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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.: 201202-007 Effective Date: Friday, December 4, 2015
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TABLE OF CONTENTS

Page No.

Article 1. Name of the Agreement 1

Article 2. Purpose of the Agreement 1

Article 3. Parties to the Agreement 1

Article 4. Geographic Scope 1

Article 5. Authority 1

Article 6. Administration and Delegation of Authority 5

Article 7. Membership 6

Article 8. Voting 6

Article 9. Duration and Resignation 7

Article 10. Law and Arbitration 7

Article 11. Right of Disassociation 8

Article 12. Non-Assignment 9

Article 13. Notices 9

FMC Agreement No.: 201202-007 Effective Date: Friday, December 4, 2015
Downloaded from WWW.FMC.GOV on Tuesday, May 22, 2018

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:

FMC Agreement No.: 201202-007 Effective Date: Friday, December 4, 2015
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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

FMC Agreement No.: 201202-007 Effective Date: Friday, December 4, 2015
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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;

(vi) off-peak operations at marine terminal facilities in the Port, 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. Provided, that the parties will not implement an off-peak program agreed to pursuant to this paragraph (vi) unless and until (1) they have filed a further amendment to this Agreement authorizing such implementation, and such amendment has become effective under the Shipping Act of 1984, as amended, and (2) a copy of an MTO schedule setting forth the material details of such off-peak program has been provided to the Federal Maritime Commission ("FMC") not less than forty-five (45) days prior to the effective date of such program. Said schedule may thereafter be revised without further amendment to this Agreement, provided that the parties provide the FMC with a copy of the revised schedule at least thirty (30) days prior to implementation; and

(vii) In view of the urgent need to ease congestion in the Port of Oakland, and pursuant to the authority contained in Article 5.1(vi) and elsewhere in this Agreement, the Parties hereby agree that they shall open their terminals for one or more additional shifts per week for such time period and for such number, scheduling and duration of additional shifts as they may from time to time agree. The number, scheduling and/or duration of such additional shift(s) may be uniform or, if one or more Parties so decides, non-uniform. Initially, one (1) additional shift per week shall be added. In order to offset in whole or in part the costs of such additional shift(s) and to encourage use of the additional shift(s), the Parties shall establish a fee to be assessed on some or all of the cargo moving via their terminals at the Port of Oakland. The amount of such fee and the terms and conditions of its application and collection shall be set forth in a marine terminal operator schedule to be published by the Parties, which fee and schedule may be adjusted and/or revised from time to time as the Parties may agree. The fee shall initially be collected via a limited liability company to be established by the Parties and to be named OAKPASS, LLC (or such other name as the Parties may decide), which may subcontract with one or more other entities to perform some or all administrative functions related to the collection of the fee and the administration of the program offering additional shift(s).

FMC Agreement No.: 201202-007 Effective Date: Friday, December 4, 2015
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(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;

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

(viii) agree upon and undertake the formation, management, supervision, contracting with and/or dissolution of one or more non-profit corporations and/or limited liability companies, to implement and administer some or all agreements reached under Articles II(a)(i) – (vi) hereof, with such legal entity or entities also 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. The separate legal entity or entities may enter into contracts and agreements with the parties, with third parties, or with one another, implementing the authorities set forth herein.

FMC Agreement No.: 201202-007 Effective Date: Friday, December 4, 2015
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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.

FMC Agreement No.: 201202-007 Effective Date: Friday, December 4, 2015
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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

FMC Agreement No.: 201202-007 Effective Date: Friday, December 4, 2015
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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.

FMC Agreement No.: 201202-007 Effective Date: Friday, December 4, 2015
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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

FMC Agreement No.: 201202-007 Effective Date: Friday, December 4, 2015
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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.,

FMC Agreement No.: 201202-007 Effective Date: Friday, December 4, 2015
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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.

FMC Agreement No.: 201202-007 Effective Date: Friday, December 4, 2015
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SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have agreed this 20th day of October, 2015, to amend this Agreement as per the attached pages and to cause this amendment to be executed on behalf of all the parties listed in Appendix A.

David F. Smith

David F. Smith

FMC Agreement No.: 201202-007 Effective Date: Friday, December 4, 2015
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Oakland MTO Agreement
F.M.C. No. 201202-007

SIGNATURE PAGE

IN WITNESS WHEREOF, the undersigned has agreed this 15th day of October, 2015, to become a party to this Agreement and to be bound by the terms thereof.

EVERPORT TERMINAL SERVICES, INC.

Name: GEORGE LANG.

Title: PRESIDENT.

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FMC Agreement No.: 201202-007 Effective Date: Friday, December 4, 2015
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F.M.C. No. 201202-007
Fifth Revised Appendix A

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PORTS AMERICA OUTER HARBOR TERMINAL, LLC
1599 Maritime Street
Oakland, CA 94607

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

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

EVERPORT TERMINAL SERVICES, INC.
655 Deep Valley Drive
Rolling Hills Estates, CA 90274

FMC Agreement No.: 201202-007 Effective Date: Friday, December 4, 2015
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