

**TACOMA MARINE TERMINAL COOPERATIVE WORKING AGREEMENT**

FMC Agreement No. 201242

A Marine Terminal Cooperative Working Agreement

Expiration Date: [None]

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## ARTICLE 1

### **FULL NAME OF AGREEMENT**

This Agreement shall be known as the Tacoma Marine Terminal Operator Cooperative Working Agreement (“Agreement”).

## ARTICLE 2

### **PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to promote the most efficient use of port and terminal assets and resources by permitting the Parties (as defined below) to discuss, negotiate, and enter into agreements (between or among the Parties and with third parties) that rationalize, schedule, and/or otherwise relate to the use of the Parties’ wharves, berths, cargo handling equipment, facilities, data, and other properties and assets, to cooperate and coordinate with each other, and to enter into agreements related to any of the foregoing, including exchange of information and data, all to improve efficiency and save costs while directly and indirectly benefiting the shipping public.

The past several years have seen consolidation of ocean common carriage by carrier alliances, including use of such alliances for joint negotiation of terminal services agreements and rates, and the deployment of larger container ships, imposing significant new capital spending requirements upon terminals, with more to come in the future. These developments present unique challenges, requiring extensive planning. This Agreement will enable the Parties (as defined below) to have discussions and enter into agreements regarding how to mitigate increasing costs associated with larger vessels and retain the velocity of container movement in light of changing market conditions and will allow the Parties to continue to attract capital markets participation,

foster economic growth, and provide public benefits to their respective communities with efficient long-term planning and development. This Article 2 is the “Purpose” of the Agreement.

### ARTICLE 3

#### **PARTIES TO THE AGREEMENT/GEOGRAPHIC SCOPE**

The Parties to this Agreement (each a “Party” and together the “Parties”) are marine terminal operators as defined in the Shipping Act of 1984, as amended (the “Shipping Act”), 46 U.S.C. § 40102(14). Each Party operates public wharves and other marine terminal facilities in connection with ocean common carriage. The names and addresses of the Parties are as provided in Appendix A.

This Agreement covers services and activities of the Parties at the respective terminals operated by the Parties in the Port of Tacoma, Washington (the “Port”), as established under the laws of the State of Washington.

### ARTICLE 4

#### **SCOPE OF AGREEMENT/AGREEMENT AUTHORITY**

A. Authority.

1. The Parties are authorized to meet together, coordinate, cooperate, consult, discuss, reach agreement, and implement or effectuate agreements<sup>1</sup> (including subcontracting arrangements between or among the Parties and with third parties), policy and related positions or goals, and take such other actions as may be

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<sup>1</sup> Implementation of any agreements between the Parties or with third parties reached pursuant to any Article of this Agreement shall be subject to the filing and effectiveness requirements of the Shipping Act and the FMC’s implementing regulations, to the extent applicable.

authorized herein to further the Purpose of this Agreement (Article 2). The Parties, or any two or more of them, may exchange and analyze information (in any form), discuss, and agree upon matters relating to cargo moving in the foreign commerce of the United States concerning, involving, or affecting:

- a. Cargo receipt, release, and other handling practices and terms, cargo handling areas, the operation of gates at the Port, operational terms and conditions of gate access to the Parties' facilities, efficient use of the wharves and berths, terminal utilization levels, hours of operation, turn times, appointment systems, staffing, technology, physical and cyber security, sustainability, systems architecture, and other environmental, health, safety, systems, and infrastructure concerns and/or improvements;
- b. Operational matters relating to the interchange of cargo, chassis, and containers with motor carriers and/or rail carriers, including security (including physical and cyber security), data and privacy compliance, access control, gate rules, appointment systems, turn times, truck idling, on-terminal equipment use and/or storage, measures to reduce vehicle congestion at terminals and surrounding areas, demurrage and detention practices and management, billing, compliance with interchange/leasing arrangements, indemnification and limitations of liability, and resolution of disputes and complaints, and any other compliance or related issues;
- c. Regulatory and other standards or requirements;
- d. The use, operation, and individual or joint acquisition of equipment, software, systems, and other goods;

- e. Development, individual or joint acquisition, testing, deployment, and use (including shared use) of container handling equipment and technologies relating to the safe, secure, efficient, or environmentally sensitive operation of marine terminals, including wireless systems (e.g., Wi-Fi, WLAN, etc.), gate technologies, Differential Global Positioning System (“DGPS”) technologies, radio-frequency identification (“RFID”) technologies, and other technologies and services.
- f. Peak and off-peak operations and efficiency and operational matters (including true-up costs and assessments among the parties, but not specific fees or charges assessed against third parties) concerning the cost recovery of any related measures;
- g. The implementation and/or administration of measures with respect to the operation of marine terminals mandated or established by one or more ports, federal, state, or local governments, or other governmental authorities or agencies, including standards and criteria for cargo interests, inland carriers, or others seeking access to port or marine terminal facilities, and/or operational matters concerning the imposition of fees (other than fees addressed pursuant to a conference agreement) on users of marine terminals in connection with programs for the reduction of air or other pollution attributable to activities in and around marine terminals, and compliance with federal, state, local, and port standards for the environment, emissions levels, and measures designed to achieve such standards. In furtherance of

this objective and without limiting their authority with respect to same, the Parties are authorized to:

