

**Operating Agreement of the  
TraPac Memorandum of Understanding**

Among

The City of Los Angeles acting through  
Board of Harbor Commissioners,  
The [TraPac Nonprofit],  
and  
The TraPac Appellants, an Unincorporated Association

This Operating Agreement of the TraPac Memorandum of Understanding (or "Agreement") is made as of this date, by and among the CITY OF LOS ANGELES ("City"), a municipal corporation, acting by and through its BOARD OF HARBOR COMMISSIONERS ("BOHC"), the [TRAPAC NONPROFIT – OR NAME AT INCORPORATION] ("the Nonprofit"), and the TRAPAC APPELLANTS ("the Appellants"), a list of which is attached as Exhibit 1, all of which, from time to time herein, shall be referred to individually as "Party" and collectively as "Parties."

RECITALS:

1. The City of Los Angeles, by and through the Harbor Department ("Harbor Department") is trustee for the State of California of certain sovereign tide and submerged lands pursuant to Chapter 656, Statutes of 1911, as amended ("Port's statutory trust grant"). The Harbor Department holds these sovereign tide and submerged lands, whether filled or unfilled, in trust, pursuant to the common law Public Trust Doctrine, the Port's statutory trust grant, the California Constitution (collectively "Tidelands Trust"), the Charter of the City of Los Angeles, and other applicable law. All revenues derived from these lands are subject to the Tidelands Trust ("Port Trust funds and assets"). For the purposes of this Agreement, "Port" or "Port of Los Angeles" shall refer to the geographic boundaries of the area administered by the Harbor Department.
2. On April 3, 2008, the City and the Appellants entered into a Memorandum of Understanding, Harbor Department Agreement No. 09-2764 ("MOU" or "TraPac MOU") (see Exhibit 2) to settle Appellants' administrative appeals of the BOHC's certification of the environmental impact report for the TraPac container terminal at Berths 136-147. The MOU was executed on July 15, 2009, by the President of the Board of Harbor Commissioners.
3. The MOU requires the City to establish a Port Community Mitigation Trust Fund ("PCMTF"), to make various payments to such PCMTF to fund appropriate mitigation projects and grants ("Projects"). The MOU requires the establishment of a nonprofit to operate the PCMTF (the "Nonprofit").

4. The Parties desire that the Nonprofit operate the PCMTF in such a manner as to provide funding for mitigation projects for so long as such projects are necessary.
5. The Parties desire that this Agreement shall govern the operation of the PCMTF by the Nonprofit subject to the MOU.
6. Despite mitigation measures that are required as part of individual Port development projects to reduce project-specific impacts and efforts to continue the process of reducing emissions below baseline conditions, as the MOU stated, "the surrounding communities of Wilmington and San Pedro, however, receive a disproportionate share of negative environmental impact due to Port and Port-related operations."
7. To help address these issues, the MOU contemplated a funding mechanism, The Port Community Mitigation Trust Fund ("PCMTF"), which was intended to help "offset[] past, present and future [cumulative] off-port impacts from port operations."

IN CONSIDERATION OF THE FOREGOING, IT IS MUTUALLY AGREED AS FOLLOWS:

1. A copy of the articles of incorporation, bylaws of the Nonprofit, and conflict of interest policy of the Nonprofit are attached hereto as Exhibits 3, 4, and 5. Exhibits 3, 4, and 5 shall be incorporated by reference and made a part herein.
2. While the funding formula in the MOU used future projects as a benchmark in the distribution and calculation of funds to be contributed by the Harbor Department to the PCMTF, the PCMTF and the Projects funded therefrom are not to be used as project-specific mitigation designated within the TraPac Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) or other future CEQA/NEPA documents.
3. The corporate existence of the Nonprofit will be perpetual. It will not automatically terminate or expire upon the passage of five years from the date of the filing of its Articles of Incorporation. The parties intend that the Nonprofit is a legal entity separate from the City. The Nonprofit's staffing and legal counsel will be designated by the Nonprofit's Board of Directors.
4. Establishment and Funding of PCMTF.
  - a. As soon as practicable after the signing of this Agreement, the PCMTF shall be established for the receipt of funds from the Harbor Department with the California Community Foundation ("CCF") or other appropriate

