

FUNDING AGREEMENT
REGARDING
DOMINGUEZ OIL RELEASE

Harbor Department
Agreement 11-2993
City of Los Angeles

This FUNDING AGREEMENT REGARDING DOMINGUEZ OIL RELEASE (the "Agreement") is dated as of May 1, 2011, by and among the Alameda Corridor Transportation Authority, a joint powers authority created under the laws of the State of California ("ACTA"), the City of Long Beach, a municipal corporation, acting by and through its Board of Harbor Commissioners ("POLB") and the City of Los Angeles, a municipal corporation, acting by and through its Board of Harbor Commissioners ("POLA") (POLB and POLA are sometimes collectively referred to herein as the "Ports"). The Ports and ACTA are sometimes referenced to herein individually as a "Party" and collectively as the "Parties". Capitalized terms not defined in this Agreement shall have the meanings assigned thereto in the Alameda Corridor Use and Operating Agreement dated October 12, 1998 (the "Use and Operating Agreement") previously entered into by the Parties, Union Pacific Railroad and BNSF Railway Company.

RECITALS

WHEREAS, on January 7, 2011, the United States Environmental Protection Agency (Region IX) (the "EPA") issued an order to ACTA, POLB and POLA concerning an oil discharge (the "Discharge") into the Dominguez Channel and a storm water drainage system used by ACTA in connection with the operation of the Alameda Corridor (the "Order"). The Order was issued pursuant to the Clean Water Act and requires the Parties, effective January 7, 2011, to perform certain removal, mitigation or prevention work with respect to the oil discharge, as further described in the Order, a copy of which is attached hereto as Exhibit A;

WHEREAS, the EPA has identified the source of the oil discharge as an underground pipeline which runs under a portion of the Alameda Corridor;

WHEREAS, on March 30, 2011, the EPA issued an order to the owner of the subject oil pipeline, Crimson Pipeline Management Company ("Crimson") to undertake removal, mitigation or prevention work required to address the Discharge and to prevent another release from occurring;

WHEREAS, until further directed by the EPA or otherwise agreed to among the Parties, the work which has been, or will be, required to be performed by ACTA and the Ports under the Order is limited to: (1) maintenance of the oil containment system put in place under the direction of the EPA; (2) cleaning out the oil residue from the trunk line connecting the drop inlet south of the track drain outlet to the City of Los Angeles Pump Station and related wet-well; and (3) certain investigation, exploration, diagnostic or other work requested by the EPA from time to time related to the Discharge;

WHEREAS, ACTA is currently serving as project coordinator on behalf of the Ports and itself in connection with the Discharge;

WHEREAS, ACTA is requesting from each Port three staged advances, each in the amount of \$250,000, in order to fund a portion of the initial work activities in connection with or related to the Order, the Discharge and/or this Agreement during the first one hundred and twenty (120) days of implementation;

WHEREAS, ACTA anticipates that it also will advance \$500,000 from its unrestricted sources for the purpose of funding the costs of such work activities incurred or paid by ACTA in connection with or related to the Order, the Discharge and/or this Agreement; and

WHEREAS, the Parties desire to provide for the funding of certain work and activities to be performed by ACTA under or in connection with the Order and this Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Funding of Expenditures; Procedure For Advances. Each Port shall advance to ACTA an initial amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) toward costs incurred or paid in connection with work consistent with the National Contingency Plan related to the Order, the Discharge and/or this Agreement; provided, however, that such funds and subsequent advances, unless otherwise approved in writing by each Port, shall not be used to pay the salaries or time of ACTA management personnel. ACTA may, however, include the salaries and time of ACTA management personnel in any claim for recovery from any potentially responsible third party or other funding source. Although not required by this Agreement, subject to written approval by each Port, each Port may make subsequent advances to ACTA from time to time for the purpose of funding costs incurred or paid by ACTA in connection with or related to the Order, the Discharge and/or this Agreement. Each such subsequent advance made by each Port shall be governed by the terms of this Agreement without the need for any further documentation or amendments.