- i) Meet, discuss, and exchange information among themselves and/or with federal, state, and local governments, port authorities,<sup>2</sup> ports, ocean carriers, rail and truck carriers, equipment manufacturers and providers, and others regarding activities or conditions affecting or relating to environmental issues, including the establishment of programs to minimize the environmental impact of port and terminal 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 promulgated by any port(s), measures to promote the purchase or use of newer and/or more environmentally-sound equipment in or near the Parties' terminals, including truck or engine replacement programs; and
  - ii) Reach agreement among themselves on positions with respect to any matter within the scope of this Article and communicate such positions to the relevant port or other authorities;
- h. Compliance with statutes, regulations, practices, standards, and other similar issues and matters, including the Shipping Act, Federal Motor

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<sup>2</sup> For purposes of this Agreement, the term “port authorities” includes the Northwest Seaport Alliance and any subsequent, additional, or different organization regarding the same filed agreement.

Carrier Safety Regulations, state motor vehicle safety regulations approved by the Department of Transportation, International Maritime Organization requirements and other international health, safety, security, and environmental requirements, practices, and issues, the Maritime Transportation Security Act of 2002 (and as it may be amended), United States Coast Guard rules and regulations, and other current or future regulations and any changes or amendments to any of the foregoing; and

- i. The costs and expenses associated with any of the foregoing or any authority provided for in this Agreement, including cost and expense recovery and sharing methods and opportunities.
2. In connection with implementing, maintaining, and/or administering any or all aspects of any authority, programs, or other matters described in this Article or matters regarding or requirements established or mandated by one or more conferences, ports, federal, state, or local governments, or other governmental authorities or agencies, the Parties are authorized to discuss, agree upon, and implement rules, regulations, procedures, practices, terms, conditions, and other measures, including: standards and criteria for user access to marine terminal facilities; imposition or collection of fees on users of marine terminals (other than fees addressed pursuant to a conference agreement); 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 or any authority; the recovery of the costs and distribution of funds; and the improvement of port and cargo security and compliance with federal, state, local, and other standards with respect to same.

3. In furtherance of the Purpose and the authority provided for herein, and subject to effectiveness and filing provisions of the Shipping Act and implementing FMC regulations, to the extent applicable, the Parties are authorized to:
  - a. Meet, discuss, exchange information, and reach agreement among themselves and/or with federal, state, and local governments, port authorities, ports, ocean carriers, rail and truck carriers, equipment manufacturers and providers, cargo interests, and other interested parties regarding port and cargo security, trade, and other issues, as permissible under the authority of this Agreement; and
  - b. Discuss, agree upon, and implement 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.
4. The authority in this Agreement and the discussions and agreements thereunder are separate and apart from other FMC agreements to which the Parties may be members. The authority of this Agreement is not an extension of the authority in any other FMC agreement.

B. Service Cooperation. In furtherance of the authorities set forth in this Article, the Parties are authorized to engage in the following activities:

1. Consult and agree upon the allocation and use of equipment, chassis, resources, and services for efficient and competitive service levels, including an allocation among the Parties of an agreed portion of any revenue or costs to true up the Parties' respective costs and contributions;
2. Consult and agree upon joint contracting for the purchase, ownership, lease, or operation of equipment, facilities, and any services related to such equipment or facilities;
3. Consult and agree upon any temporary measures and adjustments in response to any changes in market conditions, including seasonal, force majeure, and similar issues and circumstances;
4. Establish and maintain such standing or ad hoc committees as the Parties deem necessary or appropriate to consider, review, make, and implement administrative, accounting, operational, and policy decisions relating to the matters within the scope of the Agreement. The Parties may also establish and maintain one or more Agreement coordination offices, titles, positions, or combinations thereof to maximize the efficiency of the Parties' efforts and the related services within the scope of this Agreement (collectively, a "Coordinator"). Each Coordinator shall be authorized to perform day-to-day management, administrative, data and information collection and analysis, service coordination, contract negotiation and coordination, financial audit, review, and settlement, service inspection and

observation, long-term planning, and other functions related to the Purpose of this Agreement and each Party may embed a Coordinator in another Party's office; and

5. Meet, discuss, confer, and agree regarding any matter authorized by this Agreement for the purpose of determining positions to take in any conference to which the Parties both belong.