independent financial manager. The City shall transfer funds in its existing PCMTF to the new PCMTF held by California Community Foundation or other appropriate independent financial manager upon execution of an appropriate agreement providing, among other things, that the California Community Foundation or other appropriate independent financial manager shall only disburse funds from the PCMTF pursuant to approvals of the BOHC in accordance with Section 5.C. of this Agreement. The PCMTF shall exist until the earlier of such time as (1) all cumulative impacts from Port and Port-related operations have been mitigated, or (2) all City obligations under the MOU to further fund the PCMTF have been satisfied or expired and all funds of the PCMTF has been expended, providing however that the BOHC may, in its sole discretion, extend the existence of the PCMTF after obligations under the MOU have been satisfied or expired.

- b. The Harbor Department shall transfer any funds due to the PCMTF under MOU Section V.B.iv. for the increase in TEUS over the prior calendar year from facilities existing in 2007 within ninety (90) days after the end of the calendar year.
- c. For any MOU Exhibit B expansion project for which an EIR is certified before five (5) years has passed from the first meeting of the Nonprofit's Board of Directors, the Harbor Department shall be obligated to make payments to the PCMTF pursuant to MOU Section V.B.v. However, if such first meeting of the Nonprofit fails to occur prior to June 30, 2011, and the BOHC determines that the Nonprofit has unreasonably delayed its first meeting, the BOHC may, at its sole discretion, set the date from which the 5-year period begins to run to be the date of that BOHC meeting or a later date as the BOHC sees fit. The transfer of funds to the PCMTF for each such project shall be made not later than twenty-one (21) days after the first of the following actions to occur:

Award of a construction contract or project-specific materials procurement contract for the expansion project; or

Commencement of construction of the expansion project, whether or not a construction contract has been awarded; or

Determination by the Board of Harbor Commissioners that a transfer of funds to the PCMTF is in the best interests of the City even though construction has not been initiated.

As part of EIR/EIS certification of an MOU Exhibit B project, the BOHC shall calculate and approve an exact dollar amount of the Harbor Department's contribution to the PCMTF pursuant to MOU Section V.B.v.

The Harbor Department shall not begin construction on an MOU Exhibit B project until such time the entire Harbor Department contribution to the PCMTF pursuant to MOU Section V.B.v. has been transferred to the PCMTF in accordance with the timeframe described above.

The Harbor Department shall transfer the total contribution to the PCMTF pursuant to MOU Section V.B.v. in accordance with the timeframe described above and shall not make partial payment of the total amount to the PCMTF whether or not any project is divided into construction phases, or into separate or subsequent construction contracts.

If the Harbor Department fails to transfer funds to the PCMTF in accordance with this section, it shall be obligated to pay interest at the City Treasurer monthly rate of return as actually received by the Harbor Department to the PCMTF on any amount not timely transferred, accruing from the date the transfer should have occurred until such funds are actually transferred. This interest is in addition to transferring the total MOU contribution to the PCMTF pursuant to MOU Section V.B.v. to the PCMTF.

- d. The contribution obligations under the MOU shall be discussed in good faith by the Appellants and the BOHC after the passage of five years from the April 3, 2008 approval of the TraPac MOU by the BOHC. Such discussions shall include, without limitation, revision of the City's annual contribution under MOU Section V.B.iv. to account for growth attributed to Exhibit B Projects, revision of the list of Exhibit B projects for which payments under MOU Section V.B.v. apply, and other topics raised by parties.
5. The Nonprofit and the Harbor Department shall be subject to the following terms and conditions with respect to PCMTF funds:
- A. Project Funding. PCMTF funds shall be spent by the Nonprofit on qualifying projects ("Projects"), as reviewed and approved by the BOHC, having exercised its independent judgment to determine that the projects mitigate a direct or indirect impact from Port and Port-related operations and are consistent with the Tidelands Trust and the MOU. [The term "projects" as used herein, shall include specific studies if they contribute to the furtherance or development of potential projects, analysis of project results, or in furtherance of a mitigation goal or requirements.] However, technical support for the purpose of determining whether a proposed Project is consistent with Tidelands Trust doctrine ("Project-specific Tidelands nexus analysis") shall be treated as part of the annual administrative budget of the Nonprofit.