2. Deposit of Funds; Accounting; Technical Reports. All funds advanced by POLA and POLB under this Agreement shall be deposited by ACTA into one or more separate bank accounts to be established and held by ACTA solely for the purposes described in Section 1 hereof (the "Compliance Fund"). ACTA shall maintain proper books and records with respect to the activities and work carried out in connection with or related to the Order, the Discharge and/or this Agreement, including an accounting of all expenditures made or incurred and

supporting documentation evidencing the activities and work performed by each contractor or service provider in connection with or related to the Order, the Discharge and/or this Agreement. From time to time or as requested by POLA or POLB, ACTA shall provide an accounting to the Ports of the expenditures made or incurred in connection with or related to the Order, the Discharge and/or this Agreement. ACTA agrees to retain all such books and records for a period of four (4) years following the termination of this Agreement or such longer period as may be required by law. In the event funds are no longer required by ACTA to carry out its obligations under the Order, the Discharge and/or this Agreement and no further recovery and/or disbursement of funds from third party sources is being sought or required by ACTA pursuant to Section 3 hereof, ACTA shall so advise the Ports and refund to each Port its pro rata share based on the relative amounts contributed by each Port under this Agreement, at which time this Agreement shall terminate. In addition, ACTA shall use reasonable efforts to cause any technical consultant retained by ACTA in connection with the Order or the Discharge to include in any written report to ACTA a statement that such report may also be relied on by each Port in connection with the Order and the Discharge.

3. Reimbursement.

a. Pursuit of Claims. ACTA shall use good faith efforts to identify potential sources of reimbursement and pursue reimbursement of funds advanced to ACTA by each Port or expended by ACTA from its own funds, in either case, in connection with the Order, this Agreement and/or the Discharge, including but not limited to, from third parties, potential local, state and federal funding sources (including, but not limited to, the Oil Spill Liability Trust Fund established under the Oil Pollution Act of 1990) and the Use and Operating Agreement. The Parties acknowledge that despite ACTA's use of good faith efforts, ACTA may not recover all or

any portion of such funds and, even if it is possible to recover such funds, it may take a significant period of time to receive the actual funds. The Parties further acknowledge that it is possible that any responsible third party named by the EPA may not ultimately be legally required to reimburse such funds or may not possess the financial resources to pay such funds. The Ports agree that ACTA shall not be responsible for reimbursing the Ports for the funds advanced to it pursuant to this Agreement except to the extent that ACTA is able to obtain reimbursement of expenses funded from the Compliance Fund or from third party sources, and except as provided in the last sentence of Section 3.b. The Parties acknowledge that each Party may also seek reimbursement from any such sources of its own funds, including Recovery Costs (defined in Section 3.b. below), that are used to pay costs associated with the Order, the Discharge and/or this Agreement.

b. Allocation of Funds; True-Up. Unless otherwise required by law or by the rules or regulations of the entity providing funds ("Reimbursement Restrictions"), all funds recovered by ACTA from public and private sources in reimbursement of expenses incurred or paid by ACTA in connection with or related to the Order, the Discharge and /or this Agreement, shall be reimbursed to each Party on a pro rata basis, based on the total amount contributed by each such Party under this Agreement or by ACTA from its own Funds; provided, however, prior to making any such pro rata allocation, ACTA shall first be reimbursed for its reasonable costs and expenses, including reasonable attorneys fees, in connection with (i) the preparation, filing and pursuit of claims against any potentially responsible third party, including, without limitation, costs of litigation, mediation, arbitration or similar proceedings, or (ii) the preparation, filing and pursuit of claims against, or for reimbursement or other funding from, potential local, state and federal funding sources (including, without limitation, the Oil Spill

Liability Trust Fund established under the Oil Pollution Act of 1990) (collectively, "Recovery Costs"). From time to time, ACTA shall provide to each Port an accounting of all contributions made to date by each Party under this Agreement and all amounts reimbursed by third party sources, amounts subject to Reimbursement Restrictions, Recovery Costs, and the total amount, if any, reimbursed or to be reimbursed by ACTA to each Party in accordance with this Agreement. Further, to the extent funds are advanced pursuant to this Agreement that are not actually used by ACTA to pay third parties, or to reimburse itself for costs paid to third parties, pursuant to this Agreement, such funds will be returned to the Ports within a reasonable time on a pro rata basis based on the total amount contributed by each such Party under this Agreement.

4. Reservation of Rights. The Parties acknowledge and agree that this Agreement is intended solely for the purpose of providing a funding mechanism for the activities to be performed by ACTA in connection with its role as project coordinator under the Order and under this Agreement. Nothing in this Agreement is intended to waive or otherwise prejudice the rights, claims, defenses, causes of action and other remedies any Party may have against any other person with respect to any liability, damage, loss or claim arising from or related to the Discharge or the Order, including payment under the Use and Operating Agreement. Nothing in this Agreement is meant to constitute an admission or agreement that any Party is responsible for, or has liability of any kind with respect to, the Discharge or the Order. Each of ACTA, POLA and POLB reserves all rights, claims, defenses and causes of action it may have with respect to or arising from the Discharge and/or the Order or any future directives from any governmental entity or agency related the Discharge.

