

202-008493-019

Amendment to
FMC Agreement No. 202-008493

ORIGINAL

WHEREAS, the Final Rule issued by the Federal Maritime Commission in Docket No. 86-16, 46 C.F.R. §572.502(a) (8) requires certain modification of the Trans-Pacific American Flag Berth Operators Agreement (the "Agreement");



NOW, THEREFORE, pursuant to Article 8.1 of the Agreement, the parties hereby agree to amend and modify the Agreement by (a) restating the authority set forth in subarticle 5.4 pertaining to service contracts and incorporating such authority in a new Article 14, (b) renumbering the existing Articles 14-16 appropriately, including internal cross-references, and (c) conforming the Table of Contents. The parties hereby authorize the firm of Morgan, Lewis & Bockius, Washington, D.C., to file this amendment, as reflected by the First Revised Page Nos. 1, 4, 13, 14, 15 and 16 attached hereto, with the Federal Maritime Commission on their behalf, and any associated supporting materials as may be required to effectuate this amendment.



IN WITNESS WHEREOF, the parties have caused this amendment to be executed by their respective officers or agents thereunto duly authorized, by so executing the attached First Revised Page No. 16, or counterparts thereof, each of which will constitute an original of this amendment.

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5.2 Any tariff, schedule or compendium of such rates, terms or conditions, or any particular such rate, term or condition, agreed upon and approved by unanimous vote of all parties pursuant to Article 8.2 shall be binding upon and adhered to by all parties.

5.3 Credit for payment of freight and other charges due under tariffs issued pursuant to this Agreement may be extended by the parties only as permitted by and in accordance with rules and provisions and related bonding requirements (including rules and provisions in any standard credit agreement or indemnity bond forms) approved by unanimous vote of all parties pursuant to Article 8.2 and set forth in such tariffs. However, even if such credit has been approved and implemented, no credit shall be extended by any party to any shipper or consignee that the Secretary or his designee has advised the parties in writing is delinquent in the payment of freight or other charges to any party under tariffs filed pursuant hereto.

5.4 This Agreement specifically covers service contracts, as provided more fully in Article 14.

clearly identifying such action with the name of the party or parties taking such independent action. Parties taking independent action must charge and collect freight and other charges and provide service strictly in accordance with the terms of such independent action as set forth in the tariff, and failure to do so constitutes a breach of the Agreement subject to all the provisions of this Agreement and amendments and appendices thereto relating to breaches. Prior to giving notice of any independent action hereunder, each party hereto is encouraged, but is not required, first to propose to the Agreement that the Agreement itself take the action and to permit the Agreement to act thereon at a meeting.

ARTICLE 14 - SERVICE CONTRACTS

This Agreement specifically and without limitation covers service contracts, and authorizes the Agreement to negotiate and enter into all such contracts on behalf of the parties and otherwise to exercise full and complete control and jurisdiction over all such contracts, the parties hereby agreeing that they shall not enter into, maintain or modify any such contracts for their own account.

ARTICLE 15 - BREACH OF AGREEMENT

15.1 It shall be a breach of this Agreement to undertake any independent action without complying with the provisions of Article 13 governing such action. It shall also be a breach of this Agreement for any party, either directly or indirectly by whatever means, to engage in the transportation of cargoes subject to this Agreement at rates or upon terms and conditions other than those: (i) agreed upon hereunder; (ii) set forth in any separate tariffs which are permitted to continue; (iii) established pursuant to a right of independent action; or (iv) set forth in the essential terms of a service contract. Additionally, there shall be no undue preference or advantage or unjust or unreasonable discrimination or unfair practices against any consignor or consignee by any party.

15.2 Each party shall be responsible for the acts or omissions of its officers, employees, agents, and sub-agents, and of its parent, subsidiary, associated, related or affiliated companies, as well as of any other persons, firms, or corporations in any manner subject to its control (collectively "associates"), which acts or omissions may in any manner affect the Trade covered by this Agreement. Every act or omission of any associate in violation of this Agreement shall be imputed to the party and shall constitute a violation by the party as fully as if done by the party itself.

15.3 Unless the conduct is subject to the jurisdiction of a Neutral Body which has been engaged pursuant to Article 10, the existence of a breach and the assessment of any damages therefor shall be determined by unanimous decision of all parties (but with no vote accorded to the party or parties charged with breach), and shall be communicated promptly in writing to all parties. Such decision shall be final and binding as between the parties unless arbitration is invoked under Article 16. If arbitration is not invoked within thirty (30) days after the decision of the parties is made, such decision shall be treated as if it were an arbitrator's award under Article 16 and shall be final, binding and enforceable in any court having jurisdiction.

ARTICLE 16 - ARBITRATION

Should any dispute arise between or among any parties concerning or based upon this Agreement, the matter in dispute shall in all cases be referred for resolution to a single arbitrator in San Francisco, California, or such other place as may be mutually agreed by the parties to the dispute. The arbitrator shall be appointed by the mutual agreement of the parties to the dispute or, failing such agreement and upon application by one of them, by the American Arbitration Association. Except by agreement of the parties to the dispute, 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 17 - EXPENSES

Any expenses incurred in carrying out this Agreement shall be borne by the parties as they may from time to time mutually agree pursuant to Article 8.2.

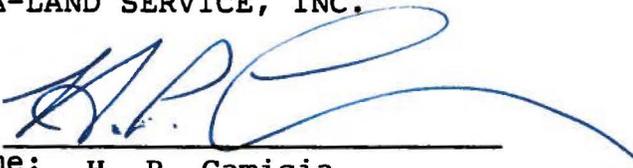
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers or agents thereunto duly authorized. This Agreement may be executed in counterparts, each of which will constitute an original hereof.

AMERICAN PRESIDENT LINES, LTD.

BY _____
Name:
Title:

Date
Signed:

SEA-LAND SERVICE, INC.

BY 
Name: H. P. Camicia
Title: V. P. Pricing, Pacific Division

Date
Signed: September 15,
1988

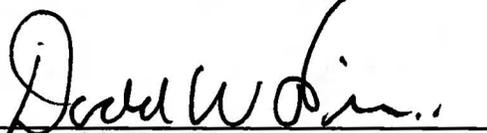
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AMERICAN PRESIDENT LINES, LTD.

BY 
Name: Dodd W. Fiori
Title: Vice President, Marketing and Pricing

Date
Signed: 9/27/88

SEA-LAND SERVICE, INC.

BY _____
Name:
Title:

Date
Signed: