

CALIFORNIA ASSOCIATION OF PORT AUTHORITIES

PARTIES TO THE AGREEMENT

Non-Operating Members

Humboldt Bay Harbor District

Port of Long Beach

Port of Los Angeles

Port of Oakland

Port of Richmond

Port of San Diego

Port of San Francisco

Operating Members

Port of Stockton

Sacramento-Yolo Port District  
(Port of Sacramento)

Port of Redwood City

Oxnard Harbor District  
(Port of Hueneme)

## CALIFORNIA ASSOCIATION OF PORT AUTHORITIES

### WITNESSETH:

#### OBJECTS AND PURPOSES

That, in consideration of the benefits to be severally and collectively derived from this agreement, the parties hereto hereby associate themselves in an association to be known as the “CALIFORNIA ASSOCIATION OF PORT AUTHORITIES” hereinafter referred to as the “Association”, to establish and maintain just and reasonable, and, as far as practicable, uniform terminal rates, charges, classifications, rules, regulations and practices at such terminals for, or in connection with, interstate and foreign waterborne traffic, provided that it is recognized that each port or terminal may have a different situation and the term “uniform” shall not necessarily be construed to mean identical, and it is understood that all matters involved herein shall be worked out in a spirit of bona fide effort to accomplish an arrangement that will give no one an undue advantage, taking into consideration all competitive conditions, and to cooperate with port authorities and marine terminal operators of other districts either individually or through their associations, to the end that the purposes set forth above may be achieved as widely as possible

#### ARTICLE 1 – MEMBERSHIP

Any port authority or marine terminal operator in the State of California may hereafter by consent of a majority of the parties hereto become a party to the Association. The admission of any such port authority or terminal operator shall not be denied without just and reasonable cause.

#### ARTICLE 2 – TARIFF COMPLIANCE

The parties hereto agree to assess and collect all rates and/or other charges for, or in connection with, traffic handled by them within the scope of this agreement, strictly in accordance with the rates, charges, classifications, rules, regulations and/or practices set forth in their respective applicable tariffs; that they will not in any respect deviate from or violate any of the terms of said tariffs; and that no rates or charges assessed or collected pursuant to such tariffs shall be directly or indirectly illegally or unlawfully refunded or remitted in whole or in part in any manner or by any device.

#### ARTICLE 3 – WITHDRAWAL PROCEDURE

Any member may resign from the Association at any time, upon three (3) months’ previous written notice of such resignation mailed to the Association. Promptly upon the receipt of any such notice of resignation, the Association shall mail a copy thereof to the Federal Maritime Commission, Washington, D.C. Upon the effective date of said resignation, the member so resigning shall be relieved of all obligations to the Association, except for the amount

of any dues of said member then due and unpaid, and except for the amount of any then delinquent assessment levied against said member.

#### ARTICLE 4 – HEADQUARTERS

The principal office of the Association shall, unless otherwise determined by the members, be at the office of the Executive Secretary of the Association in Sacramento, California.

#### ARTICLE 5 – MEMBERS’ REPRESENTATION

At an organization meeting in San Francisco, California, on the 12<sup>th</sup> Day of April, 1940, and at each subsequent annual meeting as hereinafter provided each Association member shall declare the name of the person who shall represent it at meetings of the Association and such person shall serve until such time as his successor is named and seated. Each member shall be permitted to designate and appoint one alternate to serve instead of such accredited representative in the event of his absence.

#### ARTICLE 6 – OFFICERS

The officers of the Association shall be a President, a Vice President, and a Treasurer. These officers shall be elected by the members by a majority vote at each annual meeting of the Association and shall serve, without compensation for two years or until their successors have been duly elected and installed in office. They shall perform the duties ordinarily performed by such officers and such other duties as may be assigned to them by the members. In the event the offices of either President or Vice President shall for any reason become vacant during the term for which those officers were elected, the members of the Association may fill the vacancy by a majority vote.

#### ARTICLE 7 – EXECUTIVE SECRETARY

The members may select and contract for or employ an Executive Secretary and such other help as may be necessary to carry on the activities of the Association and shall fix their duties and compensation.

#### ARTICLE 8 – DUTIES OF PRESIDENT

It shall be the duty of the President to preside at all meetings of the Association, and he shall be ex officio member of all committees.

#### ARTICLE 9 – DUTIES OF VICE PRESIDENT

In the absence or disability of the President, the Vice President shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the President.

## ARTICLE 10 – DUTIES OF EXECUTIVE SECRETARY

The Executive Secretary shall keep an accurate record of the proceedings of the Association and shall issue all calls and notices ordered by the President. He shall have custody of all official papers and records, except those of the Treasurer. He shall furnish promptly to the Federal Maritime Commission, Washington, D.C., and to each member of the Association a copy of the Minutes of each meeting.