5. Miscellaneous.

a. Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

b. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REFERENCE TO THE CONFLICTS OF LAW RULES AND PRINCIPLES OF SUCH STATE.

c. Principles of Construction. The descriptive section headings contained in this Agreement are for convenience and reference only and shall not be held to expand, modify or aid in the interpretation of this Agreement. No provision of this Agreement shall be construed against any of the Parties or their counsel because such party or its counsel drafted such provision.

d. Entire Agreement. This Agreement constitutes the sole and entire agreement between the Parties regarding funding activities under the Order and supersedes all prior agreements, negotiations, and discussions among the Parties regarding funding activities under the Order or the subject oil release; provided, however, nothing in this Agreement is intended to modify, supplement or otherwise alter the terms of the Use and Operating Agreement, the Use Permit or any acquisition, construction, financing or other agreement with respect to the Alameda Corridor, or the interpretation thereof.

e. No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

f. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which shall constitute one and the same instrument, and shall become effective when one or more

counterparts have been signed by each of the Parties hereto. Facsimile or email copies of an executed counterpart shall be deemed sufficient for execution of this Agreement. A copy of the signed original of this Agreement may be used for all purposes for which a signed original can be used.

g. Modification. This Agreement can only be altered, amended, waived, modified or otherwise changed in any respect by a writing executed by authorized representatives of each of the Parties.

h. Further Cooperation. Each party shall do all things reasonably necessary to carry out the terms of this Agreement, to the extent not inconsistent with the express terms hereof unless otherwise agreed by the Parties in writing.

i. Effective Date. This Agreement is not effective until fully executed and delivered by the Parties.

j. Change in Responsibility. Nothing in this Agreement shall preclude the Parties from changing the allocation of responsibilities specified in this Agreement from time to time by mutual agreement.

IN WITNESS WHEREOF, the Parties to this Agreement have caused their duly authorized representatives to execute it as of the day and year first above written.

POLB

CITY OF LONG BEACH,
acting by and through its
Board of Harbor Commissioners

Approved as to form this 7/25/11
~~day of May, 2011~~

Dominic Higgins, City Attorney

By: [Signature]
Name: RICHARD D STEINKE
Its: EXECUTIVE DIRECTOR

By: _____
Name: _____
Its: _____

POLA

CITY OF LOS ANGELES,
acting by and through its
Board of Harbor Commissioners

By: [Signature]
Name: GERALDINE KNATA
Its: EXECUTIVE DIRECTOR

ATTEST:
By: [Signature]
Name: Karla Tondreau
Its: ACTING BOARD SECRETARY

Approved as to form this 7/20/11
day of May, 2011

CARMEN A. TRIVANICH, City Attorney

By: [Signature]
Name: KENNETH MATHERO
Its: DEPUTY CITY ATTORNEY

ACTA

ALAMEDA CORRIDOR
TRANSPORTATION AUTHORITY,
a Joint Powers Authority

By: [Signature]
Name: J. T. DOHERTY
Its: CEO

Approved as to form this 21st
day of ~~May~~, 2011

By: [Signature]
Name: Charles M. Gal
Its: Deputy City Atty

~~[Signature]~~ City Atty

of Los Angeles ("PLA") and Port of Long Beach ("PLB"), referred to herein as the "Respondents." This Order provides for the performance of removal actions in connection with the discharge of oil into the Dominguez Channel and the City of Los Angeles storm water management system, approximately 3000 meters north of the intersection of East Anaheim Street and North Henry Ford Avenue, Wilmington, Los Angeles County, California (the "Site"). This Order requires Respondents to immediately conduct response actions to remove, mitigate or prevent a substantial threat from the discharge of oil or hazardous substances into or on navigable waters or adjoining shorelines.

II. PARTIES BOUND

3. This Order applies to and is binding on Respondents, and Respondents' directors, officers, employees, agents, receivers, trustees, successors, parent company, subsidiaries and assigns. Any change in ownership or corporate status of Respondents, including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondents' responsibilities under this Order.

