

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 subparagraph 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.

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 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.

Oakland MTO Agreement
F.M.C. No. 201202-005
Fourth Revised Appendix A

PORTS AMERICA OUTER HARBOR TERMINAL, LLC
~~2200 Powell Street, Suite 1200~~ 1599 Maritime Street
~~Emeryville, CA 94608~~ 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-INC., LLC
920 West Harry Bridges Boulevard
Wilmington, CA 90744-5230