BEFORE THE
FEDERAL MARITIME COMMISSION

NAME: Port of New York & New Jersey/OCEMA Discussion Agreement

FMC NO.:

CLASSIFICATION:

ORIGINAL EFFECTIVE DATE:

FMC Agreement No.: 012484 Effective Date: Pending
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ARTICLE I. FULL NAME OF THE AGREEMENT

The full name of this agreement is the Port of New York & New Jersey/OCEMA Discussion Agreement (hereinafter, the "Agreement").

ARTICLE II. PURPOSE OF THE AGREEMENT

The Port Authority of New York and New Jersey ("the Port Authority") and Ocean Carrier Equipment Management Association Agreement ("OCEMA") (FMC Agreement No. 202-011284) recognize that there are issues of common interest relating to cargo throughput and infrastructure financing affecting operations in and around the Port of New York and New Jersey ("PONYNJ") that could be discussed and potentially agreed to for the benefit of the port, carriers and other users of the PONYNJ. Therefore, the purpose of this Agreement is to authorize the parties to this Agreement to collect and exchange information, engage in discussions, and reach agreement on measures to facilitate the achievement of same.

ARTICLE III. PARTIES TO THE AGREEMENT

The parties to the Agreement (hereinafter referred to individually as a "Party" and jointly as the "Parties") are the Port Authority and OCEMA.

ARTICLE IV. GEOGRAPHIC SCOPE OF THE AGREEMENT

The geographic scope of this Agreement is the region in and around the marine container terminals and any related intermodal facilities in the PONYNJ owned or operated by the Port Authority. The New York-New Jersey Port Authority Compact of 1921 defines the Port Authority's area of jurisdiction is called the "Port District," a region within a radius of approximately 25 miles of the Statue of Liberty. It being understood however that cargoes moving via the PONYNJ can originate in ports and inland locations throughout the U.S. and in other countries.

ARTICLE V. AGREEMENT AUTHORITY

(A) The Parties are authorized to discuss, collect and exchange information, and reach agreement, in accordance with the procedures in Article VI(B), with respect to the following matter:

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(i) The Cargo Facility Charge (CFC) as set out in the Port Authority's Marine Terminals Tariff, FMC Schedule PA-10 to explore other means of billing and collecting same, the amount and nature of the charges, responsibility for payment, and alternatives and possible modifications to the current CFC.

(B) The Parties are authorized hereunder, on a voluntary, non-binding basis, to agree upon and jointly announce policy positions, initiatives, operating objectives and goals, and general approaches to achieving same. Notwithstanding any agreement reached by the Parties on policies, initiatives, objectives or goals hereunder:

(i) any operational program agreed to be jointly undertaken pursuant to this Article V, shall not be implemented without further amendment to this Agreement; and

(ii) actions taken unilaterally by a Party pursuant to this Article V, e.g., through amendment of its tariffs, schedules or contracts, not requiring agreement by the other Party (irrespective of any discussion or agreement hereunder) shall not require further amendment to this Agreement.

ARTICLE VI. ADMINISTRATION AND DELEGATION OF AUTHORITY

(A) This Agreement shall be administered by the Parties through 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.

(B) The Parties may discuss, consider, exchange information concerning any matter within the scope of this Agreement. The Parties may hire contractors to develop information or proposals relating to the matters within the scope of this Agreement. The Parties may reach common positions and jointly communicate same to the public and to regulators, legislators, and other government officials.

(C) Agreements reached hereunder, including amendments to this Agreement, shall require the consent of both Parties.

(i) In making agreements with the Port Authority under this Agreement, OCEMA members shall act through the OCEMA meeting and decision-making structure, in accordance with the provisions of the OCEMA Agreement concerning discussion, voting and whether and to what extent an OCEMA member is bound by an agreement,

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decision or action of the group, including a proposal, position or other agreement made under this Agreement.

(ii) No agreement reached hereunder shall be binding upon the Port Authority without the authorization of the Board of Commissioners of the Port Authority or a duly authorized designee thereof as set forth in this Article VI.

(D) A duly authorized representative of each Party is authorized to execute this Agreement and amendments to this Agreement on behalf of his or her respective Party.