- i. The parties acknowledge that approximately \$6 million for air filtration systems in schools has been separately handled through agreement with the South Coast Air Quality Management District and performance in accordance with that other agreement constitutes satisfaction of City's obligations related to the MOU section V.B.ii.a.;
- ii. \$5.24 million for the Projects as may be approved by the BOHC in accordance with Section 5.C. within the categories of projects identified in Exhibit A of the MOU, as well as the operational and administrative costs of the Nonprofit as may be approved by the BOHC in accordance with Section 5.C.
- iii. All Port Trust funds and assets held by the Nonprofit shall be spent pursuant to the Public Tidelands Trust and in accordance with the MOU. PCMTF moneys may only be spent in accordance with the MOU.

**B. Project Selection and Performance.**

- i. The Nonprofit shall develop and select proposals to receive PCMTF funding based on identification of impacts from Port or Port-related operations, the ability of the proposal to mitigate the identified impact, technical feasibility, cost-effectiveness, organizational capacity to complete the project, and the benefits that a project proposal would provide.
- ii. The staff of the Nonprofit shall research whether a project, through information provided in proposals and any other information that it may choose to use, meets the project criteria developed by the Nonprofit, and it shall make a recommendation of its findings to the Board of Directors of the Nonprofit.
- iii. The Board of Directors of the Nonprofit, after taking into consideration any recommendations by the staff of the Nonprofit, shall forward the final recommended Projects to the BOHC for its final review and determination as to whether those Projects may be funded by the PCMTF in accordance with Section 5.
- iv. Additionally, for each Project recommended to the BOHC, the Nonprofit will provide a "Project-specific Tidelands nexus analysis" that includes a description of the impacts of Port and Port-related operations to be mitigated and an analysis of how the recommended mitigation measure will

address, reduce or eliminate such impacts. Each Project-specific Tidelands nexus analysis shall discuss how the recommended mitigation measure is reasonable and appropriate for an impact. Pursuant to the MOU, the PCMTF shall only be expended on Projects in San Pedro and Wilmington. It is not required that a precise mathematical calculation be conducted, however, analysis shall include a quantitative and/or qualitative evaluation of impacts and mitigation measures sufficient for the Board of Harbor Commissioners to exercise its independent judgment on the recommended Project.

- v. Only Projects that are consistent with the MOU, conform to the Tidelands Trust Doctrine, and are approved by the BOHC in accordance with Section 5.C may be funded by the PCMTF. PCMTF funds shall only be transferred to the Nonprofit upon approval by the BOHC. The Nonprofit shall not expend any PCMTF funds for a particular project until the Board of Directors of the Nonprofit has satisfied the reporting requirements under Section 5.C., and the Nonprofit has complied with all its obligations under this Agreement for expenditure of PCMTF funds. The Nonprofit shall develop project criteria for the purpose of the Nonprofit's solicitation, development, and evaluation of project proposals to ensure that projects approved and funded through the PCMTF shall offset past, present, and/or future off-port impacts from Port and Port-related operations from the CEQA categories of noise, land use, blight/aesthetics, recreation, natural resources, light/glare, safety, air quality, community resources, cultural resources, geology and soils, populations and housing, public services, water quality, and future categories of impacts identified under CEQA.
- vi. The Nonprofit may either contract directly with an entity to complete a project the Nonprofit has selected, complete a project using its own staff, or the Nonprofit may generate a Request for Proposals ("RFP") for certain projects to be funded by the PCMTF. The Non-Profit shall award contracts based on a fair and competitive process.
- vii. Any funds allocated for a Project selected by the Nonprofit's Board of Directors and approved by the BOHC in accordance with Section 5.C., which has not been used, not been fully expended for that Project, or is no longer necessary to mitigate the impact for which the funds were allocated and the Project designed, shall be returned to the

PCMTF so that it may be allocated to other Projects as determined by the Board of Directors of the Nonprofit and reviewed and approved by the BOHC in accordance with Section 5.C.