C. Data and Information Collection.

1. The Parties are authorized to obtain, compile, maintain, exchange, analyze, mine, and discuss information, records, statistics, studies, agreements, and data pertaining to all matters within the authority of this Agreement, concerning, involving, or affecting: productivity related metrics, turn times, gate utilization, container yard utilization, equipment utilization, utilization or deployment of technology, other information related to this Agreement or the services provided by the Parties, and potential operational benefits or efficiencies that could be obtained in connection with their operations at the Port, whether prepared by one or more of the Parties or obtained from outside sources, relating to or for purposes of the Parties utilizing the authorities provided by this Agreement.
2. The Parties are authorized to collect, obtain, compile, maintain, analyze, and develop operational data, records, statistics, studies, compilations, consultancy reports, forecasts, projections, know-how, and information regarding customers, assets, leases, and providers (collectively "Data") and to exchange, compile, maintain, analyze, and develop such Data and any derivatives of such Data, subject to Article 4.D.2 regarding information covered by confidentiality agreements or

non-disclosure restrictions The Parties are authorized to consult, meet, discuss, and agree on any matter regarding the authority described in this Article.

D. Discussion and Exchange of Information.

1. In furtherance of the authorities set forth in this Article, the Parties are authorized to meet as appropriate to discuss and exchange information regarding the following subjects:
  - a. Joint or independent acquisition and utilization of marketing materials for individual ocean common carriers and collections of carriers (conferences, alliances, joint services, carrier networks and other agreements to which ocean common carriers are parties) (all such entities collectively “Carriers”), shippers, beneficial cargo owners, and ocean transportation intermediaries;
  - b. Commercial opportunities regarding Carriers. This includes vessel calls and rotations, operational efficiencies, cost reductions, the changing shipping environment, large ship operations, supply-chain technology, stevedoring, gate, rail and yard operations, warehousing, safety and security, customer service, and new product lines;
  - c. Joint or independent acquisition, utilization, and best practices relating to operating systems and equipment, including operational metrics relating to the repair and use of chassis and containers, provided that this Agreement does not cover discussions regarding the purchase or lease prices for containers or chassis;

- d. Cargo handling practices and terms, gate operations and access, turn times, staffing, and infrastructure; and
  - e. In addition, the Parties are authorized jointly to meet with and exchange information with Carriers, shippers, other marine terminal operators, beneficial cargo owners, and ocean transportation intermediaries regarding operational issues and performance criteria related to the Purpose.
2. Nothing contained in this Article permits the Parties to exchange or share information that is subject to a confidentiality agreement or restriction prohibiting or restricting such sharing or exchange.

E. Rights and Liabilities.

The Parties are authorized to discuss and agree on their respective rights; fair and reasonable allocation of liabilities among the Parties; apportionment of damages; satisfaction of claims; procurement of insurance and management of claims thereunder; and indemnities for activities under this Agreement; matters pertaining to cargo loss or damage, damage or loss to containers or other equipment; schedule or delivery delays; loss or damage to a vessel; accidents; hazardous, dangerous, breakbulk, or oversized cargo; loss or damage caused by cargo; damage to persons or property; failure to perform; force majeure; and any other liability among the Parties or to third parties.

F. Implementing.

1. The Parties are authorized to meet, confer, discuss, and negotiate and enter into any implementing arrangements, writings, understandings, procedures, and documents that are within the scope of this Agreement and any of the foregoing that may be

ordinary and necessary to fulfill the Purpose of this Agreement, including authorization to:

- a. Meet, individually or collectively, with users (including inland carriers, Carriers, and/or cargo interests), government agencies and officials, and others, subject to the filing and effectiveness provisions of the Shipping Act and implementing FMC regulations, to the extent applicable, to discuss and attempt to reach a consensus with respect to the development, implementation, and administration of the authorities contained in this Agreement;
- b. Evaluate, grant, deny, cancel, and administer credit to customers of the Parties; receive from and/or distribute to any or all of the Parties confidential financial, credit, creditworthiness, and payment data or other information regarding Carriers, inland carriers, cargo interests, shippers, consignees, or other persons obligated to pay any charge or fee owed or due to a Party or determining creditworthiness; reporting to the Parties regarding the same; and/or otherwise implement the Parties' decisions, including the authority to subcontract any responsibilities to third-party vendors;
- c. Agree upon and establish procedures for implementing and administering any agreement reached hereunder with respect to the authorities contained in this Agreement, which procedures may be set forth in an appendix hereto; and

- d. Agree upon and establish procedures for monitoring compliance with agreements entered into hereunder pursuant to the authorities contained in this Agreement and remedies for breach of such agreements.