(E) A duly authorized representative of the Port Authority is authorized by the Parties to file this Agreement and amendments to this Agreement on behalf of the Parties.

(F) A duly authorized representative of OCEMA will take and file with the Federal Maritime Commission, the minutes of the meetings held pursuant to this Agreement.

ARTICLE VII. DURATION AND WITHDRAWAL

(A) This Agreement shall become effective when it enters into effect pursuant to the Shipping Act, as amended, and shall remain in effect indefinitely.

(B) Either Party may withdraw from this Agreement at any time by giving not less than thirty (30) days advance written notice of withdrawal to the other Party; provided, however, that such withdrawal shall not affect financial or other obligations previously incurred by the party under any contracts or other lawful agreements made under this Agreement.

ARTICLE VIII. CONFIDENTIALITY

(A) Each Party hereto shall keep confidential any and all information disclosed to it by the other Party and which has been identified and labeled as "Confidential," to the full extent permitted by law and by the Freedom of Information Policy and Procedure of the Port Authority ("FOI Policy").

(B) The Port Authority acknowledges that information submitted to the Federal Maritime Commission pursuant to 46 C.F.R. § 535.608 concerning discussions held or agreements made pursuant to this Agreement and the minutes of the meetings held pursuant to this Agreement (submitted to the Federal Maritime Commission pursuant to 46 C.F.R. § 535.701, are exempt from disclosure by the Federal Maritime Commission under 5 U.S.C. § 552 as set forth in 46 C.F.R. §§ 535.608, 535.701 (i).

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(C) The Port Authority agrees to assert all applicable exceptions from disclosure set forth in the FOI Policy with respect to the confidential discussions held, the confidential communications made or the confidential agreements made pursuant to this Agreement and the minutes of the meetings held pursuant to this Agreement. Such applicable exceptions to disclosure may include, but are not limited to, information and documents meeting one or more the following descriptions:

(i) Which are rendered confidential or privileged, or are exempted from disclosure by federal or state law or regulations or rules or decisions of court, including those set forth in Article VIII (B) hereof; or

(ii) Which, if disclosed, would impair present or future awards or negotiations, including collective bargaining or negotiations of leases, permits, contracts or other agreements; or

(iii) Which are trade secrets or are maintained for the regulation or supervision of commercial enterprise which, if disclosed, would cause injury to the competitive position of the enterprise.

(D) The Parties agree that required disclosure of information or documents pursuant to the FOI policy upon a determination by the Port Authority that no exception to disclosure is applicable shall not constitute a violation of this Agreement.

(E) The Parties agree that disclosure of information or documents pursuant to an order of a court or regulatory agency or other government body of competent jurisdiction shall not constitute a violation of this Agreement.

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IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized representatives as of this ____ day of May, 2017.

FOR OCEAN CARRIER EQUIPMENT MANAGEMENT ASSOCIATION (FMC AGREEMENT NO. 202-011284)

By:_____
Jeffrey F. Lawrence
Executive Director
Ocean Carrier Equipment Management Association
1200 19th Street, NW
Washington, D.C. 20036
202-463-2504
jlawrence@cozen.com

FOR THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By:_____
Molly Campbell
Director, Port Department
The Port Authority of New York and New Jersey
4 World Trade Center, 17th Floor
New York, NY 10003
212-435-4202
mccampbell@panynj.gov

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IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized representatives as of this ____ day of April, 2017.

FOR OCEAN CARRIER EQUIPMENT MANAGEMENT ASSOCIATION (FMC AGREEMENT NO. 202-011284)

By:_____
Jeffrey F. Lawrence
Executive Director
Ocean Carrier Equipment Management Association
1200 19th Street, NW
Washington, D.C. 20036
202-463-2504
jlawrence@cozen.com

FOR THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: Molly Campbell
Molly Campbell
Director, Port Department
The Port Authority of New York and New Jersey
4 World Trade Center, 17th Floor
New York, NY 10003
212-435-4202
mccampbell@panynj.gov

OK TERMS (BP) 4/20

Port Authority Use Only:	
Approval as to Terms:	Approval as to Form:
BP	AK

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