## ARTICLE 11 – DUTIES OF TREASURER

The Treasurer shall keep an accurate record of the receipts and disbursements of the Association and shall be responsible for the funds of the Association. At the expiration of his term of office, he shall turn over to his successor the funds of the Association and the financial books and records.

## ARTICLE 12 – EXECUTIVE COMMITTEE

The President, Vice President, and Treasurer shall constitute the Executive Committee of which the President shall be the Chairman. It shall carry on the customary routine executive duties of the Association, subject at all times to the directions and orders of the Association.

## ARTICLE 13 – COMMITTEES

- (a) The President shall appoint such committees as may from time to time be necessary; provided, however, there shall be a standing Committee on Tariffs and Practices, consisting of a representative of each Operating and Non-Operating Member appointed by such member and, in addition, there shall be a standing Traffic Committee of Operating Members, consisting of a representative of each Operating Member appointed by such Operating Member as listed on the Title Page of this Agreement, and each such Committee may elect its own Chairman and Vice Chairman.
- (b) The Committee on Tariffs and Practices shall, except as hereinafter provided in paragraph (d) of this Article, investigate and study operating costs, methods and practices, as well as traffic conditions, in order to discuss just and reasonable rates, charges, classifications, rules, regulations and practices at ports in the State of California.
- (c) The Committee on Tariffs and Practices is authorized with reference to the rates, charges, classifications, rules and regulations of other than members of this Association, to take such actions, in the name of the California Association of Port Authorities, as are appropriate and necessary to represent the common interest of all Association members before regulatory bodies or rate-making bureaus to secure results in the best interest of California ports. Such action by the Committee on Tariffs and Practices shall be taken only upon unanimous approval of all members of the Committee, and only after each such action has been approved by the President of the Association.

- (d) The Traffic Committee of Operating Members shall investigate and study operating costs, methods and practices in order to discuss just and reasonable rates, charges, classifications, rules, regulations and practices inherent in the furnishing of accessorial services peculiar to and performed only by Operating members at ports in the State of California, but may not investigate or study operating costs, methods and practices of non-operating members. The Traffic Committee of Operating Members, on behalf of the membership, may approve by the unanimous vote of all of its members the adoption of such rates, charges, classifications, rules, regulations and practices for such accessorial services. Except as expressly set forth herein, the powers and duties of the Traffic Committee of Operating Members shall not extend to any rate, charge, classification, rule, regulation or practice that is within the jurisdiction of the Committee on Tariffs and Practices under paragraph (b) of this Article.
- (e) Nothing in this agreement is intended to nor shall preclude a member designated on the Title Page hereof as a “Non-Operating” member from including in its tariff and performing accessorial services which are peculiar to and customarily performed by “Operating” members. When any accessorial service peculiar to and customarily performed by Operating members is in fact performed by and/or is included in the tariff of a member or members designated as “Non-Operating”, the Committee on Tariffs and Practices and not the Traffic Committee of Operating Members shall have jurisdiction with respect thereto, and all provisions of this agreement which relate to “services peculiar to and performed only by Operating members” shall be inapplicable thereto.
- (f) The President may appoint a Committee on Terminal Agreements, which committee shall not be a standing committee. The Committee on Terminal Agreements shall investigate study, exchange information and discuss leases, agreements, licenses, assignments and other contracts relating to the use of terminal facilities of members of the Association. The Committee shall submit its report and recommendations to the Association and any such report or recommendations shall not be binding upon any member of the Association.

#### ARTICLE 14 – MEETINGS

- (a) The annual meeting of this Association shall be held each year, at the call of President, upon one month’s written notice, provided the force of this section may be abrogated by unanimous consent.
- (b) Special meetings of the membership shall be called by the President at his own discretion or upon the written request of five (5) members. The purpose of such special meeting shall be set forth in the notice which shall be mailed, e-mailed or faxed by the Executive or Association Secretary to the members at least one (1) week before the date of the meeting, and no business other than that for which the meeting is called shall be transacted, provided, however, if all members are present and unanimously agree, any other matters within the scope of the agreement may be dealt with at such meetings.
- (c) The President, at his own discretion, may, or upon the written request of five (5) members, shall, call a meeting by correspondence, and the President shall fix the date thereof. A notice of the call of any meeting by correspondence shall be given by the Executive or

