Original Title Page

FMC AGREEMENT NO. 201143-005
(3rd Edition)

WEST COAST MTO AGREEMENT

A Marine Terminal Agreement as defined in 46 C.F.R. 535.307(b)

Original Effective Date: June 23, 2003

West Coast MTO Agreement
F.M.C. No. 201143-005
(3rd Edition)

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ARTICLE I. FULL NAME OF THE AGREEMENT.

The Agreement established hereby shall be entitled the "West Coast MTO Agreement" (hereinafter "Agreement").

ARTICLE II. AUTHORITY OF THE AGREEMENT.

(a) **AUTHORITY**. The parties are authorized to exchange information, discuss, agree upon, establish, revise, maintain, cancel and enforce terminal rates (excluding the inland division or inland portion of through rates), charges, rules, regulations, procedures, practices, terms and conditions relating to cargo moving in the foreign commerce of the United States concerning:

(i) matters involving or affecting the interchange of cargo, chassis and containers with motor carriers and/or rail carriers including security, access control, gate rules, demurrage, detention, billing, compliance with interchange/leasing arrangements, indemnification and limitations of liability, and resolution of disputes and complaints;

(ii) off-peak operations at marine terminal facilities in California, including: measures to encourage use of off-peak hours, recovery of costs of establishing and maintaining off peak operations, hours and days of service, services and facilities to be made available, and measures to facilitate efficient payment, collection and distribution of any funds collected with regard to off-peak operation. Any measures, activities or charges adopted pursuant to this sub-paragraph may be applied with respect to peak hour shipments in furtherance of or in connection with an off-peak hours program;

(iii) the development, acquisition and use of technology related to the safe, secure and efficient transportation of cargo including, but not limited to, RFID technology;

(iv) compliance with statutes and regulations, including the Federal Motor Carrier Safety Regulations, state motor vehicle safety regulations approved by the Department of Transportation, and the Maritime Transportation Security Act of 2002, Coast Guard rules and regulations, and other current or future regulations;

(b) **IMPLEMENTATION OF AUTHORITY.** In order to implement the authority contained in Article II(a), the parties are authorized to:

(i) meet, individually or collectively, with users (including inland carriers, ocean common carriers and/or cargo interests) to discuss and attempt to reach a consensus with respect to the development, implementation and administration of the authorities contained in Articles II(a)(i) – (iv);

(ii) agree upon and undertake the formation, management, supervision, contracting with and/or dissolution of a non-profit corporation and a limited liability company, to be known initially as PierPass, Inc. and Pier Pass L.L.C., respectively, ~~a separate legal entity~~ to implement and administer agreements reached under Articles II(a)(i) – (iv) hereof, with such legal entities also ~~entity~~ having the authority to: act as agent(s) for the Agreement and/or the parties; publish, administer, and enforce any marine terminal operator schedule that may be adopted hereunder; evaluate, grant, deny and administer credit to customers of the parties in accordance with such marine terminal operator schedule; oversee and implement collection and distribution of charges, including legal action to collect the charges and exercise of lien and other legal rights on behalf of the parties; receive from and/or distribute to any or all of the parties confidential financial, creditworthiness and payment data or other information regarding shippers, consignees or other persons obligated to pay any charge or fee established under this Agreement for purposes of enforcing and collecting such charge or fee or determining creditworthiness; the distribution of monies collected as a result of such charges (which distribution may be based on total or other measures of cargo volume); reporting to the parties regarding same; and/or otherwise implement the parties' decisions, including the authority to subcontract any responsibilities to third-party vendors. The parties themselves may also directly exercise any of the above authority. These separate legal entities may enter into contracts and agreements with one another, with the parties, or with third parties, implementing the authorities set forth herein;

(iii) agree upon and establish procedures for implementing and administering any agreement reached hereunder with respect to the authorities contained in Articles II(a)(i) – (iv), which procedures may be set forth in an appendix hereto and/or one or more marine terminal schedule(s);

(iv) subject to the requirements of the Shipping Act of 1984, as amended, agree upon and establish procedures for monitoring compliance with agreements entered into hereunder pursuant to the authorities contained in Articles II(a)(i) – (iv) and remedies for breach of such agreements; and

(v) agree upon and make available to the public the terms of a common marine terminal operator schedule and/or the parties' individual marine terminal operator schedules applicable to shippers and other cargo interests and their agents or contractors, inland carriers, and other carriers or persons having control over or beneficial interest in the cargo with respect to the authorities contained in Articles II(a)(i) – (iv); PROVIDED, however, that the authority provided under Article II(a)(i) - (iv) shall not include agreement on a general security assessment or surcharge intended to recover a party's overall or systemic expenditures on security (as distinct from a charge associated with a specific activity (e.g., RFID); and further PROVIDED, that no common marine terminal operator schedule or common terms agreed upon by the parties to this Agreement pursuant to the terms of this Agreement and which are to be set forth in individual marine terminal operator schedules shall become effective until thirty (30) days after such schedule has been provided to the Federal Maritime Commission.

