becomes effective.

ARTICLE 3. Geographic Scope of the Agreement.

3.1 The geographic scope of the Agreement applies to the activities at or related to terminal facilities at the Port of San Juan, Puerto Rico.

ARTICLE 4. Overview of Agreement Authority.

4.1 LAC and PRT are authorized to agree on and implement the organization of PNT as a Puerto Rico limited liability company. ~~PNT shall operate as a Marine Terminal Operator. PNT shall provide shared management services with regard to the operation of PRT and LAC's marine terminals, and shall serve as an agent for and on behalf of LAC and PRT in communications and transactions with carrier customers and other parties.~~ PNT's organization and procedures are determined by PNT's formational documents, as agreed, amended and supplemented by the Parties. The PNT members are LAC and PRT.

4.2 PNT shall conduct container stevedoring, ro/ro stevedoring, terminal, container freight station and equipment maintenance and repair operations, and activities incidental thereto, at San Juan, Puerto Rico, ~~as described herein, in order to serve the carrier customers of LAC and PRT, utilizing the marine terminal facilities furnished by LAC and PRT.~~ The Parties may discuss, agree and take any actions in furtherance of or related ~~PNT's~~ stevedoring, terminal, container freight station and equipment and maintenance, including PNT's operations, and activities incidental thereto, including but not limited to the following:

- a. Hold such licenses and permits ~~and leases~~ necessary to operate the ~~terminal~~ terminals.
- b. Establish operating procedures for ~~the~~ terminal facilities and services.
- c. ~~Establish~~ Discuss and agree on common rates, charges, terms of service and competitive practices.
- ~~d. Publish~~ Discuss, agree on and publish marine terminal operator schedules.
- ~~e.d.~~ _____ Publish marine terminal (i.e., tariffs).

- f.e. Negotiate and enter into agreements individually or jointly concerning marine terminal facilities and/or services, marine terminal conference agreements and/or agreements to provide stevedoring, maintenance and repair and other related services, subject to any applicable governmental filing requirements.
- g.f. Take measures necessary or appropriate to comply with the applicable governmental requirements, including with respect to terminal security.
- ~~h.~~ ~~Either directly or through subcontractors, hire labor, including union labor, for its operations.~~
- g. ~~Either directly or thorough subcontractors, own and/or lease~~ Utilize supervisory employees and union labor for PNT operations from or through LAC, utilize managerial and administrative employees of LAC and PRT through secondment arrangements, and hire such other PNT employees as necessary to perform PNT's functions.
- h. Transfer small equipment, including rigging gear, personnel vehicles and spare parts and supplies, from LAC and PRT to PNT.
- i. Utilize and operate cranes, lift machines, container handling equipment, yard trucks and other equipment and gear owned or leased by LAC and PRT, and made available for PNT's use under terms and conditions agreed by the parties incident to PNT's purposes.
- j. ~~Either directly or through subcontractors, operate, pursuant to lease, sublease, assignment, subassignment, purchase or acquisition,~~ Conduct operations in marine terminal facilities owned or leased by LAC and operations connected

~~with PRT. LAC and PRT shall hold such facilities at leases necessary to operate the Port of San Juan, Puerto Rico terminal.~~

- k. Enter into agreements in ~~its~~ PNT's own name to obtain services and materials required for such operations. Such services and materials may include:
- i. Payroll, coordination of external audits, billing, and accounts payable;
 - ii. Tax services, such as the preparation and filing of, and assistance with respect to, tax returns and reports to the Internal Revenue Service;
 - iii. Legal services;
 - iv. Insurance services, including assistance in designing, obtaining and negotiating insurance policies;
 - v. Property management services, ~~including the administration of leasehold and/or ownership interests in land and equipment;~~
 - vi. Human resources services;
 - vii. Services related to public affairs, including contacts with news and trade publications media and including crises management;
 - viii. Marketing, advertising, and public relations services, such as developing a customer service program, and/or pursuing third party opportunities;
 - ix. General services with respect to government relations;
 - x. Terminal design services, including mechanical/electrical and industrial engineering;
 - xi. Vessel planning services; and
 - xii. Other professional services.

- l. Engage in such other activities as are customary for a marine terminal and/or stevedoring operation.
- m. Preserve, maintain, and distribute PNT funds in accordance with its formational documents.
- n. Execute any and all agreements, documents, certificates, and instruments necessary or convenient in connection with the management and operation of the ~~terminal~~terminals or in connection with the business of PNT.
- o. Manage ~~its~~PNT's legal, accounting, and tax affairs.
- p. Perform all functions necessary to operate a Puerto Rico limited liability company, including but not limited to maintenance of company books and records, preparation of financial statements, filing of tax returns and other tax information as required, establishment of bank accounts and investments, maintenance of offices and hiring and management of personnel, indemnification of managers and officers, and maintenance of insurance.