Association Secretary in writing by mail, e-mail or fax to each member and shall be dated not less than ten (10) days prior to the date fixed for any such meeting by correspondence, which notice shall state the manner of call of said meeting by correspondence, state the date fixed for said meeting by correspondence, contain the subject or subjects to be voted upon at such meeting together with the text of any resolutions or any other actions proposed for vote and contain a ballot form of subjects corresponding to the agenda by which the members may register their votes upon any or all of the subjects set forth in the agenda for such meeting by correspondence. A member shall be deemed to have voted on a subject at a meeting by correspondence (a) if the member shall have communicated its vote, in the affirmative or in the negative, on such subject to the Executive or Association Secretary in writing, by mail or otherwise, and if such communication is received by the Executive or Association Secretary or is postmarked prior to midnight of the date fixed for such meeting by correspondence or (b) if the member shall have failed to communicate its vote on such subject to the Executive or Association Secretary in the manner and within the time specified in Clause (a) above, in such event its vote on such subject shall be deemed to be and shall be entered as in the affirmative. Any resolution or other action proposed and adopted at a meeting by correspondence shall have the same force and effect as though such resolution or other action had been adopted or taken at an annual or special meeting of this Association.

- (d) The President, at his own discretion, when in the judgment of the President time is of the essence and a special meeting or a meeting by correspondence will result in undue delay, may call a meeting by telephone and fix the date and purpose thereof.

The notice of the call of any meeting by telephone shall be given by the Executive or Association Secretary to each member by telephone, e-mail or fax, and by arranging a telephonic conference on the date so fixed between the President and all or so many of the members (but not less than one-half (1/2) of the membership of the Association in good standing) as may be available, and by stating at such telephonic conference the manner of call of said meeting by telephone and the purposes for which such meeting is called, together with the text of any resolutions or other actions proposed. No business other than that transacted, provided, however, if all members are present and unanimously agree any other matters within the scope of the agreement may be dealt with at such meeting by telephone. The President shall preside at such meeting by telephone and shall entertain motions, seconds and discussion, put matters to vote and otherwise carry on the business of the meeting by telephone as if such meeting were an annual or special meeting of the Association in person.

In the event any member is absent from a meeting by telephone, the Executive or Association Secretary shall, as soon after such meeting has adjourned as such absent member may be reached by telephone or e-mail or fax, advise such member of the purposes of the call and the subject or subjects acted upon at such meeting, of the text of any resolutions or other actions voted upon or taken at such meeting together with the vote thereon, and shall ask for, receive, and, subject to confirmation within twenty-four hours thereafter by such absent member, record such member's vote on each of such resolutions or other actions.

Any resolution or other action proposed and adopted at a meeting by telephone shall have the same force and effect as though such resolution or other action had been adopted or taken at an annual or special meeting of the Association.

- (e) The Committee on Tariffs and Practices and the Traffic Committee of Operating Members shall conduct their business in regular or special meetings or in meetings by telephone or by correspondence in accordance with procedures adopted by the Committees, approved by the Association and filed with the Federal Maritime Commission.

#### ARTICLE 15 – COMMITTEE ON TARIFFS AND PRACTICES DOCKET PROCEDURE

Any member desiring to have a docket matter placed on the agenda for consideration by Tariffs and Practices Committee shall prepare a Docket Data Sheet and provide it to the Executive Secretary. Upon the Docket Data Sheet shall be designated (1) the number assigned thereto; (2) the date of the proposal; (3) the title of the subject; (4) the number of the meeting and the date on which the meeting, at which the subject is to be considered, will be held; and (5) details of the proposal.

Docket Data Sheets bearing appropriate prefix numbers and the next consecutive suffix number under the particular heading shall be assigned in accordance with the following subject outline:

- Prefix No. 1 – General Rules and Regulations
- Prefix No. 2 – Car Loading and Unloading
- Prefix No. 3 – Dockage
- Prefix No. 4 – Service and Facilities Charges
- Prefix No. 5 – Tariff Definitions
- Prefix No. 6 – Wharfage
- Prefix No. 7 – Wharf Demurrage and Storage
- Prefix No. 8 – Miscellaneous Matters Relating to Members' Tariffs
- Prefix No. 9 – Miscellaneous Matters Not Related to Members' Tariffs
- Prefix No. 10 – Tariff Interpretations

Proposals submitted under the Emergency Docket Procedure shall be designated by the suffix letter "E".

#### ARTICLE 16 – COMMITTEE ON TARIFFS AND PRACTICES MEETINGS

Meetings of the Committee on Tariffs and Practices shall be regularly scheduled as determined by the Committee but no less frequently than quarterly. Special meetings shall be subject to the call of the Chairperson.

Notice of the date and place at which meetings are to be held shall be given by the Committee Chairperson or Executive Secretary as far in advance as reasonably practicable.