(c) **LIMITATION ON AUTHORITY.** Nothing in this Agreement shall be construed to alter or supersede the rights and obligations of the parties under any applicable collective bargaining agreement.

(d) **MEETINGS AND DISCUSSIONS.**

(i) The parties or any two or more of them are authorized to conduct meetings and hold discussions and reach voluntary agreement related to the subjects set forth in subparagraph (a) above, either in person or via electronic means, and either as the entire group or through subcommittees or subgroups.

(ii) Pursuant to the foregoing authority, the parties shall establish an Executive Committee consisting of one representative from each of the five (5) parties having the highest number of Revenue Units (as hereinafter defined) and one representative chosen from among the other parties. The Executive Committee shall develop recommendations for consideration and approval of the parties.

(iii) For purposes of this Agreement, "Revenue Units" shall mean the total loaded TEUs (or equivalent revenue units as defined under Pacific Maritime Association rules and guidelines) handled and moving through the parties' terminals (including those of affiliates listed in Appendix A hereto) including rail and gate moves, but excluding transshipment, inter-terminal and domestic moves, during the last full calendar year for which data are available. The Revenue Units of the parties shall be adjusted annually when the data for the most recent full calendar year become available. Until such time as the parties may otherwise agree, the parties' cargo volumes shall be determined based on data provided by the Pacific Maritime Association.

(e) **INFORMATION EXCHANGE.** The parties hereto are authorized to obtain, compile, maintain and exchange information, whether past, current or anticipated, including records, statistics, studies, data and documents of any kind or nature, whether prepared by the parties or obtained from outside sources, to allow the development of additional agreement(s) and understanding(s) with respect to matters within the scope of this Agreement. 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 to the Agreement and shall not be disclosed to any unaffiliated third party without the express consent of the party that provided the information. It shall not be a violation of this section to disclose information pursuant to lawful government requests or court orders.

(f) **BINDING EFFECT OF AGREEMENT ACTIONS.** Except as otherwise expressly provided hereunder or with respect to any amendment to this Agreement, a party shall be bound by a proposed agreement, decision or action reached or to be taken hereunder ("Agreement Action") only if it affirmatively states in writing (including e-mail) that it agrees to be bound. In stating that it agrees to be bound by all or part of any Agreement Action, a party may establish limitations on the extent to which it is so bound. A party may thereafter choose not to be bound by any Agreement Action in accordance with the provisions of Article XI hereof.

(g) **DOMESTIC CARGO.** For purposes of reaching or implementing agreements or decisions with respect to all matters within the scope of Article II(a)(i) – (iv) hereof, the parties are also authorized to discuss, consider, agree and exchange information with respect to waterborne cargoes moving in U.S. domestic trades to, from, or via

those marine terminals within the geographic scope of this Agreement ("Domestic Cargo") to the extent that such terminals also handle cargoes in U.S. foreign commerce. The foregoing authority for Domestic Cargo shall include consideration of and agreement on all matters for such cargoes which are authorized under Articles II(a)(i) – (iv) and (b)(i) – (v) with respect to foreign commerce cargoes.

ARTICLE III. PARTIES TO THE AGREEMENT.

(a) **CURRENT PARTIES.** The current parties to this Agreement are set forth in Appendix A annexed hereto.

(b) **ADDITIONAL PARTIES.** Upon a vote of the parties, additional marine terminal operators shall be allowed to join this Agreement in accordance with the requirements of the Act and FMC regulations.

