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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

**BEFORE THE
FEDERAL MARITIME COMMISSION**

NAME : Port of NY/NJ—Port Authority/Marine Terminal Operators Agreement

FMC NO. : 201210

CLASSIFICATION : A Marine Terminal Agreement as defined in 46 C.F.R.535.308

ORIGINAL
EFFECTIVE DATE :



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ARTICLE I. FULL NAME OF THE AGREEMENT

The full name of this agreement is the Port of NY/NJ—Port Authority/Marine Terminal Operators Agreement (hereinafter “Agreement”).

ARTICLE II. PURPOSE OF THE AGREEMENT

The Port Authority of New York and New Jersey (“the Port Authority”) and the marine terminal operator-members of the Port of NY/NJ Sustainable Services Agreement (“PONYNJSSA”), F.M.C. Agreement No. 201175, recognize that there are issues relating to promoting environmentally sustainable, efficient, and secure marine terminal operations in the Port of New York and New Jersey (“PONYNJ”) that could be raised, discussed, and potentially agreed upon to the extent permitted by the Shipping Act of 1985 as amended by the Ocean Shipping Reform Act of 1998 (the “Shipping Act”), re-codified at 46 U.S.C. §§ 501, *et seq.* and regulations promulgated by the Federal Maritime Commission (“FMC”), 46 C.F.R. §§ 501, *et seq.*,

It is further recognized that the Port Authority has promulgated a Clean Air Strategy and announced general measures relating to improving air quality in the PONYNJ area; and the members of the PONYNJSSA have an interest in ensuring that programs adopted by the Port Authority are implemented efficiently and without unnecessary disruption to marine terminal operations or the commerce served by the marine terminals owned and/or operated by the Port Authority in 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 promote environmentally sustainable, efficient, and secure marine terminal operations as well as

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to assist the Port Authority in the implementation of the Port Authority's Clean Air Strategy to improve air quality in the PONYNJ area in a manner that will benefit the PONYNJ community.

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 the PONYNJSSA, and each of its individual marine terminal operator members, a list of which is attached hereto.

ARTICLE IV. GEOGRAPHIC SCOPE OF THE AGREEMENT

The geographic scope of this Agreement is the area in and around marine terminals owned and/or operated by the Port Authority in the PONYNJ.

ARTICLE V. AGREEMENT AUTHORITY

(A) The parties may (but are not required) to discuss, collect and exchange information, and reach agreement, in accordance with the procedures in Article VI. (C), with respect to the following matters:

(1) The development, acquisition, testing, deployment, implementation, administration, and operation of any and all aspects of programs or measures to minimize the environmental impact of port operations and to meet or implement mandatory or voluntary legal or regulatory requirements of Port Authority-or any federal-, state-, or locally-imposed requirements with respect to air quality. The foregoing shall include but not be limited to the utilization and implementation of RFID or similar technology; requirements for performance of technology and systems, program funding, compensation for services, terminal operator liability or protection from liability and costs; criteria and procedures to be followed for verifying that trucks comply with any environmental or other requirements adopted by the Port Authority for admission to Port facilities; designation of trucks as compliant with Port Authority requirements, and reflecting the compliance status of trucks in any database(s) that may be established or presently exist; criteria, conditions, and procedures to be used to determine the right of admission or non-admission of trucks to marine terminal facilities in the PONYNJ; procedures to be used to update and/or correct any database of trucks or their owners or operators; procedures to be used to encourage compliance with applicable requirements.

(2) The development, acquisition, testing, deployment, and use of equipment, technology, or procedures related to the safe, secure, and efficient transportation of cargo,

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the safe, secure, and efficient operation of marine terminals owned and/or operated by the Port Authority, and the identification of trucks operating at the terminals, including, but not limited to, RFID technology.

(3) Measures to promote compliance with federal, state, or local statutes and regulations, including, but not limited to, the Federal Aviation Administration Authorization Act of 1994, Clean Air Act, Federal Motor Carrier Safety Administration regulations; state motor vehicle safety regulations approved by the federal Department of Transportation; the Maritime Transportation Security Act of 2002, the Security and Accountability for Every Port Act of 2006 (SAFE Port Act); and Department of Homeland Security (including Customs and Border Protection, Coast Guard, and Transportation Security Administration).

(4) The development, implementation, and administration of one or more databases, including the data therein, with information determined to be relevant to any Port Authority Clean Air Strategy or clean truck program, or other program regarding trucks serving the PONYNJ, including but not limited to size, weight, age and model year, registration, ownership, operation, information concerning drivers, compliance or non-compliance with environmental or other requirements adopted by the Port Authority and/or other governmental or quasi-governmental agencies, and in the interface of such database(s) with the various technologies described in Article V.(A)(1) through V.(A)(3) above.

(5) Seeking or providing sources of funds (including loans or grants from federal, state and local governments and government agencies, quasi-governmental entities and other sources) to help fund the clean air, clean cargo handling equipment, clean trucks, security, port and terminal infrastructure, and/or truck replacement programs established by the Port, and/or assisting others in obtaining such funding.

(6) Enhancing the awareness of the shippers and the general public, as well federal, state, and local policy-makers and legislators of the capabilities, efficient operations, and public service provided by marine terminal operators in the PONYNJ.

(B) It is understood that, by entering into this Agreement or agreements (if any) with the Port Authority pursuant to this Agreement, the PONYNJSSA does not necessarily endorse any particular content or requirements of any program that has been or may be adopted by the Port Authority, but rather seeks to facilitate the implementation of the programs adopted by the Port Authority in a manner that is efficient and does not unnecessarily disrupt marine terminal operations in the PONYNJ. Except to the extent as specifically agreed otherwise, the members

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of the PONYNJSSA and the Port Authority retain all respective legal rights and potential remedies with respect to the content of such Port Authority programs.