C. Project, Budget and Funding Schedule Approval.

- i. At such times as are mutually agreed, but no less frequently than once per year, the City shall convene a meeting of the BOHC within sixty (60) days of the request of the Nonprofit in order to receive, consider, and vote on a report from the Nonprofit. This report shall include a progress of previously approved projects, the balance of PCMTF funds at the time of report, and/or requests for additional projects to be funded by the PCMTF. The report by the Nonprofit shall be submitted to the BOHC with copy to State Lands Commission no later than the date upon which the Nonprofit makes its request for the meeting. The report shall include the resolution by the Board of Directors of the Nonprofit that projects proposed to be funded conform to the requirements of the MOU and are located in San Pedro or Wilmington. Further, the Nonprofit's report to the BOHC should demonstrate: a) that the project mitigates direct or indirect impacts of Port or Port-related operations, b) that the proposed project reasonably and appropriately mitigates, addresses, reduces, or eliminates the identified impact, and c) that the budget and schedule for funding draw-downs from the PCMTF is appropriate for the type of project. Furthermore, the report shall include the substantial form of proposed contracts the Nonprofit intends to execute if the Project is approved by the BOHC. In addition, Nonprofit may pass on to the BOHC projects it does not recommend for approval, but which were received by the Nonprofit. The BOHC has no obligation to consider such non-recommended projects, and they will be received for information purposes only unless the BOHC elects, in its sole discretion, to consider them.
  
- ii. The BOHC shall exercise its independent judgment in reviewing each proposed project, its associated budget and schedule for funding as to: a) consistency with the MOU, the Tidelands Trust; b) whether the identified impact is attributable to Port or Port-related operations, b) whether the proposed project reasonably and appropriately mitigates, addresses, reduces, or eliminates the identified impact, c) that the budget and schedule for funding draw-downs from the PCMTF is appropriate for the type of project, and d) substantial form of

contracts which the Nonprofit proposes to enter into if the Project is approved. The BOHC may not arbitrarily or unreasonably decline to fund a Project. Should the BOHC decline to fund a Project recommended by the Nonprofit, it shall provide written findings relating to the reasons for the rejection based on the factors above.

- iii. Mediation and Non-Binding Arbitration of BOHC Rejection of Project. If the BOHC rejects a Project, if requested by Nonprofit, Port staff and the Nonprofit shall promptly meet for the purposes of good faith discussion of the rejection. Thirty (30) days after the rejection, the Nonprofit may initiate mediation by the American Arbitration Association ("AAA"), or other mediation service agreed to by the Nonprofit and City, to attempt to resolve whether the BOHC rejected the Project on bases set forth in Section 5.C.ii. Mediation shall take place within the City of Los Angeles. The cost of mediation services (e.g., mediator and AAA fees) shall be divided equally between the PCMTF and Port general funds. Nonprofit may utilize portions of its budget for legal costs for mediation counsel.

If mediation does not resolve the dispute, Nonprofit may initiate non-binding arbitration by the American Arbitration Association ("AAA"), or other mediation service agreed to by the Nonprofit and City, to attempt to resolve whether the BOHC rejected the Project on bases set forth in Section 5.C.ii. Non-binding arbitration shall take place within the City of Los Angeles. The cost of non-binding arbitration services (e.g., arbitrator and AAA fees) shall be divided equally between the PCMTF and Port general funds. Nonprofit may utilize portions of its budget for legal costs for arbitration counsel.

Nothing in this Agreement shall limit the right of a party to seek equitable relief from a court of competent jurisdiction.

- iv. Those portions of the Nonprofit's annual budget that are funded by the PCMTF shall be reviewed and approved by the BOHC prior to the release of any funds from the PCMTF to the Nonprofit. In addition, the Nonprofit shall submit an annual financial statement to the BOHC each year as to the expenditure of Port Trust funds. Further, the Nonprofit shall keep separate accounts and procedures for the management of the Port Trust funds received, including such funds used for administration of the Nonprofit.
- v. [Non-profit acknowledges that any BOHC approval of transfer of funds from the PCMTF shall, at the time of BOHC approval,

require approval of the Office of the City Attorney as to form and legality to ensure compliance with the MOU and all laws, including the City of Los Angeles Charter and Administrative Code and Tidelands Trust.]