G. Joint Development.

The Parties are authorized to consult, discuss, and agree on the terms and conditions of joint research, development, implementation, interchange, licensing, and use of documentation, data, technology, and other systems and practices and computerization, communications, software, and related requirements or improvements.

- H. The Parties, or their designated agents or advisors, may directly exercise any of the above authority.

**ARTICLE 5**

**ADMINISTRATION AND DELEGATION OF AUTHORITY**

This Agreement will be administered by the Parties through their respective Chief Executive Officer/Executive Director or individuals delegated by the Parties' respective Chief Executive Officers/Executive Directors or others with equivalent authority within the Party's organization. The activities may be carried out by face-to-face meeting, telephone or video conference, electronic mail or other electronic communication, or such other means of communication as the Parties may deem appropriate. The Parties may establish such committees as they deem appropriate for furtherance of the purposes of this Agreement.

The Parties' respective Chief Executive Officers or equivalent officers, or any of their delegates (including legal counsel for the Parties), are authorized to execute this Agreement and any subsequent amendments hereto on behalf of the Parties, and to make or authorize the filing of

this Agreement and any subsequent amendments with the Federal Maritime Commission (“FMC”).

## **ARTICLE 6**

### **VOTING**

Except as specifically otherwise provided hereunder, all matters relating to this Agreement shall be by mutual agreement of the Parties.

## **ARTICLE 7**

### **CONFIDENTIALITY**

The Parties agree and understand that all information exchanged under this Agreement may contain non-public, confidential business information, and trade secrets. The Parties shall treat all such information exchanged pursuant to this Agreement as confidential. The Parties recognize that such confidentiality may be limited by legal requirements applicable to one or both Parties under federal, state, or local law.

The confidential information of each Party shall remain the property of the Party despite being shared with the other Party. In the event either Party elects to terminate this Agreement, both Parties will return, or certify the deletion and/or destruction of, any confidential information received from the other Party under this Agreement. The obligations under this Article survive the termination of the Agreement.

## **ARTICLE 8**

### **EFFECTIVE DATE, DURATION AND TERMINATION**

This Agreement will become effective on the date it becomes effective under the Shipping Act, and will remain in effect indefinitely. Either of the Parties may terminate this Agreement at any time upon thirty (30) days prior written notice to the other Party at the address set forth herein.

## **ARTICLE 9**

### **AMENDMENTS**

The terms of this Agreement may be amended by mutual agreement of the Parties. Such amendments shall be in writing, signed by the Parties, and to the extent required under the Shipping Act, shall be filed and shall become effective as provided in the Shipping Act and applicable regulations.

## **ARTICLE 10**

### **NOTICES**

Any notice or consent permitted or required under this Agreement shall be in writing and served on each Party at the address set forth herein (or such other address as may be designated by one Party to the other in writing), either by electronic delivery, first class certified mail, return receipt requested, or by overnight delivery service.

## **ARTICLE 11**

### **COUNTERPARTS**

This Agreement and any future amendment hereto may be executed by the Parties' duly-authorized representatives in multiple original counterparts. Each counterpart shall be deemed an original, and all together shall constitute one and the same agreement.

## ARTICLE 12

### LAW AND ARBITRATION

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to provisions regarding conflicts of law, subject to the Shipping Act, implementing regulations of the FMC, and U.S. general maritime law, to the extent applicable.

Except as the Parties to a particular dispute may otherwise agree, 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 Tacoma familiar with corporate and/or maritime matters, and the type of business conducted by the Parties, who shall have no financial or personal interest whatsoever in or with any Party and shall not have acquired a detailed prior knowledge of the matter in dispute. The arbitrator shall be appointed by the mutual agreement of the Parties to the arbitration or, failing such agreement and upon application by any Party to the arbitration, 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, as defined by the Federal Rules of Civil Procedure, and the arbitrator shall have the power to subpoena the same.

The arbitrator’s decision, including the written findings of fact and conclusions, shall be final and conclusive; judgment may be entered on the award and the award shall be enforceable in any court of competent jurisdiction; the arbitrator may allocate the cost of arbitration to one or

more participating Parties in a manner consistent with the award; the arbitrator may not award exemplary or punitive damages.

**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their authorized representatives as of this 15th day of February, 2018:

**Husky Terminal And Stevedoring, Inc.**

**Washington United Terminals, Inc.**

\_\_\_\_\_  
Keiji Kubo  
Chairman and Chief Executive Officer

\_\_\_\_\_  
Eric C. Jeffrey  
Legal Counsel

**APPENDIX A: PARTIES TO THE AGREEMENT**

(1)

Washington United Terminals, Inc.

1815 Port of Tacoma Road

Tacoma, WA 98421

(2)

Husky Terminal And Stevedoring, Inc.

1101 Port of Tacoma Road, Terminal Four

Tacoma, WA 98421