

Harbor Department
Agreement 10-2720-A
City of Los Angeles

FMC AGREEMENT NO. 201199
LOS ANGELES HARBOR DEPARTMENT AGREEMENT NO. 08-2720-1A
LONG BEACH HARBOR DEPARTMENT AGREEMENT NO. 7359 HD

FIRST AMENDMENT TO PORT FEE SERVICES AGREEMENT
BETWEEN AND AMONG THE CITY OF LOS ANGELES, THE CITY OF LONG
BEACH, PORTCHECK LLC AND MARINE TERMINAL OPERATORS

THIS FIRST AMENDMENT TO PORT FEE SERVICES AGREEMENT ("Amendment") is made and entered into between and among the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners ("POLA"), the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("POLB") (POLA and POLB hereinafter referred to collectively as the "Ports"), PORTCHECK LLC (Vendor"), and the following marine terminal operators (each individual referred to as an "MTO" and collectively referred to as "MTOs"): APM TERMINALS PACIFIC LTD., CALIFORNIA UNITED TERMINALS, INC., EAGLE MARINE SERVICES, LTD., INTERNATIONAL TRANSPORTATION SERVICE, INC., LONG BEACH CONTAINER, INC., PACIFIC MARITIME SERVICES, L.L.C., SEASIDE TRANSPORTATION SERVICE LLC, SSA TERMINALS, LLC, SSA TERMINAL (LONG BEACH), LLC, TOTAL TERMINALS INTERNATIONAL, TRANS PACIFIC CONTAINER SERVICE CORPORATION, WEST BASIN CONTAINER TERMINAL LLC, and YUSEN TERMINALS, INC., as follows:

WHEREAS, the Ports, Vendor and the MTOs previously entered into that certain Port Fee Services Agreement dated as of October 20, 2008 (the "Agreement") to provide the terms and conditions under which Vendor and MTOs collect certain fees and administer certain aspects of the Ports' Clean Truck Program; and

WHEREAS, after more than one year of performance of the Agreement, the parties have determined various adjustments to be made to the Operating Costs and Compensation under the Agreement, as provided under Section 2.3 and 2.4 of the Agreement.

NOW THEREFORE, the parties, intending to be legally bound, hereby agree as follows:

1. Section 2.2, Operating Costs, shall be deleted in its entirety and revised to read as follows:

"In addition to Development Costs, the Ports shall pay Vendor the Incremental Costs of operating the Systems and performing all other services pursuant to this Agreement as set forth in Exhibit E, attached hereto and incorporated by this reference, in a total annual amount not to exceed \$3,900,000 effective from May 1, 2010, as such annual amount may be adjusted by the budgets agreed to under this Section (subject to such Board approval as may be required)

("Operating Costs") and subject to the reconciliation and payment process set forth in Section 2.3 hereof. The Ports and Vendor acknowledge and agree that if the TF is terminated, Operating Costs may continue to be incurred after collection of the TF ceases. The Ports and Vendor agree to discuss in good faith and agree on a projected budget and duration for post-termination Operating Costs as soon as the Ports notify the Vendor of the proposed termination date of the TF. Following such agreement, such Operating Costs shall be invoiced, paid and reconciled per the procedures in this Section 2 in the same manner as any other Operating Costs. The Vendor shall submit invoices for Operating Costs to the Ports every month on or about the first day of the month for Incremental Costs projected to be incurred during the month in accordance with the then-current version of Exhibit E. The Operating Costs for that month shall be apportioned between POLA and POLB according to the respective volume of merchandise for each port assessed the Fees, measured in twenty-foot equivalent units. All payments to Vendor shall be made by the Ports in due course, but not to exceed 30 days after receipt of the invoices by the Ports, without prejudice to or waiver of the right to subsequent adjustment of the amounts due pursuant to Section 2.3 hereof."

2. Exhibit E, Operating Costs, is hereby relabeled as Exhibit E-1 and deemed to be effective during the time period from the commencement of the term of this Agreement through August 31, 2009. Exhibit E-1 was replaced by Exhibit E-2 effective during the time period from September 1, 2009 through April 30, 2010. Exhibit E-2 was replaced by Exhibit E-3 effective during the time period from and after May 1, 2010, attached hereto and incorporated herein. The parties agree that Exhibits E-1, E-2 and E-3 include the estimated Operating Costs for each applicable time period agreed upon by the parties, which remain subject to the semi-annual reconciliation described in Section 2.3 of the Agreement.

3. Within fifteen (15) days of the execution of this Amendment, POLA shall remit to Vendor payment of all outstanding invoices. Within fifteen (15) days of the execution of this amendment, representatives of POLA shall meet with representatives of Vendor to discuss in good faith and promptly resolve those open issues arising from POLA's initial 2009 audit of Vendor.

4. Except as amended herein, all remaining terms and conditions of the Agreement shall remain unmodified and in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Agreement on the date to the left of their signatures.