- vi. Regarding any approval by the BOHC of release of funds from the PCMTF to Nonprofit, within the later of (a) two (2) weeks from BOHC approval or (b) the sixth City Council meeting day after BOHC approval, the Port staff must generate a letter giving permission for the approved amount to be released from the PCMTF to the special operating account of the Nonprofit by the independent financial manager set forth in Section 5.D. If within the required time, no letter is generated, the independent financial manager may release the funds upon the Nonprofit's request if the Nonprofit is able to reasonably demonstrate that the BOHC has formally approved the amount and release of funds.

- D. Independent Financial Manager. The PCMTF shall be created in the California Community Foundation or other appropriate independent financial manager. The Nonprofit shall create a special operating account (which cannot be comingled with other funds raised by the Nonprofit). Upon approval of a Project and/or annual budget of Nonprofit in accordance with Section 4.C, the BOHC shall authorize release of PCMTF funds to Nonprofit in accordance with schedule of funding approved by the BOHC.

City and Appellants shall work cooperatively to form the funding agreement concerning CCF's (or other appropriate independent financial manager) receipt and transfer of funds to/from the PCMTF. [The City Attorney's Office shall not have an approval separate from the BOHC's decision regarding transfer of funds to/from the PCMTF.]

- E. Independent Contractor. The Nonprofit, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of City. Nonprofit shall not represent itself as an agent or employee of the City and shall have no power to bind the City in contract or otherwise. Furthermore, any contractor or subcontractor of the Nonprofit is acting as an independent contractor and not as an agent or employee of the Nonprofit, the Harbor Department, or the City.
- F. Administrative and Implementation Costs. The Nonprofit Board, in consultation with the Nonprofit staff, shall submit a detailed budget and report to the BOHC on an annual basis regarding its annual administrative needs and requirements, coordination with State Lands Commission, and funding, research, and technical support for Project-

specific Tidelands nexus analyses. Such budget shall include funds reasonably needed for the insurance and any other expenditures of the Nonprofit required by this Agreement (see Section 21), as well as reasonable legal costs, including without limitation those related to mediation and arbitration under Section 5.C.iii. The Nonprofit's administrative and implementation costs are subject to approval by the BOHC in accordance with Section 5.C., and shall include whenever applicable staff time for program management to ensure timely progress and oral/written reporting, contract administration time for contracts and invoices, technical staff time for review of contractor work and expertise on Project work. Upon approval of such annual budget in accordance with Section 5.C., BOHC shall direct transfer of such funds from the PCMTF to Nonprofit. The BOHC may not arbitrarily or unreasonably decline a budget request from the Nonprofit. Should the BOHC decline a budget request from the Nonprofit, it shall provide written findings relating to the reasons for the rejection.

- G. Recordkeeping and Independent Audit Rights. The Nonprofit shall keep and maintain full, complete and accurate books of accounts and records in connection with its performance under this Agreement and in accordance with generally accepted accounting principles consistently applied, which books and records shall be readily accessible to and open for inspection and copying by the City or Appellants at its premises as herein provided. During the term of this Agreement, City or Appellants or their designated representatives shall have the right, upon fifteen (15) days prior written request, to perform a record inspection or a full audit, through an independent third-party auditor approved by the Nonprofit, on any and all books of account and records of the monies expended pursuant to this Agreement and the PCMTF. Any audit or inspection shall be conducted during the Nonprofit's normal business hours. The party initiating the audit or inspection shall bear its full cost, including the copying of documents and may not pay for the audits through the PCMTF. City or Appellants or their designated representatives may audit, review and copy any and all non-privileged and non-confidential writings (as that term is defined in Section 250 of the California Evidence Code) in the possession of Nonprofit arising from or related to this Agreement, whether such writings are (a) prepared by Nonprofit or any individual or entity acting for or on behalf of Nonprofit, and (b) without regard to whether such writings have previously been provided to City or Appellants. Nonprofit shall keep records for the length of the term plus five years. Once every other year, the State Lands Commission may vote to perform a record inspection or a full audit of the Nonprofit consistent with the requirements set forth above for the City and the Appellants, but only after having reviewed a similar record inspection

or audit conducted that same year either internally by the Nonprofit or by either the City or Appellants. The State Lands Commission shall bear the full cost of any audit it requests or initiates, including copying costs. Nothing in this Agreement limits the State Lands Commission authority under Public Resources Code Section 6301 and 6306.

