

## SECOND AMENDMENT TO AGREEMENT NO. E6646

### DATA DELIVERY AGREEMENT

THIS SECOND AMENDMENT to Agreement No. E6646, with a reference date of May 1, 2015, is made and entered into between and among the CITY OF LOS ANGELES, a municipal corporation ("Port") acting by and through its Board of Harbor Commissioners ("Board"), PIERPASS, LLC., a California limited liability company ("PierPass"), and each of the tenants of the Port that are signatories below ("Tenants").

1. Compensation. The parties agree that as long as the Port of Long Beach and the Port of Los Angeles are contracting with PierPass to provide data, the compensation to PierPass shall be increased to \$4,000 per calendar month after the first thirty six (36) months of the term.

2. Extension of Term. The parties hereby extend the term of this Agreement for an additional three (3) years, to a maximum term of six (6) years.

3. FMC Agreement Amendment Filing. The parties agree to the terms of the amended pages of the Federal Maritime Commission Agreement No. 201215-002, as amended by this Second Amendment, attached as Exhibit A hereto, to be filed with the Federal Maritime Commission.

Except as amended herein, all remaining terms and conditions of Agreement No E-6646 shall remain in full force and effect.

(Signature Page Follows)



SIGNATURE PAGE (Continued)

**CALIFORNIA UNITED TERMINALS, INC.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

**EAGLE MARINE SERVICES, LTD.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

**SEASIDE TRANSPORTATION SERVICES,  
L.L.C.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

**TRAPAC INC.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

**YUSEN TERMINALS, INC.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

SIGNATURE PAGE (Continued)

**WEST BASIN CONTAINER TERMINAL,  
L.L.C.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title

|

EXHIBIT A

Port of Los Angeles Data  
Delivery Agreement  
FMC Agreement No. 201215-002  
Second Revised Page No. Title Page

PORT OF LOS ANGELES

DATA DELIVERY AGREEMENT

FMC Agreement No. 201215-002

Expiration Date: See Section 3

EXHIBIT A

Port of Los Angeles Data  
Delivery Agreement  
FMC Agreement No. 201215-002  
Second Revised Page No. 1

This **PORT OF LOS ANGELES DATA DELIVERY AGREEMENT** (the “Agreement”), dated for reference purposes as of January 1, 2012, is entered into between and among the City of Los Angeles, a municipal corporation, acting by and through its Executive Director (the “Port”), PierPass, LLC, a California limited liability company (“PierPass”), and each of the tenants of the Port (the “Tenants”) listed in Exhibit A hereto.

**WHEREAS**, the Tenants are tenants of the Port who operate marine terminals on Port property (“Terminals”) under long-term permits (“Permits”) and in accordance with the Port of Los Angeles Tariff No. 4, Section 20 (“Tariff”);

**WHEREAS**, the Port, as part of its Clean Air Action Plan, has adopted a Clean Truck Program, which requires the Tenants to limit access to their Terminals to trucks that comply with the Tariff’s access requirements; and

**WHEREAS**, the Port intends to amend the Tariff to require that Tenants provide truck data from the Tenants’ Terminal gate transactions in order to verify compliance with the Tariff; and

**WHEREAS**, the Tenants have designated PierPass as their agent to deliver such data to the Port on their behalf for a limited period until the Tenants commence providing the data directly to the Port, and PierPass is uniquely capable of delivery of such data due to the existing Port cargo tracking systems that it operates on behalf of the Tenants.

## EXHIBIT A

Port of Los Angeles Data  
Delivery Agreement  
FMC Agreement No. 210-215-002  
Second Revised Page No. 3

and shall remain exclusively the property of PierPass or the Tenants, as the case may be. PierPass and Tenants grant the Port, as to their respective property, a fully paid up, non-exclusive, worldwide, irrevocable royalty-free license to use, reproduce, prepare derivative works, distribute copies and display the Data solely to the extent necessary for conducting the business of the Port. Such license extends to third party consultants that may be engaged by the Port to assist it in conducting the business of the Port, for example, for the preparation of reports of the Clean Truck Program or emissions inventories under the Clean Air Action Plan.