4.3 The Parties are authorized to consult, exchange information, discuss, and make and implement agreements regarding the subjects of this Article 4. Such agreements may include,

inter alia:

- a. Agreement for LAC to provide for the benefit of PNT union labor on terms that provide that PNT will not contract with any third party, other than LAC, to provide union labor for PNT's operations; ~~provided, however, that nothing contained in this Agreement shall preclude PNT from directly contracting for its own labor.~~
- b. Agreement for LAC to ~~lease~~allow PNT to ~~PNT~~utilize stevedoring and terminal equipment necessary for PNT's operations.

- ~~e.~~—Agreement for PRT to ~~lease to~~allow PNT to utilize stevedoring and terminal equipment ~~necessary for PNT's operations.~~
- ~~d.~~—Agreement for LAC to ~~lease to~~ PNT ~~port property necessary for PNT's operations.~~
- ~~e.c.~~—Agreement for PRT to ~~lease to~~ PNT ~~port property~~ necessary for PNT's operations.
- ~~f.d.~~—Agreement for LAC to provide to PNT terminal operating system software and/or accompanying information technology support services, or other back office support as required by PNT.
- ~~g.e.~~—Agreement for PRT to provide to PNT financial system software and/or accompanying information technology support services, or other back office support as required by PNT.
- ~~h.~~—Agreement for LAC to ~~supply PRT with union longshore labor and direction/control through supervisory support during a temporary period (not to exceed three months) covering the formation and transition of PRT operations to PNT, to the extent such labor is necessary to ensure continuity of operations during that transition period.~~

ARTICLE 5. Performance of Terminal and Stevedoring Activities.

5.1 The Parties agree that ~~during the term of existences of PNT, PRT will use commercially reasonable efforts to ensure that all current major customers of PRT utilize PNT to provide all stevedoring and terminal services at the Port of San Juan.~~

~~5.2—The Parties agree that~~ LAC will retain and not assign all current stevedoring and customer contracts at the Port of San Juan to PNT.

5.3~~2~~ The Parties agree that PRT will retain and not assign all current stevedoring and customer contracts to PNT.

5.3 LAC and PRT may enter into new stevedoring and customer contracts individually or jointly.

5.4 PNT may act as agent for the LAC and PRT individually or jointly in the marketing, sales, negotiation and execution of stevedoring and customer contracts.

5.5 This Agreement shall not extend to the provision of stevedoring or terminal services at the Army Terminal by PRT, or the provision of vessel agency services, chassis pool operations, or breakbulk stevedoring at Island Terminal, by LAC.

ARTICLE 6. Delegations of Authority.

6.1 The following persons shall have authority on behalf of a Party to sign and file this Agreement, any subsequent modifications thereto, and any supporting information with the Federal Maritime Commission (FMC) or any other governmental entities with jurisdiction over this Agreement and to respond to any requests for information from the FMC, and such persons are also authorized to delegate such authority:

- a. A designated senior executive of each Party; or
- b. Legal counsel for each Party or for the Agreement.

6.2 This Agreement and any subsequent modifications hereto may be executed in writing by separate counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

ARTICLE 7. Effective Date, Term and Termination.

7.1 The Agreement shall become effective on the date it becomes effective under 46 U.S.C. 40304.

7.2 The Agreement shall continue in effect ~~indefinitely~~until June 30, 2028, unless otherwise terminated by agreement by all Parties, or an event occurs which gives rise to a termination event under PNT's formational documents. This agreement may be extended upon agreement of the parties, upon filing and effectiveness under 46 U.S.C. 40304.

ARTICLE 8. Miscellaneous.

8.1 Assignment. The Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither the Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by any of the Parties hereto without the prior written consent of the other Parties.

8.2 Governing Law. The Agreement, the construction of its terms, and the interpretation of the rights and duties arising hereunder shall be governed by the Shipping Act of 1984 and the laws of the Puerto Rico.

8.3 Disputes. Any dispute arising out of this Agreement shall be settled by arbitration in accordance with the commercial rules of the American Arbitration Association as then in effect.

8.4 Amendments. The provisions of this Agreement may not be waived, amended, or repealed, in whole or in part, by any of the Parties hereto, except with the written consent of each of the Parties hereto.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have caused this amended Agreement to be executed by their authorized representatives as of this third day of , ~~2019~~April, 2020:

[Name]
[Title]
Hernan F. Ayala-Rubio
Executive Vice President
Luis Ayala Colon
San Juan, PR

[Name]
[Title]
Chris May
President
Puerto Rico Terminals, LLC
Jacksonville, FL

Paul Hydock
General Manager
Puerto Nuevo Terminals LLC
San Juan, PR