

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "MOU"), is dated for reference purposes as of _____ between the SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT ("SCAQMD"), the CITY OF LONG BEACH, CALIFORNIA, a municipal corporation, acting by and through its Board of Harbor Commissioners ("POLB"), the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners ("POLA"; together with POLB, each a "Port" and collectively, the "Ports"). The aforementioned parties to this MOU shall be referred to individually herein as a "Party" and collectively herein as "Parties."

RECITALS

A. The Ports have each adopted a Clean Trucks Program (the "Clean Trucks Program") to reduce heavy-duty drayage truck-related air pollution in the Ports by incentivizing the existing heavy-duty drayage trucking fleet to near-zero and zero emission trucks. As part of an Early Adopter Program, the Ports are planning to provide grants and subsidies towards the lease or purchase of the newest and cleanest Drayage Trucks available to be used at the Ports.

B. The SCAQMD and the California Energy Commission ("CEC") entered into a grant agreement (Award Number ARV-17-040) ("CEC Agreement"), effective July 6, 2018, under which the CEC awarded SCAQMD \$8 million in grant funds for the replacement of older heavy-duty diesel trucks with Low NOx, Natural Gas Trucks involved in goods movement and port drayage activities in the South Coast Air Basin ("Program"). The Program will be administered using criteria set forth in the "Proposition 1B: Goods Movement Emission Reduction Program Final 2015 Guidelines for Implementation," as adopted by the California Resources Board and as may be further amended ("Prop. 1B Guidelines").

C. The SCAQMD, POLA and POLB are each committing \$2 million as additional contribution to the Program funds, for a total Program funding of \$14 million. Funding from the Ports will be used to fund Low NOx, Natural Gas Drayage Trucks.

D. The SCAQMD will be administering the Program, and the Parties are entering into this MOU in order to clarify the obligations of the Parties, subject to the terms and conditions of the CEC Agreement.

In consideration of the foregoing, and the mutual undertakings contained herein, the Parties hereby agree as follows:

1. **DEFINED TERMS.**

As used herein, the following terms have the following meanings:

“CEC Agreement” has the meaning set forth in Recital B hereof, as the same may be amended from time to time as agreed by the CEC and the SCAQMD.

“Clean Trucks Program” has the meaning set forth in Recital A hereto.

“Drayage Truck” means any in-use On-Road Vehicle with a Gross Vehicle Weight Rating greater than 26,000 pounds operating on property owned by POLA or POLB for the purpose of loading, unloading or transporting cargo, including containerized, bulk, break-bulk and neo-bulk goods. Drayage Trucks do not include dedicated use vehicles, authorized emergency vehicles, military tactical support vehicles, yard trucks, or other vehicles that are exempted from ARB’s Final Regulation to Control Emission from In-Use On-Road Diesel-Fueled Heavy Duty Drayage Truck Rule Section 2027 *et seq.*

“Grant” means a grant under the Program for funding to replace a Drayage Truck using the Ports’ funds with a Low NOx, Natural Gas Drayage Truck.

“Low NOx, Natural Gas Drayage Truck” means a Drayage Truck that contains a heavy duty engine operating on natural gas, that meets 0.02 g/bhp-hr standard for NOx or better.

“Low NOx, Natural Gas Truck” means a truck that contains a heavy duty engine operating on natural gas, that meets 0.02 g/bhp-hr standard for NOx or better.

“POLA Grantee” means the current owner of a Drayage Truck listed in the Ports Drayage Truck Registry (PDTR) under a valid POLA Concession Agreement that has been approved and signed the documentation for Grant funding to replace their existing Drayage Truck with a qualifying Low NOx, Natural Gas Drayage Truck that will also be listed in the PDTR.

“POLB Grantee” means the current owner of a Drayage Truck listed in the Ports Drayage Truck Registry under a valid POLB Registration Agreement that has been approved and signed the documentation for Grant funding to replace their existing Drayage Truck with a qualifying Low NOx, Natural Gas Drayage Truck that will also be listed in the PDTR.

“Program” has the meaning set forth in Recital B hereof.

“Prop. 1B Guidelines” has the meaning set forth in Recital B hereof.

2. PROGRAM FUNDS.

- a. **Port Funding.** For the purpose of funding Low NOx, Natural Gas Drayage Trucks under the Program, POLA shall contribute up to \$2,000,000 and POLB shall contribute up to \$2,000,000. The Ports’ contribution under this MOU shall apply only to Low NOx, Natural Gas Drayage Trucks that will be used at the Ports. Moreover, the Ports’ contribution shall apply only to Grants awarded by SCAQMD through June 15, 2020, after which the Ports shall reassess future commitment of

Port funds and/or disposition of uncommitted Port Program contributions made prior to that date.