III. DEFINITIONS

4. Unless expressly stated otherwise, terms used in this Order shall have such meaning as may be defined in Section 311(a) of the CWA, 33 U.S.C. § 1321(a).

5. "Order" shall mean this Order for Removal, Mitigation or Prevention of a Substantial Threat of Oil Discharge, EPA Docket No. OPA 311-09-2011-0001, and any documents incorporated herein pursuant to paragraph 16 of this Order.

6. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday.

IV. FINDINGS OF FACT AND VIOLATIONS

7. Respondents are public agencies. The PLA is an agency within the City of Los Angeles. The PLB is an agency within the City of Long Beach. The ACTA is a joint powers authority formed by the PLB, the PLA and the respective cities. The Respondents own, operate, and/or maintain the property

from which oil discharged into the City of Los Angeles storm water management system

8. On December 21, 2010, the National Response Center ("NRC") received an incident notification (NRC Report #962833) of a large sheen coming from the Dominguez Channel near Wilmington, California. Dominguez Channel is a stream in southern Los Angeles County that empties into the East Basin of the Port of Los Angeles and the Pacific Ocean. It was observed that the oil entered the channel from the outfall of a City of Los Angeles storm water pump station. Oil entered the storm water management system from an outfall of the ACTA railroad right-of-way storm water drainage system. Oil was also observed migrating from the ACTA railroad right-of-way onto the Shell Lubricants facility, approximately 0.45 miles up gradient to the north. Oil from this expression migrated with storm water into the Shell Lubricants facility storm water retention basin. The flow of oil from the apparent source area is intermittent and related to rain events that cause flow in the storm water systems. The Dominguez Channel is within the definition of navigable waters of the United States and adjoining shorelines for the purpose of the Section 311 of the Clean Water Act, 33 U.S.C. § 1321. The presence of oil from the discharge is a substantial threat of the continued release of oil into or on navigable waters or adjoining shorelines to navigable waters.

9. The work to be performed pursuant to this Order is in accordance with the National Contingency Plan, 40 C.F.R. Part 300, and any appropriate Regional or Area Contingency Plan, and is necessary to ensure the effective and immediate removal, mitigation, or prevention of a substantial threat from a discharge of oil or hazardous substance.

V. ON SCENE COORDINATOR and PROJECT COORDINATOR

10. Martin Powell, an employee of EPA Region 9, shall be the primary On Scene Coordinator ("OSC") and shall have the authorities, duties, and responsibilities vested in the OSC by the National Contingency Plan, 40 C.F.R. Part 300. The OSC's authority includes, but is not limited to, the authority to halt, modify, conduct, or direct any tasks required by this Order. Within one (1) day of the Effective

Date of this Order, Respondents shall designate a Project Coordinator who shall be responsible for overseeing Respondents' implementation of this Order. Respondents' notice of designation shall include an address and telephone number for Respondents' Project Coordinator. To the maximum extent possible, all oral communications between Respondents and EPA concerning the activities performed pursuant to this Order shall be directed through the OSC and Respondents' Project Coordinator.

VI. WORK TO BE PERFORMED

11. Respondents shall follow the terms set forth in this Order and perform the work as required in this Order.
12. Respondents shall ensure that oil from the rail road right-of-way drainage system and surrounding property does not enter into navigable waters, tributaries or adjacent shorelines. Respondents shall take all necessary steps to remove the Site discharge or threat of discharge of oil into such waters or adjacent shorelines from the, including the removal of soils contaminated with petroleum hydrocarbons.
13. In accordance with paragraph 14 of this Order, Respondents shall propose necessary corrective action measures to complete the removal action for the Site to ensure that there is no longer a substantial threat of a discharge of oil into the environment. Respondents shall perform the actions as approved by EPA in accordance with the process for approval stated in paragraph 16 of this Order.
14. Within three (3) days after the Effective Date of this Order, Respondents shall submit to EPA for approval a Work Plan to perform the work required by this Order. The Work Plan shall provide a concise description of the activities to be conducted to comply with the requirements of this paragraph, including those addressed below. The Work Plan shall include:
 - a. The study, design and implementation of immediate measures to halt the discharge of oil into the environment.
 - b. The study, design and implementation of measures to clean up and remove all oil and petroleum contamination at the Site, and all impacted areas.