(C) In furtherance of any agreement or understanding reached hereunder, the parties are authorized to discuss, negotiate, and without further amendment to this Agreement or other agreement filed under the Shipping Act, agree to the terms of one or more agreements, including but not limited to terms for agency agreements or agreements to similar effect, pursuant to which the PONYNJSSA, one or more of its marine terminal operator members, or one or more separate legal entities owned, established, or controlled by the PONYNJSSA or its members, will provide the Port Authority with services to implement any or all aspects of any Port Authority program set forth in Article V.(A). Such agreement terms may address all aspects of the relationship, including but not limited to services to be provided, performance requirements for such services, compensation to be paid, allocation of liability and costs or indemnification, and contract term. Such agreement terms may address services and activities at or with respect to terminal facilities within the PONYNJ other than the facilities of the members of the PONYNJSSA to the extent that the Port Authority determines that such other facilities are subject to the Port Authority's programs. In addition, the parties may discuss, exchange information, and reach agreement with respect to the terms of their respective marine terminal operator schedule(s) published by one or more of them individually or jointly, to the extent that such terms relate to the subject matter of this Agreement. No agreement or agreement terms described or referred to herein shall constitute a contract or agreement binding upon the Port Authority unless: (i) the Board of Commissioners of the Port Authority ("the Board") or a duly authorized designee thereof has authorized the making of such contract or agreement, (ii) the gubernatorial veto period applicable to the Board action authorizing such contract or agreement has expired without gubernatorial

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veto being taken on the action, and (iii) each such contract or agreement has been executed by the Port Authority pursuant to such authorization.

(D) The parties may hire and retain consultants, subcontractors, or other third parties to carry out the purposes of this Agreement or any responsibilities or duties discussed, established or agreed upon under this Agreement, subject to the parties' agreement regarding costs in connection with such hiring. The parties may also meet, discuss, exchange information, and reach agreement with regard to the use of contractors, technology, databases, data, or information used by them or their affiliates in any other location with respect to the subjects set forth in Article V. (A).

(E) The parties may meet, discuss, and exchange information with truck owners, operators, or drivers, cargo interests, ocean carriers, intermediaries, governments, and other persons regarding any of the matters within the scope of this Agreement.

(F) Nothing in this Agreement shall be construed to alter or supersede the rights and obligations of the parties or their members under any applicable collective bargaining agreement, or under any marine terminal facilities agreement, nor to limit the authority, rights or obligations of the parties under any other agreement to which one or more of them may be a party.

ARTICLE VI. ADMINISTRATION AND DELEGATION OF AUTHORITY

(A) This Agreement shall be administered by the parties, their respective members 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, and may be carried out by any duly authorized representatives of the parties, or the duly authorized representatives of any separate legal entity established or

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retained by the PONYNJSSA for the purposes of implementing any authority provided for under this Agreement. 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. Said parties may reach common positions and communicate same to the other party or parties or the full Agreement membership for consideration, discussion, or negotiation.

(C) Agreements reached hereunder, including amendments to this Agreement, shall require the consent of both parties. In making agreements with the Port Authority under this Agreement, the PONYNJSSA members shall act through the PONYNJSSA structure, in accordance with the provisions of the PONYNJSSA Agreement concerning voting and concerning whether and the extent to which a PONYNJSSA member is bound by an agreement, decision or action of the group, including an agreement, decision, or action made under this Agreement. 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 Article V. (C) hereinabove.

(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 PONYNJSSA 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 the PONYNJSSA will take and file with the Federal Maritime Commission, the minutes of the meetings held pursuant to this Agreement.

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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) Any 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 parties; provided, however, that such withdrawal shall not affect financial or other obligations previously incurred by the party under contracts or other agreements made under this Agreement.

ARTICLE VIII. CONFIDENTIALITY

(A) Each party hereto shall keep confidential any and all information disclosed to it by the any other party and which has been identified and labeled as “Confidential,” including, but not limited to, the identity of and all other information relating to cargo interests.

(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).

(C) The Port Authority agrees to assert all applicable exceptions from disclosure set forth in the Port Authority’s Freedom of Information Policy and Procedure (“FOI Policy”) with respect to the confidential discussions held or 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:

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Which are rendered confidential or privileged, or are exempted from disclosure by federal or state law or regulations or rules or decisions of court; or

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

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) In the event a request is made to the Port Authority in accordance with its FOI Policy for disclosure of the Confidential Information or any part thereof, the Port Authority, promptly after receiving such request but prior to the determination by its Secretary as to the disclosure of such Confidential Information, shall notify PONYNJSSA in writing of such fact so as to give PONYNJSSA an opportunity to explain the confidential nature of the Confidential Information to the Secretary of the Port Authority. In the event the Secretary concludes that the requested information shall be made available to the third party, then, prior to notifying the said third party thereof and prior to providing the said third party an opportunity to inspect and copy such Confidential Information, the Port Authority shall notify PONYNJSSA of the Secretary's determination. Thereupon, PONYNJSSA shall have a right to submit additional information to the Secretary and to request reconsideration of the Secretary's determination. In the event the Secretary's determination to make the requested information available to the requesting party remains unchanged following such reconsideration, PONYNJSSA shall have a right to a review

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of the Secretary's determination by following the procedures set forth in the section of the FOI Policy headed "Appeals."

(F) 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.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their duly authorized representatives as of this 30 day of December, 2010

FOR PONYNJ SSA MEMBERS



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FOR THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY



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Members of the PONYNJSSA:

APM Terminals North America, Inc.
Global Terminal & Container Services LLC
Maher Terminals, LLC
New York Container Terminal, Inc.
Port Newark Container Terminal LLC