THE CITY OF LOS ANGELES,
a municipal corporation,
acting by and through its
Board of Harbor Commissioners

Dated: 12/15/10

By Molly Campbell
Executive Director

Attest Rose M. Dwarshak
Board Secretary

APPROVED AS TO FORM
December 14, 2010
CARMEN A. TRUTANICH, City Attorney

By Joy M. Crose
Joy M. Crose, Assistant General Counsel

Account#	59967	W.O. #	08220
Ctr/Div#	0210	Job Fac.#	636-00
Proj/Prog#	652		
Budget FY:	Amount:	(City of L.A. Portion Only)	
09/10	\$830,995	Date 12/14/10	
10/11	\$1,431,005		
TOTAL	\$2,262,000		

For Acct/Budget Div. Use Only

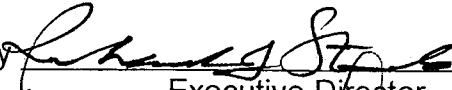
Verified by: Janet Fernan

Verified Funds Available: 1000000

Date Approved: 12/14/10

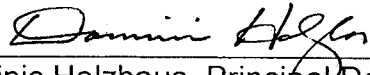
THE CITY OF LONG BEACH,
a municipal corporation,
acting by and through its
Board of Harbor Commissioners

Dated: 12-28-10

By 
Executive Director

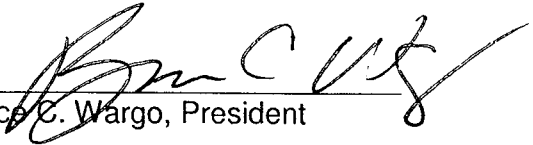
Attest 
Board Secretary

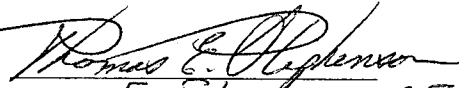
APPROVED AS TO FORM
12/28, 2010
ROBERT E. SHANNON, City Attorney

By 
Dominic Holzhaus, Principal Deputy

PORTCHECK LLC

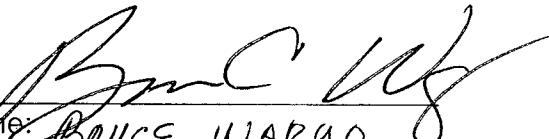
Dated: 11/23/10

By: 
Bruce C. Wargo, President

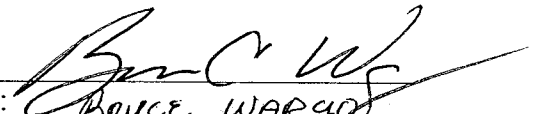
Attest: 
Thomas E. Stephenson, CFO
(Print/type name and title)

MARINE TERMINAL OPERATORS:

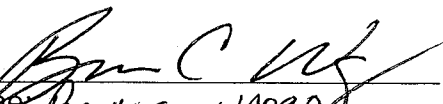
APM TERMINALS PACIFIC LTD.

By: 
Name: BRUCE WARGO
Title: ATTORNEY-IN-FACT

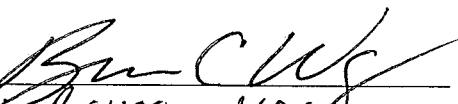
CALIFORNIA UNITED TERMINALS, INC.

By: 
Name: BRUCE WARGO
Title: ATTORNEY-IN-FACT

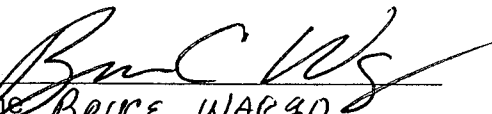
EAGLE MARINE SERVICES, LTD.

By: 
Name: BRUCE WARGO
Title: ATTORNEY-IN-FACT

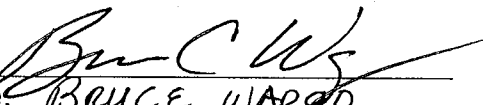
INTERNATIONAL TRANSPORTATION SERVICE, INC.

By: 
Name: BRUCE WARGO
Title: ATTORNEY-IN-FACT

LONG BEACH CONTAINER TERMINAL, INC.

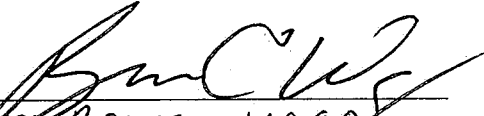
By: 
Name: BRUCE WARGO
Title: ATTORNEY-IN-FACT

PACIFIC MARITIME SERVICES, L.L.C.

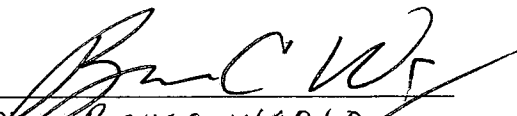
By: 
Name: BRUCE WARGO
Title: ATTORNEY-IN-FACT



