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OAKLAND MTO AGREEMENT

FMC AGREEMENT NO. **201202**

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

Expiration Date: None.

EFFECTIVE
JUL 17 2009
UNDER THE SHIPPING ACT OF 1984
Federal Maritime Commission

FMC Agreement No.: 201202-003 Effective Date: Friday, September 3, 2010
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ARTICLE 1. NAME OF THE AGREEMENT

The name of this agreement is the "Oakland MTO Agreement" (hereinafter "Agreement").

ARTICLE 2. PURPOSE OF THE AGREEMENT

The purpose of the Agreement is to authorize marine terminal operator tenants at the Port of Oakland, California to meet, discuss, exchange information and reach agreements relating to those aspects of their operations at that Port set forth in Article 5 hereof.

ARTICLE 3. PARTIES TO THE AGREEMENT

The parties to the Agreement (hereinafter referred to individually as a "party" and jointly as the "parties") are listed in Appendix A.

ARTICLE 4. GEOGRAPHIC SCOPE OF THE AGREEMENT

The geographic scope of this Agreement is the area in and around marine terminals at the Port of Oakland, California (the "Port").

ARTICLE 5. AUTHORITY

5.1. The parties are authorized to exchange information, discuss, agree upon, establish, revise, maintain, cancel and enforce terminal rates, charges, rules, regulations, procedures, practices, terms and conditions relating to cargo moving in the foreign commerce of the United States with respect to any one or more of the following:

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(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, appointment systems, turn times, truck idling, measures to reduce vehicle congestion at terminals and surrounding areas, demurrage, detention, billing, compliance with interchange/leasing arrangements, indemnification and limitations of liability, and resolution of disputes and complaints;

(ii) matters involving the development, implementation and/or administration of measures mandated or established by the Port, the California Air Resources Board, federal, state or local governments, or other governmental authorities or agencies in connection with the reduction of air pollution attributable to activities in and around marine terminals and compliance with federal, state, local and port standards for air quality, emissions levels, measures designed to achieve such standards, and reporting requirements with respect to such measures. Such measures shall include, without limitation: the establishment of programs to minimize the environmental impact of port operations and measures to implement and enforce such programs; measures to meet or implement mandatory or voluntary port or other legal or regulatory requirements with respect to air quality, including any clean air action plan or program adopted or promulgated by the Port; measures to promote or require the purchase or use of newer and/or more environmentally sound trucks in or near the marine terminals at the Port, including truck or engine replacement programs; environmental or emissions standards and criteria for cargo interests, inland carriers, or others seeking access to port or marine terminal facilities; standards, criteria and procedures for access or denial of access to marine terminal facilities by cargo containers, trucks, inland carriers or other users of the terminals; imposition or collection of fees on users of marine terminals; seeking or providing sources of funds; seeking, obtaining and administering loans or grants from federal, state and local governments and government agencies, ports and port authorities, quasi-governmental entities and other sources to help fund such programs; the development of databases to be used in administering or implementing any or all aspects of any of the foregoing; and the recovery of the costs and distribution of funds;

(iii) matters involving the improvement of port and cargo security and compliance with federal, state, local and port standards with respect to same; the development, acquisition and use of technology related to the safe, secure and efficient transportation of cargo within or around the terminals including, but not limited to RFID, GPS, or other similar technologies; the implementation of measures to acquire, test, deploy, operate and upgrade transportation worker identification credential ("TWIC") technology and other port and cargo security technology (including hardware, software, and databases), and to seek, obtain and administer grants from federal, state and local governments and government agencies, quasi-governmental entities and other sources to help fund such technology-related activities;

(iv) matters relating to compliance with statutes and regulations, including the Federal Motor Carrier Safety Regulations, state motor vehicle safety regulations

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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;

(v) matters relating to experience that the parties, their affiliates, and/or their contractors have had at other locations or in connection with other programs relating to technology, processes, systems, software, databases, and/or general administration with respect to the matters described in Article 5.1.

5.2. In order to implement the authority contained in Article 5.1, the parties are authorized to:

(i) reach agreement among themselves on positions with respect to any matter within the scope of Article 5.1 and communicate such positions to the relevant port or other authorities;

(ii) meet, individually or collectively, with users (including inland carriers, ocean common carriers and/or cargo interests), federal, state and local government agencies and officials, port authorities, ports, equipment manufacturers and providers and others to discuss and attempt to reach a consensus with respect to the development, implementation and administration of the authorities contained in Article 5.1;

(iii) in order to promote cost and administrative efficiencies, agree to use contractors, subcontractors, databases, technology, software, and/or processes that the parties, their affiliates, or their contractors are currently using or have used at other ports;

(iv) agree upon and undertake the formation, management and dissolution of one or more non-profit corporations and/or limited liability companies to implement and administer some or all agreements reached under Article 5.1 and/or contract with one or more related or unrelated entities to provide such services;

(v) agree upon and establish procedures for implementing and administering any agreement reached hereunder with respect to the authorities contained in Article 5.1, which procedures may be set forth in an appendix hereto and/or one or more marine terminal schedule(s);

(vi) 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 Article 5.1 and remedies for breach of such agreements; and

(vii) 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

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having control over or beneficial interest in the cargo with respect to the authorities contained in Article 5.1.