- b. Grant Award and Disbursement. Each Grant shall be in the amount of up to \$100,000 per Low-NOx, Natural Gas Drayage Truck. The Ports' collective contribution of \$4 million is expected to fund up to 20 trucks per Port for a total of 40 trucks that must be used at both Ports. Grant awards shall be disbursed by SCAQMD to the POLA Grantees and POLB Grantees, in the form of a one-time lump-sum Grant payment to the Grantee or truck dealer towards the Grantee's acquisition cost of a qualifying Low NOx, Natural Gas Drayage Truck. SCAQMD shall prioritize awarding Port funds based on the highest number of visits to the Ports. Before disbursing funds to POLA Grantees and POLB Grantees, SCAQMD will provide Vehicle Identification Numbers (VINs) of the Grantees' existing and replacement trucks to the Ports and the Ports shall conduct PDTR checks and provide SCAQMD with the results within 10 business days of receipt of the VINs.

As to the remaining \$10 million in funding (\$2 million from SCAQMD and \$8 million from CEC), SCAQMD will prioritize the disbursement of those funds for Low NOx, Natural Gas Drayage Trucks that serve the Ports and will be registered in the PDTR.

3. PROGRAM ADMINISTRATION.

- a. SCAQMD as Administrator. SCAQMD shall be the administrator of the Program, on the terms and conditions set forth under (i) the CEC Agreement and (ii) this MOU. In the event of conflict between the CEC Agreement and this MOU, the CEC Agreement shall control. In administering the Program, SCAQMD shall use the criteria in the Prop. 1B Guidelines in determining Program eligibility of the trucks to be replaced. SCAQMD may have more stringent administrative requirements than those contained in the CEC Agreement (if not otherwise prohibited) and/or the Prop. 1B Guidelines in implementing the Program.
- b. Grant Applications. SCAQMD shall be responsible for receipt and processing of Grant applications, and for deciding whether a Grant applicant is eligible for a Grant under the Program.
- c. Reporting. On a quarterly basis until Port funds are fully disbursed to Grant applicants or refunded to the Ports, SCAQMD shall provide a written report, data, or access to data containing (i) the accounting of any funds received under this MOU, (ii) the accounting of any funds disbursed under this MOU, and (iii) a breakdown of each of the Grant applications showing the specific number approved, funded and declined. The Ports may request access to review the records of SCAQMD on reasonable request during business hours.
- d. Record Retention. SCAQMD agrees to maintain data, information, records and documents required to be maintained by applicable law for such time frames as

may be required pursuant to the CEC Agreement and other applicable law. All records shall be maintained in accordance with the CEC Agreement.

- e. No Administrative Fees/Costs. Except for the Ports' contribution towards funding Low NOx, Natural Gas Truck under the Program, the Ports shall have no responsibility for payment or reimbursement of the costs of administration of the Program.

4. PAYMENT OF CONTRIBUTIONS

- a. POLA and POLB shall each make payments of its respective contributions to SCAQMD by check, wire transfer or other means agreed upon by the Parties within 45 days of receipt of an invoice from SCAQMD.
- b. The total amount of POLA's contribution is \$2 million. POLA shall make a partial payment of \$1 million prior to July 31, 2019 and make the final payment for the balance of its contribution before December 31, 2019.
- c. The total amount of POLB's contribution is \$2 million. The payment shall be made in FY 2019, October 1, 2018 through September 30, 2019, by lump sum or installments.
- d. If the Parties have any disagreement with respect to their respective obligations under this MOU, then each Party shall designate a duly-authorized representative to work in good faith with the other Party(ies)' designated representative in an attempt to resolve such disagreement.

5. REFUNDS OF UNCOMMITTED PORT FUNDS

Any uncommitted Port funds that remain after expiration or termination of this MOU shall be refunded by SCAQMD to the respective contributing Port within 30 days after termination of this MOU. However, SCAQMD shall set aside and retain Port funds for transactions and commitments made prior to the termination date and shall not refund such amounts.

6. TERM AND TERMINATION.

- a. Term. This MOU shall become effective on the date that all Parties have signed it and all appropriate authorization has been completed by all Parties. This MOU shall terminate when all required actions hereunder have been performed, but no later than June 15, 2020 ("Term"). This MOU may be terminated prior to the Term or extended beyond the Term by mutual written agreement of the Parties.
- b. Termination. Any Party may terminate this MOU by giving not less than thirty (30) days prior written notice to the other if any of the following occur: (i) the CEC Agreement is terminated; (ii) there is a change in the law or any other event that would prohibit or restrict a Party's performance of its obligations under this MOU

in any material way; or (iii) in the event of a default of this MOU by any Party. In the event of a default, the non-defaulting Party or Parties shall give the defaulting Party or Parties written notice of the nature of the default and shall give the defaulting Party or Parties a 14-day period in which to cure the default specified in the notice. The Parties further agree that the expiration or termination of this MOU shall not affect the rights and obligations of the Parties with respect to transactions and commitments that take place during the Term and prior to termination.

7. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are part of this MOU:

- a. Amendments. No amendment, modification, consent or waiver to any provision of this MOU shall be effective unless the same shall be in writing signed by a duly authorized representative of the other Party.
- b. Indemnification. Each Party agrees to indemnify, defend, and hold harmless the other Parties with respect to any loss, cost, expense or liability incurred by such other Parties with respect to the indemnifying Party's own obligations under this MOU; provided, however, that no party shall be obligated to indemnify another Party for any loss, cost, expense, or liability that is caused by the gross negligence or willful misconduct of such other Party.
- c. Counterparts. This MOU may be signed in counterpart with the same effect as if the signatures thereto and hereto were on the same instrument.
- d. Entire Agreement. This MOU and any exhibits and other documents attached to or referenced herein or therein, shall constitute the entire agreement between the Parties relating to the subject matter hereof and thereof, and there are no representations, warranties or commitments except as set forth herein or therein. This MOU supersedes all prior understandings, negotiations and discussions, whether written or oral, between the Parties relating to the transactions contemplated hereby.
- e. Expenses and Costs. Unless specifically provided for elsewhere in this MOU, each Party will bear all costs and expenses incurred by it in connection with this MOU and transactions contemplated herein, including travel, entertainment, marketing promotions, legal fees, consulting fees, accounting fees and taxes which are or may be imposed upon that Party based upon its activities hereunder.
- f. No Third Party Beneficiaries. Except as otherwise provided herein, nothing under this MOU is intended or shall be construed to create any rights in, or confer any benefits upon, any person or entity other than the Parties hereto.
- g. Notices. All notices, requests, and other communications pursuant to this MOU shall be in writing, either by letter (delivered by hand) or commercial messenger service or sent by certified mail, return receipt requested, or by telecopy (fax), as follows:

If to SCAQMD: SCAQMD, Technology Advancement Office
21865 Copley Drive
Diamond Bar, CA 91765
Attention: Deputy Executive Officer
Tel: (909)396-2105
Fax: (909) 396-3525

With a copy to:
Naveen Berry, SCAQMD
Fred Minassian, SCAQMD
Vicki White, SCAQMD
Mei Wang, SCAQMD

If to POLA: Port of Los Angeles
425 South Palos Verdes Street
San Pedro, CA 90731
Attention: Director of Environmental Management
Tel: (310) 732-3763
Fax: (310) 547-4643

With a copy to:

Los Angeles City Attorney
425 South Palos Verdes Street
San Pedro, CA 90731
Attention: Assistant General Counsel, Harbor Division
Tel: (310) 732-3750
Fax (310) 831-9778

If to POLB: Long Beach Harbor Department
4801 Airport Plaza Drive
Long Beach, CA 90815
Attention: Executive Director
Tel: (562) 283-7090 Fax: (562) 283-7090

With a copy to:
Principal Deputy City Attorney, Harbor
333 West Ocean Boulevard, 8th Floor
Long Beach, CA 90802
Tel: (562) 570-2200
Fax: (562) 570-2232

All notices, demands and other communications hereunder, shall be deemed given and received: (i) if sent by registered or certified mail, on the third Business Day after deposit in the United States Mail, properly addressed, postage prepaid, return receipt requested; (ii) if sent by any other means of physical delivery (e.g., hand

delivery or courier service), one Business Day after delivery to the appropriate address; and (iii) if sent by facsimile, one Business Day after being transmitted to the appropriate facsimile number and the sender's facsimile machine produces a transmission or verification report confirming that such transmission has been sent.

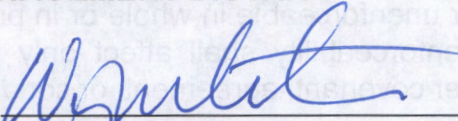
- h. Severability. The provisions of this MOU are severable, and if any clause or provision of this MOU shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause provisions and shall not affect any other covenant, agreement, or condition.
- i. Force Majeure. Neither Party shall be liable for any failure to perform its obligations in connection with any action described in this MOU if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, or other cause beyond such Party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a Party's financial condition or negligence), for only so long as any such event shall be continuing.

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IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed by their authorized representatives and delivered as of the date first above written.

**SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT**

By 
Name: Wayne Natri
Title: Executive Officer

Date: NOV 7, 2018

APPROVED AS TO FORM:

Date: NOV 7, 2018

BAYRON T. GILCHRIST
General Counsel

By 
Ruby Laity
Sr Deputy District Counsel

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

By _____
Name: Gene Seroka
Title: Executive Director,
Harbor Department

Date: _____, 2018

Attest

Name: Amber Kleges
Title: Board Secretary

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

By _____
Name: Mario Cordero
Title: Executive Director,
Harbor Department

Date: _____, 2018

Attest

Name: Richard Jordan
Title: Chief of Staff to the Board

APPROVED AS TO FORM:

Date: _____, 2018

MICHAEL N. FEUER
Los Angeles City Attorney

By _____
Joy M. Crose
Assistant General Counsel

APPROVED AS TO FORM:

Date: _____, 2018

CHARLES PARKIN
Long Beach City Attorney

By _____
Charles Gale,
Principal Deputy