(c) **WITHDRAWAL.** Any party may withdraw from the Agreement at any time by giving written notice to the Secretary; provided, however, that such withdrawal shall not relieve a party (i) of its obligations for its share of Agreement administrative expenses for the period prior to the effective date of its withdrawal or (ii) for its share of an existing Agreement financial obligation to a third party (e.g., a contract with a vendor), if that party's withdrawal from the Agreement would directly increase the cost obligation of the remaining parties for such Agreement financial obligation, with respect to the portion of the current term (exclusive of extensions) of such obligation remaining at the time the party's withdrawal becomes effective, or for a period of one (1) year after the effective date of withdrawal, whichever is shorter; provided, however, that a party will not be liable for any financial obligation under sub-paragraph (ii) hereof if it withdraws from the Agreement effective on the date that is three (3) years

after the initial effective date of a Traffic Mitigation Fee implemented by the parties, and if it has given the other members at least six (6) months' prior written notice of such withdrawal. Notwithstanding anything to the contrary in Article XI of this Agreement, if a party disassociates itself from PierPass Inc. and PierPass LLC effective on the date that is three (3) years after the initial effective date of a Traffic Mitigation Fee implemented by the parties, and gives six (6) months' prior written notice of such disassociation to the other parties, but does not withdraw from this Agreement, such party shall not be liable under Article XI(b) of this Agreement for any financial obligation of PierPass Inc. or PierPass LLC, or any financial obligation related to the operation of those entities.

(d) **REVOCATION.** A party's membership may be revoked by a vote of at least 66.6% of the total Revenue Units of all ~~the~~ current parties (including the party whose membership is being revoked). If a party's membership is revoked for reasons other than a material failure to fulfill its obligations hereunder (including the payment of its share of Agreement expenses, adherence to the terms of any marine terminal operator schedule established pursuant to this Agreement, or cooperation with any contractor or agent publishing, administering or enforcing such schedule) or failure to continue to qualify for membership, it shall not be liable for any Agreement expenses or liabilities with respect to the period after the effective date of the revocation of its membership.

(e) **PROCEDURE.** Any addition to the membership, withdrawal or revocation shall require the parties to amend or modify this Agreement. Such amendment or modification shall be filed with the FMC and shall become effective in accordance with the Act and FMC regulations.

ARTICLE IV. GEOGRAPHIC SCOPE.

This Agreement shall apply to all of the ports within the States of California, Oregon, and Washington in which the parties hereto are engaged in activities involving or relating to ocean transportation of cargo in the foreign commerce of the United States. The parties may, pursuant to the terms of this Agreement, limit their discussions and/or the application of any decisions reached hereunder to a portion of the geographic scope of this Agreement.

ARTICLE V. MEMBERSHIP ELIGIBILITY.

Only marine terminal operators whose business involves ocean transportation in the foreign commerce of the United States within the geographic scope of this Agreement are eligible to become parties to this Agreement.

ARTICLE VI. DELEGATION OF AUTHORITY.

Upon a vote of the parties approving an amendment hereto in accordance with the terms of this Agreement, Agreement counsel is authorized by the parties listed in Appendix A annexed hereto to execute this Agreement and any subsequent modifications or amendments hereto on their behalf, to file this Agreement and any modifications or amendments hereto with the Commission on their behalf, and to make all other filings on their behalf with the Commission relating to this Agreement, including the filing of minutes required by 46 C.F.R. § 535.706.

Agreement counsel also has the authority, following the approval of the parties pursuant to the terms hereof, to sign bridge agreements on the parties' behalf.

ARTICLE VII. ADMINISTRATION OF AGREEMENT.

(a) **CHAIRMAN**. The parties to this Agreement shall select a Chairman to preside at all meetings held pursuant to this Agreement. The Chairman shall be selected from among the members of the Executive Committee and shall also serve as Chairman of the Executive Committee.

(b) **SECRETARY**. The parties to this Agreement shall select a Secretary to be responsible for all administrative tasks as directed by the vote of the parties hereto. The Secretary shall schedule meetings upon receiving a request for a meeting, giving all parties hereto a minimum of seven days' notice and distributing a proposed meeting agenda. The Secretary shall be responsible for recording the minutes of all meetings held pursuant to this Agreement.

(c) **FUNDING.** The parties to this Agreement shall have the power to impose and collect membership fees to pay the costs and expenses incurred in the administration of this Agreement, including the fees and charges of counsel and other service providers, provided that such costs and expenses have been approved by the parties in accordance with the terms of this Agreement. Unless otherwise unanimously agreed, each party's share of the costs and expenses of this Agreement shall be based on its share of the total Revenue Units of the parties.