- H. Independent Monitor. The BOHC and/or Appellants may contract with a financial management company to assess and monitor the accounts and records of the Nonprofit in connection the PCMTF and the Nonprofit's performance under this agreement. The Nonprofit must make available immediately any accounts or records related to the PCMTF that the Independent Monitor deems necessary in order to perform its function. The parties desiring the Independent Monitor shall pay for the services of the Independent Monitor, and such payments shall not reduce the amounts the City is obligated to contribute to the PCMTF under the terms of this Agreement. However, the Nonprofit may make a petition to the BOHC and to the Appellants to remove or change the Independent Monitor, and should the BOHC and the Appellants both agree to the petition, then the Independent Monitor shall be changed or removed.
- I. Requirements of the Nonprofit. So long as the Nonprofit is expending or using PCMTF funds, the Nonprofit shall: (1) continue to comply with the Brown Act, (2) maintain without alteration the restrictions and qualifications for its Board of Directors which are specified at the time of the Nonprofit's incorporation, (3) maintain separate accounting and books for the receipt and expenditure of PCMTF funds and assets, and (4) require its directors and officers as well as any employee or other person affiliated with the Nonprofit, if any, who would be considered a public official by the California Political Reform Act or other applicable law to comply with the requirements and restrictions applicable to public officials until such time the California Fair Political Practices Commission determines that such laws do not apply.

Furthermore, as long as Nonprofit is holding, receiving, or using Port Trust funds, any adoption, amendment or repeal of its bylaws shall not be effective unless and until approved by the Los Angeles Board of Harbor Commissioners. The Board of Harbor Commissioners shall hear the Nonprofit's request for approval of amendment of bylaws at the next BOHC meeting subsequent to the request of the Nonprofit and in any event no later than within 60 days of Nonprofit's written request, approval shall not be unreasonably withheld, and any rejection shall require written findings by the Board of Harbor Commissioners relating to the reasons for the rejection. Should the BOHC decline to hear the Nonprofit's request to change its bylaws or should the BOHC fail to hear the request within the time limitation above, the

Nonprofit's proposed change to its bylaws shall automatically be deemed approved by the Board of Harbor Commissioners.

J. Disposition of PCMTF Funds Upon Termination of Agreement or Dissolution of Nonprofit.

If the dissolution or winding up of the Nonprofit should occur before the PCMTF is terminated, then Port Trust assets and funds remaining after payment, or provision for payment, of all debts and liabilities of the Nonprofit for previously approved Port Trust projects or expenditures shall be distributed as follows:

- i. All Port Trust funds and assets shall be distributed to the PCMTF to be used in accordance with the MOU.
  - ii. In the event all cumulative Port impacts have been mitigated, all Port Trust funds and assets remaining in the PCMTF shall be distributed to the Harbor Department to continue to be used for purposes consistent with the Tidelands Trust.
6. The parties acknowledge and agree that in addition to receiving funds from the PCMTF, the Nonprofit may solicit and receive funding from both private and government sources.
7. Compliance with Applicable Laws. The Parties shall comply with all federal, state, municipal, local and departmental laws, ordinances, rules, regulations, and orders.
8. Notices. In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to City acting through the BOHC shall be addressed to Executive Director, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, notice to Nonprofit shall be addressed to its designated legal address, and notice to Appellants shall be addressed to them care of the Natural Resources Defense Council, and Coalition for Clean Air or their designated representative, as follows: Adrian Martinez, NRDC, 1314 Second Street, Santa Monica, CA 90401. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.
9. Titles and Captions. The Parties have inserted the section titles in this Agreement only as a matter of convenience and for reference, and the section titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this

Agreement.