- c. The proper identification and disposal of waste generated during the response to this incident. Determine the quantity of petroleum in each waste stream. Quantification methods must be approved by the California Department of Fish and Game, and consistent with their methodology for oil spill quantification.
 - d. A sampling plan that includes all sampling and analysis to be performed pursuant to this paragraph.
 - e. Quality assurance/quality control, data validation, and chain of custody procedures regarding all sampling and analyses performed pursuant to this Order.
 - f. Schedules for implementing and completing all tasks described within the Work Plan.
15. Respondents shall send the Work Plan and all notices required by this Order to:
- Martin Powell, OSC
Environmental Protection Agency
2445 N. Palm Drive, Ste. 100
Signal Hill, CA 90755
(562) 733-0316
powell.martin@epa.gov
16. The Work Plan shall be reviewed by EPA, which may approve, disapprove, require revisions, or modify the Work Plan. EPA may consult with other interested agencies when considering the Work Plan, including federal, state and local agencies. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within two (2) days after receipt of EPA's notification of the required revisions. Once approved, the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order. Within one (1) day after EPA approves of the Work Plan or any portion of the Work Plan or other work specified by this Order, Respondents shall begin implementation of the approved work.
17. Respondents shall perform the work necessary to complete the task(s) in this Order in accordance with the National Contingency Plan, 40 C.F.R. Part 300, and shall comply with the schedules specified in this Order and in the Work Plan submitted pursuant to Paragraph 14.

18. Respondents shall notify EPA of any field work being conducted in accordance with this Order at least one (1) day prior to work being performed.

19. Respondents shall notify EPA of any proposed response actions that are not described in this Order at least three (3) days prior to undertaking such actions.

VII. RESERVATION OF RIGHTS AND PENALTIES

20. This Order shall not preclude EPA from taking any action authorized by the CWA or any other applicable law. EPA reserves the right to direct all activities, and to comment on and direct off-facility shipping and disposal and all other matters related to the response action directed by this Order. Furthermore, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order or from taking any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to the CWA or other applicable law.

21. Violation of any term of this Order or oral direction from EPA may subject Respondents to an administrative civil penalty of up to \$37,500 per day of violation or an amount up to three times the costs incurred by the Oil Spill Liability Trust Fund as a result of such failure under Section 311(b)(7)(B) of the CWA, 33 U.S.C. § 1321(b)(7)(B).

VIII. REPORTING REQUIREMENTS

22. Respondents shall submit weekly progress reports to EPA until all actions required by this Order are complete, unless otherwise directed in writing by EPA. These reports shall describe all significant developments during the preceding period, including work performed and any problems encountered, analytical data received during the reporting period, treatment and disposal information and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems. The OSC may require more frequent reports when the activities at the Site warrant a higher reporting frequency.

23. Within thirty (30) days after completion of the actions required under this Order, the Respondents shall submit for EPA review and approval a final report summarizing these actions. The final report shall conform, at a minimum, with the requirements stated in 40 C.F.R. § 300.165 ("OSC Reports"). The final report shall include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report also shall include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. *I am aware that under section 309(c)(4) of the CWA, 33 U.S.C. § 1319(c)(4), there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

24. The Respondents shall provide EPA representatives access to the Site. The Respondents also shall provide EPA representatives access to all records and documentation related to the release or threat of release at the Site or to Respondents' implementation of this Order. Nothing in this Order limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including the CWA, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., and the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.

25. Where work under this Order is to be performed in areas owned by or in possession of someone other than the Respondents, Respondents shall use their best efforts to obtain all necessary access agreements. Best efforts, as used in this paragraph, shall include the payment of reasonable

compensation in consideration of granting access. The Respondents shall immediately notify EPA if they are unable to obtain such agreements. EPA may then assist the Respondents in gaining access using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from the Respondents for all costs and attorney's fees incurred by the United States in obtaining access for the Respondents.

IX. REIMBURSEMENT OF OVERSIGHT COSTS

26. Respondents may be liable to reimburse the United States, on written demand, for all response costs paid by the United States and incurred in response to the release of oil described in this Order, unless otherwise exempted from this requirement by federal law. The United States may submit to Respondents on a periodic basis a bill for all response costs so incurred by the United States. The Respondents also may be liable to reimburse local and state agencies for respective costs incurred during the response to the release of oil described in this Order.

X. EFFECTIVE DATE

27. The Effective Date of this Order shall be the date of the receipt of this Order by the Respondents.



01/07/11

Martin Powell
On-Scene Coordinator
U. S. Environmental Protection Agency
Region IX

Date