(d) **TIME AND PLACE**. The parties may meet from time to time and at such places as they may decide to hold meetings, discussions and exchange information as authorized by this Agreement.

(e) **ONE CLASS**. The membership under this Agreement shall consist of one class.

(f) **REPRESENTATIVES**. Each party shall designate a representative and may designate an alternate who shall be authorized to vote on its behalf on any matter coming before a meeting of the parties to this Agreement.

(g) **QUORUM**. A quorum for a meeting at which a vote is to be taken shall be two-thirds (2/3) of the total Revenue Units of the parties.

(h) **ATTENDANCE**. Attendance at meetings under this Agreement may be by telephone, by video conference, or other means agreed to by the parties.

(i) **VOTING**. All references to a "vote" or "voting" in this Agreement shall mean voting in accordance with this section VII(i). Voting shall be based on Revenue Units. Each party shall be entitled to a vote equal to the percentage obtained by dividing its individual Revenue Units (and those of its affiliates named herein) by the total Revenue Units of the parties. Agreement decisions shall require a majority vote, which shall be the affirmative vote of at least 50.1% of the total Revenue Units of the parties; provided, however, that amendments to this Agreement shall require the affirmative vote of at least 66.6% of the total Revenue Units of the parties; and, provided further, that an amendment to Article VII(c) revising the basis upon which costs are allocated shall require the affirmative vote of 100% of the Revenue Units of the parties. Except with respect to matters expressly set forth in this Agreement or with respect to any amendment hereto, any decision taken with respect to an Agreement Action shall bind an individual party only as provided in Article II(f). In the event a proposal being voted upon relates only to ports within a particular geographic region of the Agreement, only parties with a terminal in that region shall be entitled to vote on such proposal and only such parties' Revenue Units shall be counted in determining whether the necessary vote for such proposal has occurred. For purposes

of this section, the Agreement shall have the following geographic regions: Southern California (Los Angeles/Long Beach and ports south thereof), Northern California (ports in the San Francisco Bay area) and the Pacific Northwest (ports in Oregon and Washington). Notwithstanding the definition of "Revenue Units" in Article II(d)(iii), in the event of a vote on matters within the scope of Article II(g), cargo within the scope of Article II(g) shall be included in the calculation of the parties' Revenue Units. Votes may be cast in person, via electronic means, and/or via proxy.

ARTICLE VIII. DURATION, MODIFICATION AND TERMINATION.

(a) **DURATION.** This Agreement shall become effective when permitted by 46 U.S.C. app. § 1705 and continue until terminated.

(b) **TERMINATION.** This Agreement shall continue in effect indefinitely until terminated by a vote of the parties.

(c) **PROCEDURE.** Copies of any modification, amendment or termination of this Agreement shall be filed with the Federal Maritime Commission and shall become effective as provided in the Act and FMC regulations.

ARTICLE IX. PARTIES' OBLIGATIONS.

(a) **SECURITY.** The parties each agree to deposit in such account or with such entity as they may designate from time to time cash, a surety bond or a confirmed irrevocable letter of credit in such amount as they may agree from time to time. The amount of the security may be the same for all parties or may vary based on Revenue Units or such other factors as the parties may agree from time to time. The form and terms of the security shall be approved by the parties. Any interest paid on the deposit shall be for the account of the depositing party and may be paid directly to it.

The foregoing deposit shall constitute security to the Agreement and the parties for the depositor's obligation to pay expenses and liabilities of the Agreement incurred during the time of its membership. If the security shall have been resorted to in whole or in part on account of the failure of the party to pay its share of Agreement expenses, the party providing such security shall, within ten (10) working days' notice of same, deposit in the account additional security of the kind stated above sufficient to restore the deposit its original level.

The security deposit shall remain on deposit for a period of one hundred eighty (180) days after the withdrawal or termination of membership of a party and then shall be released unless the remaining parties have determined that there is good cause to believe that such security may be required to satisfy the party's obligations under this Agreement. In the event any party fails to renew its security deposit at least thirty (30) days prior to its expiry or fails to restore the security deposit as required hereunder, upon forty-eight (48) hours written notice to the party, the Chairman shall draw upon the full amount of such security deposit which is outstanding. The proceeds of such drawing shall be maintained in an account designated by the Chairman and such proceeds shall be applied to delinquent obligations of the party under this Agreement. At such time as the security is restored by a party and such security is adequate to cover any still outstanding delinquent obligations, any remaining balance of the proceeds shall be returned to such party.