### **SECTION 2. COMPENSATION TO PIERPASS**

In exchange for the services provided by PierPass under this Agreement, the Port shall compensate PierPass a one-time amount of \$3,000 for its startup costs, payable within thirty (30) days after the effective date of this Agreement, and \$4,000 per calendar month for the first 12 months, reduced to \$3,500 per calendar month for the subsequent 24 months, and, as long as the Port of Long Beach and the Port of Los Angeles are contracting with PierPass to provide data, increased to \$4,000 per calendar month thereafter, payable within thirty (30) days after the close of each month for which monthly Data has been delivered. The maximum amount payable under this Agreement is Two Hundred Seventy Nine Thousand Dollars (\$279,000).

### **SECTION 3. EFFECTIVE DATE, DURATION AND TERMINATION**

3.1 This Agreement shall become effective on the date it becomes effective pursuant to the Shipping Act of 1984, as amended ("Shipping Act), and shall remain

## EXHIBIT A

Port of Los Angeles Data  
Delivery Agreement  
FMC Agreement No. 201215-002  
Second Revised Page No. 4

in effect for an initial term of three (3) months. Unless any party has given notice of termination in writing at least 15 days prior to the end of a term, or pursuant to any applicable provision of this Agreement, the Agreement shall be automatically extended for successive one month periods thereafter, up to a maximum of six (6) years.

3.2 Either party may terminate this Agreement on not less than twenty (20) days written notice in the event of a material breach of this Agreement by the other party after first giving the breaching party written notice of such breach and ten (10) days in which to cure such breach.

### **SECTION 4. RELATIONSHIP BETWEEN PARTIES**

PierPass acts as an independent contractor. Nothing herein is intended to create or shall be interpreted as creating any other relationship between the Port and PierPass. No party to this Agreement has authority to bind any other party with respect to any matters whatsoever.

### **SECTION 5. GOVERNING LAW AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any conflict of law principles, and shall be subject to Federal law to the extent applicable. The venue of any dispute between the parties to this Agreement shall be the State or Federal courts located in County of Los Angeles, State of California in the judicial district required by local court



EXHIBIT A

Port of Los Angeles Data  
Delivery Agreement  
FMC Agreement No. 201215-002

SIGNATURE PAGE

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

**THE CITY OF LOS ANGELES  
HARBOR DEPARTMENT**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Eugene D. Seroka  
Executive Director

APPROVED AS TO FORM AND LEGALITY  
\_\_\_\_\_, 2015  
CARMEN A. TRUTANICH, City Attorney  
Janna B. Sidley, General Counsel

By \_\_\_\_\_  
Joy Crose, Assistant General Counsel

Account #	_____	W.O. #	_____
Ctr/Div #	_____	Job Fac. #	_____
Proj/Prog #	_____		
Budget FY:		Amount:	
TOTAL			

For Acct/Budget Div. Use Only:  
 Verified by: \_\_\_\_\_  
 Verified Funds Available: \_\_\_\_\_  
 Date Approved: \_\_\_\_\_

**PIERPASS, LLC**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
John Cushing  
President

**APM TERMINALS PACIFIC**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT A

Port of Los Angeles Data  
Delivery Agreement  
FMC Agreement No. 201215-002

SIGNATURE PAGE (Continued)

**CALIFORNIA UNITED TERMINALS, INC.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

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**EAGLE MARINE SERVICES, LTD.**

Dated: \_\_\_\_\_

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**SEASIDE TRANSPORTATION SERVICES,  
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Dated: \_\_\_\_\_

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EXHIBIT A

Port of Los Angeles Data  
Delivery Agreement  
FMC Agreement No. 201215-002

SIGNATURE PAGE (Continued)

**WEST BASIN CONTAINER TERMINAL,  
L.L.C.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title