10. Modification in Writing. This Agreement may be modified only by written agreement of all Parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.
11. Waiver. A failure of any Party to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.
12. Severability. Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.
13. Jurisdiction. The Parties consent to the jurisdiction of the State of California for the enforcement of this Agreement.
14. Integrated Agreement. This Agreement contains the entire understanding and agreement between the Parties with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the Parties. Each Party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.** Notwithstanding the above, in the case of any inconsistency between this Agreement and the MOU, the terms of the MOU shall govern to the extent of such inconsistency.
15. Exhibits and Sections. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to sections are to sections of this Agreement unless stated otherwise.

16. Force Majeure. No Party shall be liable or deemed to be in default for any delay or failure to perform its obligations under this Agreement if such delay or failure results from acts of God, riot, war, civil unrest, flood, earthquake, tsunami, or other cause beyond such Party's reasonable control.
17. Counterparts. This Agreement may be executed in one or more counterpart copies. Each counterpart copy when so executed shall be deemed to be an original and all of the counterpart copies together shall constitute one fully executed agreement.
18. Effective Date. After approval by City in accordance with Section 245 of City's Charter, the Effective Date of this Agreement shall be the date of its execution by the last party to sign the Agreement. Nonprofit acknowledges that Section 245 of City's Charter furnishes to the City Council of City ("Council") the right to review this Agreement and that this Agreement shall not become effective until the sixth Council meeting day after approval of this Agreement by Board of Harbor Commissioners or Council's approval of the Agreement. Approval by the Board of Harbor Commissioners of this Agreement is sufficient as it is in partial settlement of litigation exclusively involving the policies and funds over which the Charter gives the Board of Harbor Commissioners control.
19. Term. The term of this Agreement shall be equal to the period of time that the PCMTF is in existence.
20. Indemnification in Nonprofit's Contracts. Every contract entered into by the Nonprofit (other than with the City), with the exception of employment contracts for a person receiving a W-2 from the Nonprofit, shall require the other party to indemnify the Nonprofit and the City in a form acceptable to the BOHC, unless the Office of the City Attorney waives this requirement for a specific contract of the Nonprofit, such waiver not to be unreasonably withheld.
21. Insurance. Throughout the term of this agreement, the Nonprofit shall procure and maintain insurance against claims for injuries to persons or damage to property that may arise from or in connection with any activities by the grantee or its agents, representatives, directors, officers, employees, or contractors associated with the Project undertaken pursuant to this agreement. With the written approval of its Executive Director, the Non-Profit may satisfy the coverage required by this section in whole or in part through alternative means

A. General Liability Insurance:

Nonprofit shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the City, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage

providing contractual liability, independent contractors, products and completed operations, and premises/operations coverages within Nonprofits' normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Nonprofit. The insurance provided shall contain a severability of interest clause and shall provide that any other insurance maintained by Department shall be excess of Nonprofit's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision. Each policy shall contain an additional insured endorsement naming the City of Los Angeles Harbor Department, its boards, officers, agents, and employees and a 30-day notice of cancellation by receipted mail as shown in Exhibit 6.

B. Carrier Requirements

All insurance which the Nonprofit is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

C. Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

D. Copies of Policies

Two certified copies of each policy containing the additional insured and 30-day cancellation notice language shall be furnished to Executive Director. Alternatively, two duplicate original additional insured endorsements on forms provided by the Department, as indicated above, may be submitted. The form of such policy or endorsement shall be subject to the approval of the Risk Manager of the Department.

E. Modification of Coverage

Executive Director, at his or her discretion, based upon recommendation of independent insurance consultants to City, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to the Nonprofit.

F. Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, the Nonprofit shall furnish to Executive Director a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If the Nonprofit neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance will be deducted from the next payment due the Nonprofit.

G. Accident Reports

The Nonprofit shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if the Nonprofit's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to the Nonprofit, its officers or managing agents.

22. Business Tax Registration Certificate. The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This Code Section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. See Exhibit 7.
23. Non-Discrimination. The Nonprofit, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's

race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated and made a part of this Agreement. See Exhibit 8.

24. Conflict of Interest. It is hereby understood and agreed that the parties to this Agreement are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and the Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement.
25. Wage and Earnings Assignment Orders / Notices of Assignments. The Nonprofit and/or any Subconsultant are obligated to fully comply with all applicable state and federal employment reporting requirements for the Nonprofit and/or Subconsultant's employees. The Nonprofit and/or Subconsultant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. The Nonprofit and/or Subconsultant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. The Nonprofit or Subconsultant will maintain such compliance throughout the term of this Agreement.
26. State Tidelands Grants. This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Nonprofit agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions, and reservations.