(b) **ADHERENCE.** It shall be a breach of this Agreement for any party to provide marine terminal services within the geographic scope of this Agreement (or a portion thereof) upon terms and conditions inconsistent with those to which it is bound pursuant to procedures under Article II(f).

ARTICLE X. ARBITRATION

Any dispute between or among any parties concerning or based upon this Agreement shall in all cases be referred for resolution to a single arbitrator in Los Angeles, CA, to be appointed by the mutual agreement of the two sides in the arbitration or, failing such agreement and upon application by any party, by the American Arbitration Association ("AAA") ~~President of the Society of Maritime Arbitrators, Inc~~. 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. ~~there shall be no pre-hearing discovery.~~ The decision of the arbitrator shall be final, binding and not subject to further review and may be enforced by a prevailing party in any court having jurisdiction. The costs and expenses of such arbitration (including reasonable attorney's fees and costs incurred by a party or parties) shall be borne by the non-prevailing party or as the arbitrator shall otherwise determine.

ARTICLE XI. RIGHT OF DISASSOCIATION.

(a) Except as provided by paragraph (b) below, any party may, on not less than five (5) business days' advance notice, elect not to be bound by all or any portion of an Agreement Action to which it had previously agreed to be bound by providing written notice of disassociation from that Agreement Action to the Chairman of the Agreement. Such notice shall include a description of the Agreement Action (or portion thereof) from which the party is disassociating itself. The Chairman shall promptly forward the notice to all other parties. After a party has given notice of disassociation, the parties are authorized (but not required) to confer regarding the disassociation and to

take action in response thereto, including action for purposes of reaching a compromise.

(b) In the event a party disassociates itself from an Agreement Action by which it was previously bound, and such Action involves an existing Agreement financial obligation to a third party (e.g., a contract with a vendor), and the cost obligation of the other parties bound to such Agreement Action will increase as a direct result of the party's disassociation, the exercise of the right of disassociation shall not relieve the disassociating party from its obligation to pay its share of such financial obligation with respect to that portion of the current term (exclusive of extensions) of such obligation remaining at the time the party's disassociation becomes effective, or for a period of one (1) year after the effective date of disassociation, whichever is shorter.

(c) A party may delay the effectiveness of a notice of disassociation or withdraw it at any time before the expiry of the notice period by providing written notice of delay or withdrawal to the Chairman. A party which has disassociated itself from an Agreement Action (or a portion thereof) may reassociate itself with and become bound by such Action (or a portion thereof) with immediate effect by so notifying the Chairman in writing.

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ORIGINAL APPENDIX A

APM TERMINALS PACIFIC LTD.
2500 Navy Way
Terminal Island, CA

CALIFORNIA UNITED TERMINALS, INC.
1200 Pier E Street
Long Beach, CA 90822

EAGLE MARINE SERVICES, LTD.
1111 Broadway
Oakland, CA 94607

HUSKY TERMINALS AND STEVEDORING, INC.**
710 Port of Tacoma Rd.
~~Terminal 7-D~~
Tacoma, WA 94821-3816

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

SEASIDE TRANSPORTATION SERVICE LLC*
~~MARINE TERMINALS CORP.~~
1999 Harrison St., Suite 550
Oakland, CA 94612-3520

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

WEST BASIN CONTAINER TERMINAL LLC*
1999 Harrison St., Suite 550
Oakland, CA 94612-3520

~~PASHA STEVEDORING & TERMINALS, L.P.~~
~~802 S. Fries Ave.~~
~~Wilmington, CA 90744~~

*Affiliate of Marine Terminals Corp.

**Affiliate of International Transportation Service, Inc.

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ORIGINAL APPENDIX A (continued)

~~SSA MARINE for itself and its marine terminal operator affiliates Pacific Maritime Services, L.L.C. and SSA Terminal (Long Beach), LLC~~
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

TRANSBAY CONTAINER TERMINAL, INC.**
2500 7TH Street
Oakland, CA 94607

TRANS PACIFIC CONTAINER SERVICE CORPORATION
920 West Harry Bridges Boulevard
Wilmington, CA 90744-5230

YUSEN TERMINALS, INC.
701 New Dock Street
Terminal Island, CA 90731

+Affiliate of SSA Marine

**Affiliate of International Transportation Service, Inc.