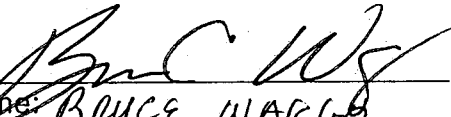
**SEASIDE TRANSPORTATION
SERVICE LLC**

By: 
Name: BRUCE WARGO
Title: ATTORNEY-IN-FACT

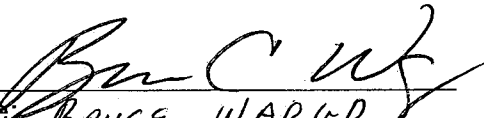
SSA TERMINALS, LLC

By: 
Name: BRUCE WARGO
Title: ATTORNEY-IN-FACT

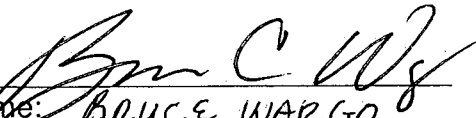
SSA TERMINAL (LONG BEACH), LLC

By: 
Name: BRUCE WARGO
Title: ATTORNEY-IN-FACT

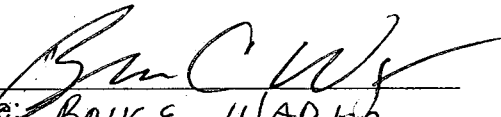
TOTAL TERMINALS INTERNATIONAL

By: 
Name: BRUCE WARGO
Title: ATTORNEY-IN-FACT

**TRANS PACIFIC CONTAINER SERVICE
CORPORATION**

By: 
Name: BRUCE WARGO
Title: ATTORNEY-IN-FACT

**WEST BASIN CONTAINER TERMINAL
LLC**

By: 
Name: BRUCE WARGO
Title: ATTORNEY-IN-FACT

YUSEN TERMINALS, INC.

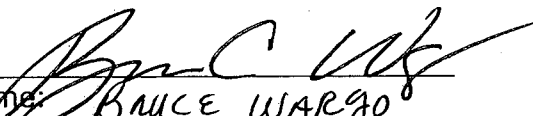
By: 
Name: BRUCE WARGO
Title: ATTORNEY-IN-FACT

EXHIBIT E

OPERATING COSTS

PortCheck, LLC

Budget of Operating Costs

As described in Section 2.2 of the Agreement, the Ports and Vendor have agreed upon the budget of operating costs as set forth in this Exhibit E.

Exhibit E-1: Effective October 20, 2008 – August 31, 2009

Exhibit E-2: Effective September 1, 2009 – April 20, 2010

Exhibit E-3: Effective from and after May 1, 2010

Exhibit E-3

PortCheck
 2010
 Monthly Incremental Expenses

Exhibit E - revised effective 5/1/10

Expense Description	5/1/2010 Provisional Rate	5/1/2010 Annualized Rate
Bank and Credit Card Fees	27,000	324,000
Staff Compensation	6,933 5,000	143,200
Professional Services		375,000
Legal	1,000	
Audit & Tax	3,000	
RFID Testing Facility	27,000	
Public Relations	250	
Consulting - Other	0	
Operating Expenses		
VES Operating Expenses	239,262	2,871,144
Occupancy Expense	1,650	
Information Technology	3,000	
Travel and Entertainment		
Insurance	3,900	
Office	1,190	
Uncollected Accounts	2,000	24,000
Taxes and Licenses	3,000	
Other Operating Expenses		162,658
L A Business License	0	
	<u>324,186</u>	<u>3,900,000</u>
Rounded	<u>325,000</u>	<u>3,900,000</u>

Exhibit E-2

PortCheck
 8/31/2009
 PortCheck
 9/1/09 to 4/30/10
 Monthly Incremental Expenses

Expense Description	Proposed
Bank and Credit Card Fees	120,000
Staff Compensation	Accounting position 6933 Collection Support 5,000
Professional Services	
Legal	6,000
Financial Consulting	4,000
RFID Testing Facility	24,000
Public Relations	3,500
Consulting - Other	0
Operating Expenses	
VES Operating Expenses	232,294
Occupancy Expenses	2,066
Information Technology	2,100
Travel and Entertainment	100
Insurance	0
Office	1,000
Bad Debt Expense	12,000
Taxes and Licenses	1,000
LA Business License	0
	<u>419,993</u>
Six Month Estimate	<u>2,519,960</u>
Monthly Billing	<u>419,993</u>
Rounded	<u>420,000</u>

Exhibit E-1
Operating Costs

PortCheck
Detailed Budge of Operating Costs
Effective 10/20/08 to 08/31/09

Cost Elements	Amount
Bank Transaction Fees	
Credit Card - Visa/Mastercard	1,202,215
Credit Card - American Express	1,343,466
Telecheck Fees	353,685
Bank Fees - Other	<u>301,474</u>
	3,200,840
Bad Debt Expense	882,000
Staff Compensation	0***
Operational Costs	
Truck Identification Support Maintenance	0****
Truck Identification Replacement Expense	0****
Professional fees	
Legal	150,000
Financial	104,400
Public Relations	<u>120,000</u>
	374,400
System Operations and Customer Service Center	
IT Post Implementation	18,835
BPO Post Implementation	2,934,235
Other Expenses	
Occupancy	27,000
Office Expense	83,440
Office IT Costs	10,000
Audit Expense	50,000
Insurance Expense	43,200
Taxes & Licenses	<u>14,105</u>
	227,745
	<u><u>7,638,055</u></u>

*** To be determined on incremental staffing requirements

****Does not include future truck identification costs agreed to by both Ports