SIGNATURES OF PARTIES:

DATED: \_\_\_\_\_

The Los Angeles Board of Harbor Commissioners

By: \_\_\_\_\_  
CINDY MISCIKOWSKI  
President

DATED: \_\_\_\_\_  
The City of Los Angeles Harbor Department and the City  
Of Los Angeles by its Board of Harbor Commissioners

By: \_\_\_\_\_  
GERALDINE KNATZ, PhD  
Executive Director

APPELLANTS:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
DAVID PETTIT  
Natural Resources Defense Council

By: \_\_\_\_\_ Date: \_\_\_\_\_  
BONNIE HOLMES-GEN  
Manager of Air Quality Policy and Advocacy  
American Lung Association of California

By: \_\_\_\_\_ Date: \_\_\_\_\_  
GREG TARPINIAN, Executive Director  
Change to Win

By: \_\_\_\_\_ Date: \_\_\_\_\_  
JESSE MARQUEZ, Executive Director  
Coalition for a Safe Environment

By: \_\_\_\_\_ Date: \_\_\_\_\_  
MARTIN SCHLAGETER  
Campaign and Advocacy Director  
Coalition for Clean Air

By: \_\_\_\_\_ Date: \_\_\_\_\_  
SHANA LAZEROW, Attorney  
Communities for a Better Environment

By: \_\_\_\_\_ Date: \_\_\_\_\_  
GISELE FONG, Director  
Communities for Clean Ports

By: \_\_\_\_\_ Date: \_\_\_\_\_  
JIM STEWART  
Earth Day LA

By: \_\_\_\_\_ Date: \_\_\_\_\_  
LILLIAN LIGHT, President  
Environmental Priorities Network

By: \_\_\_\_\_ Date: \_\_\_\_\_  
FRANK O'BRIEN, Executive Director  
Harbor Watts Economic Development Corporation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
CHUCK MACK  
International Vice President and Port Division Director  
International Brotherhood of Teamsters

By: \_\_\_\_\_ Date: \_\_\_\_\_  
PATRICIA CASTELLANOS, Co-Director, Ports Campaign  
Los Angeles Alliance for a New Economy

By: \_\_\_\_\_ Date: \_\_\_\_\_  
KATHERINE ATTAR  
Health and Environment Program Coordinator  
Physicians for Social Responsibility

By: \_\_\_\_\_ Date: \_\_\_\_\_  
ANDY MARDESICH, President  
San Pedro and Peninsula Homeowners Coalition

By: \_\_\_\_\_  
TOM POLITEO, Co-Chair  
Sierra Club Harbor Vision Task Force

Date: \_\_\_\_\_

By: \_\_\_\_\_  
KATHLEEN WOODFIELD

Date: \_\_\_\_\_

By: \_\_\_\_\_  
CHUCK HART

Date: \_\_\_\_\_

DATED: \_\_\_\_\_  
[The Name of the Nonprofit after it is incorporated]

By: \_\_\_\_\_  
[AUTHORIZED REPRESENTATIVE OF NONPROFIT]  
[TITLE]

The Corporation

APPROVED AS TO FORM AND CONTENT:

DATED: \_\_\_\_\_  
CARMEN TRUTANICH, City Attorney

By: \_\_\_\_\_  
THOMAS A. RUSSELL  
General Counsel  
Port of Los Angeles

EXHIBIT 1

LIST OF APPELLANTS

Natural Resources Defense Council  
American Lung Association of California  
Change to Win  
Coalition for a Safe Environment  
Coalition for Clean Air  
Communities for a Better Environment  
Communities for Clean Ports  
Earth Day LA  
Environmental Priorities Network  
Harbor Watts Economic Development Corporation  
International Brotherhood of Teamsters  
Physicians for Social Responsibility  
San Pedro and Peninsula Homeowners Coalition  
Sierra Club Harbor Vision Task Force  
Kathleen Woodfield  
Chuck Hart