An agenda of the subjects to be considered at each committee meeting shall be prepared by the Executive Secretary and transmitted to the committee members reasonably in advance of the date of the meeting. Any matter not on the agenda may be brought up for consideration at such meeting upon consent of the members of the committee. When a docket matter is thus added to a Committee's agenda, the Executive Secretary shall designate the docket number assigned to the subject and shall cause a Docket Data Sheet to be prepared thereon and forwarded to the members of the committee in the event that the subject has not been previously docketed.

#### ARTICLE 17– QUORUM

For the purpose of transacting business at a meeting of the Association, a quorum shall consist of not less than one-half (1/2) of the membership of the Association in good standing. For the purpose of transacting business at a meeting of the Committee on Tariffs and Practices or of the Traffic Committee of Operating Members, a quorum shall consist of not less than one-half (1/2) of the entire membership of such Committee.

#### ARTICLE 18 – VOTING

Except as provided in Articles 1, 6, 13 and 23, all action shall be taken in behalf of the Association by a three-fourths vote of the members, provided that no action shall be taken in behalf of the Association relative to approving the amendment, supplementing, or reissuance of, or agreeing to amend, supplement or reissue, any or all of the tariffs of members with respect to any of the rates, charges, classifications, rules, regulations or practices prescribed therein except on unanimous vote of the members.

At all Association meetings (other than meetings by correspondence), any member may have more than one representative present who may participate in the discussions and offer motion, but each member is limited to one vote, provided that any member absent or present and recorded as not voting, may subsequently on proposed action that require an unanimous vote or that have failed to pass without the vote or votes of any such absent or non-voting members or members, within ten (10) days from the date of mailing of registered notice, which shall be sent forthwith by the Executive or Association Secretary to the member thus entitled, cast the vote of such member thereon in writing by registered mail to the Executive or Association Secretary; provided further, that if no dissenting vote is cast, said member's vote, after said ten (10) days' limitation, shall be declared to have been cast in the affirmative.

No member of the Association shall have the right to vote at any meeting, or to be represented on any committee, or to participate in any other Association activity, if delinquent in the payment of any assessment or if delinquent two (2) months or more in the payment of dues, and any such member so delinquent shall be excluded in determining the number of members required to constitute a "majority vote", a "three-fourths vote", or an "unanimous vote", wherever such terms are used in this Agreement.

The vote of a member of the Association entitled to vote at a meeting of the Association or at a meeting of any committee of the Association shall be cast at such meeting for such member by the accredited delegate or duly appointed alternate representative, or by the holder of a written proxy from such member.

#### ARTICLE 19 – ANNUAL BUDGET

An annual budget of revenue and expenditures shall be prepared by the Executive Committee or Association Secretary, and presented to the membership at the annual meeting. Adoption of the budget shall require a three-fourths vote of the membership.

#### ARTICLE 20 – DUES AND ASSESSMENTS

The monthly membership dues shall be fixed by the members, and shall be due and payable upon receipt of invoice. The members shall not fix uniform dues for all members, but shall graduate the dues of the various members upon such basis as may be equitable.

In order to meet extraordinary expenses the members shall have power to levy assessments, which assessments shall be graduated for each member upon the same basis as the dues are graduated. Such assessments shall be payable when levied, and shall become delinquent four (4) months after the date of mailing notice thereof to each member.

#### ARTICLE 21 – ORDINARY EXPENSES

- (a) Ordinary expenses shall be understood to mean those provided for in the Annual Budget and shall be handled in accordance with \*Section 24.
- (b) The President and the Treasurer may disburse for extraordinary expenses not to exceed \$1,500.00 per month unless prior approval has been obtained from three-fourths (3/4) of the members of this Association.

#### ARTICLE 22 – PAYMENT OF BILLS

Bills against the Association shall be paid by the Treasurer or Association Secretary when approved by the President.

#### ARTICLE 23 – AMENDMENTS

This Agreement may be amended at any regular or special meeting of the membership of the Association. Any proposal to amend this agreement shall be submitted in writing. Unanimous vote of all the parties hereto shall be required for adoption of any amendment.

#### ARTICLE 24 – MARINE TERMINAL AND PORT INDUSTRY RELATED PROJECT PLANNING

The members of this Association may engage in such activities involving the joint participation of two or more of its members in planning projects relating to the marine terminal and Port industry, including, but not limited to transportation, labor practices, infrastructure development, railroad practices and services, and environmental policy and concerns; as may be of interest to the members in order to establish, coordinate, and present the Association's point of view in such planning processes as the Association may determine to participate.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers or agents thereunto duly authorized.

–The End –