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

5.4. The parties 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.

5.5. For purposes of reaching or implementing agreements or decisions with respect to all matters within the scope of Article 5.1, 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 5.1 and 5.2 with respect to foreign commerce cargoes.

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5.6. Pursuant to 46 C.F.R. § 535.408, any further agreements contemplated by this Agreement which do not relate to routine operational or administrative matters and which are required to be filed shall not be implemented until an appropriate amendment to this Agreement has been filed and become effective.

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, and may be carried out by any duly authorized representative(s) of the parties, or the duly authorized representative(s) of any separate legal entity established or retained by the parties for 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. The parties are authorized to share administrative and other costs as they may agree from time to time.

6.2. The Agreement may (but is not required to) select a Chairman to preside at all meetings held pursuant to this Agreement. The parties are also authorized to retain a Secretary and/or any other administrative officials to administer the Agreement as they may deem necessary and appropriate, which Secretary and administrative officers may be employees of one or more entities in which the parties have an ownership interest. Subject to the direction of the parties, the Secretary shall

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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 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. To promote efficiency and reduce costs, the Secretary and other administrative officials may also be administrators of the West Coast MTO Agreement or any other agreements.

6.3. Counsel for the parties is hereby authorized to file this Agreement and any amendments thereto with the U.S. Federal Maritime Commission, execute this Agreement and any amendments hereto, and to otherwise act on behalf of the parties with respect thereto. Counsel for the parties also has the authority to sign bridge agreements on the parties' behalf.

ARTICLE 7. MEMBERSHIP

Membership is limited to the parties, unless otherwise unanimously agreed by the parties. 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 8. VOTING

Except as otherwise provided herein, decisions hereunder shall be reached by a majority vote of the parties, with each party having a single vote.

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ARTICLE 9. DURATION AND RESIGNATION.

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 indefinitely.

9.2 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 has given the other members at least six (6) months' prior written notice of such withdrawal.

ARTICLE 10. LAW AND ARBITRATION

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

10.2 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 Oakland, CA, to be

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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"). 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 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 11. RIGHT OF DISASSOCIATION.

11.1 Except as provided by paragraph 11.2 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 decision made pursuant to Articles 5.1 or 5.2 by providing written notice of disassociation from that decision to the Chairman or Secretary of the Agreement. Such notice shall include a description of the Agreement decision (or portion thereof) from which the party is disassociating itself. The Chairman or Secretary 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.

11.2 In the event a party disassociates itself from an Agreement decision, and such decision involves an existing Agreement financial obligation to a third party (e.g.,

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a contract with a vendor), and the cost obligation of the other parties 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.

11.3. 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 or Secretary. A party which has disassociated itself from an Agreement decision (or a portion thereof) may reassociate itself with such decision (or a portion thereof) with immediate effect by so notifying the Chairman or Secretary in writing.

ARTICLE 12: NON-ASSIGNMENT

The rights and obligations of each party hereunder shall not be assignable except to subsidiaries, parent companies or affiliates or with the prior unanimous agreement of the other parties. Each party shall warrant that any subsidiary or fellow subsidiary to which any assignment is made shall not be sold to a third party.

ARTICLE 13: NOTICES

Any notice hereunder shall be made by courier service or registered mail, or in the event expeditious notice is required, by e-mail or fax confirmed by courier or registered mail, to the addresses shown in Appendix A hereof.

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SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have agreed this 3rd day of September, 2010, to amend this Agreement as per the attached page and to cause this amendment to be executed on behalf of all the parties listed in Appendix A.

David F. Smith

David F. Smith

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EAGLE MARINE SERVICES, LTD.
16220 N. Scottsdale Road, Suite 300
Scottsdale, AZ 85254-1781

PORTS AMERICA OUTER HARBOR TERMINAL, LLC
2200 Powell Street, Suite 1200
Emeryville, CA 94608

SEASIDE TRANSPORTATION SERVICE LLC
1999 Harrison St., Suite 550
Oakland, CA 94612-3520

SSA TERMINALS, LLC
1131 SW Klickitat Way
Seattle, WA 98134

SSA TERMINALS (OAKLAND), LLC
1131 SW Klickitat Way
Seattle, WA 98134

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

TRAPAC INC.
920 West Harry Bridges Boulevard
Wilmington, CA 90744-5230

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