



CCF COMMUNITY INITIATIVES FUND
RESTRICTED FUND SERVICES
AND MANAGEMENT AGREEMENT

This Restricted Fund Services and Management Agreement (the “Services Agreement”) is made this _____ day of _____, in the year 2011, between The CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners (“City” or “Los Angeles”); the HARBOR COMMUNITY BENEFIT FOUNDATION (the “HCBF”), a California nonprofit public benefit corporation having its principal office in the City of Los Angeles and State of California; and CCF COMMUNITY INITIATIVES FUND (“CIF”), a California nonprofit public benefit corporation operated, supervised and controlled by the California Community Foundation (“CCF”), having its principal office in the City of Los Angeles and State of California, to create a philanthropic and charitable fund.

WITNESSETH:

WHEREAS, 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”);

WHEREAS, on April 3, 2008, the City entered into a Memorandum of Understanding, Harbor Department Agreement No. 09-2764 (“MOU” or “TraPac MOU”) to settle administrative appeals of the Board of Harbor Commissioners’ certification of the environmental impact report for the TraPac container terminal at Berths 136-147, which includes the agreement by the City to create and fund a Port Community Mitigation Trust Fund (“PCMTF”) and the establishment of a non-profit to operate the PCMTF. The MOU is attached to this agreement as Attachment A.

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WHEREAS, in accordance with the MOU, on March 25, 2011, City entered into an Operating Agreement of the TraPac Memorandum of Understanding (“Operating Agreement”), Agreement 10-2912, which, among other items, sets forth the formation and operating documents of the non-profit, and the procedures for funding projects from the PCMTF. The Operating Agreement is attached to this agreement as Attachment B. The non-profit has been established as the Harbor Community Benefit Foundation (“HCBF”), and has applied for a determination of tax-exempt status under Section 501(c)(3) of the Code.

WHEREAS, the Operating Agreement contemplates establishment of the PCMTF with CIF or other appropriate financial manager that shall receive, hold, and release funds from the City in accordance with the Operating Agreement.

WHEREAS, CIF represents that it is recognized as a tax-exempt organization under Section 501(c)(3) of the Code, and shall operate exclusively for charitable purposes within the meaning of Section 170(c)(2)(B) of the Code; and

WHEREAS, the City and others may transfer additional property to CIF for such purposes:

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the City, HCBF and CIF agree as follows:

1. **Creation of Fund.** The fund hereby created shall be known as the Port Community Mitigation Trust Fund (the “Fund”).
2. **Management of Fund.** CIF shall hold, manage, invest and reinvest the Fund in the pooled funds regularly used for CIF investments and commonly referred to as the Short-Term Liquidity Pool and/or the Permanent Pool, shall collect the income and shall pay and disburse the net income and principal therefore only in accordance with the terms of this Agreement,

Port Community Mitigation Trust Fund

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exclusively for general charitable uses and purposes. The phrase “charitable uses and purposes” shall be defined as all of those activities, uses and purposes described in Section 501(c)(3) of the Internal Revenue Code of 1986 (the “Code”).

3. **Purpose of Fund.** Income and principal of the Fund shall be disbursed for the charitable purpose of funding the HCBF and mitigation projects, HCBF operating costs, community benefits, and grants as identified and agreed upon by the City and the HCBF pursuant to the terms of the administration of the Operating Agreement and the TraPac MOU.

4. **Operation of the Project.** The City and HCBF shall designate an individual or individuals to serve as the main contact to this Fund (the “Fund Contact(s)”). The City and HCBF shall notify CIF of the identity of the person(s) designated as Fund Contact(s), and CIF will be entitled to rely on the instructions received from such individual(s) for Fund distribution until otherwise notified by the City and/or HCBF.

Upon approval by the Los Angeles Board of Harbor Commissioners (BOHC) of a distribution of funds from the Fund, CIF will be provided with written disbursement instructions which must either (1) be signed by one or more Fund Contacts from the City and one or more Fund Contacts from the HCBF, or (2) be signed by one or more Fund Contacts from the HCBF and be accompanied by a copy of officially approved minutes of the BOHC containing approval consistent with the instructions and also the sixth Los Angeles City Council meeting day after Board of Harbor Commissioners approval must have passed without further action on the item by of the Los Angeles City Council. Upon receipt of written disbursement instructions meeting either of the requirements above, CIF will make distributions in accordance with such instructions. CIF shall make distributions from the Fund only in the manner directed by the instructions. The Fund shall at all times be operated in a manner consistent with the charitable status of CIF.

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5. **Costs of Administration.** CIF charges administrative fees to cover general operating costs for gift establishment, receipt of assets and contributions, grants and fund administration, research on nonprofit agencies and issue areas, and its other charitable purposes. Investment management and consulting fees related to the foundation's investment pools are charged separately. Additional fees may be charged for extraordinary legal, banking, separately managed investment accounts or other services rendered on behalf of a fund if agreed to by the City and the HCBF in accordance with the distribution procedures previously set forth in paragraph 4 of this Services Agreement. CIF shall charge the Fund for reasonable and proper compensation for services and expenses ("Fee"). The administrative fee for this Fund will be one-half of a percent (0.50%) per annum, assessed on a quarterly basis of the balance of the Fund. CIF shall give the Fund Contact prior written notification of any intended change in the Fee.

6. **Disbursement Upon Termination of Fund Agreement.** CIF may terminate this Services Agreement with or without cause upon sixty (60) business days written notice. The City and HCBF, upon mutual agreement, also have the right to terminate this Services Agreement with or without cause upon written notice of no less than sixty (60) business days. Furthermore, this Services Agreement shall terminate no later than three (3) years after the Effective Date. The parties agree that they will begin renewal discussions relating to this Service Agreement no later than 2-1/2 years after the start date of this Services Agreement. If the Fund is terminated by mutual agreement of the City and the HCBF or by CIF, CIF shall promptly distribute all funds in the Fund, including any investment profits, to the City or to a new fund manager as directed by City and HCBF for uses in accordance with the TraPac MOU and Operating Agreement. Additionally, City may terminate this Services Agreement immediately upon making a finding of breach of fiduciary duty by CIF in which case City shall notify CIF in writing and CIF shall immediately transfer distribute all funds in the Fund, including any investment profits, to a new fund manager or to the City, whichever is mutually agreed upon by the City and the HCBF for uses in accordance with the TraPac MOU and Operating Agreement.

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7. **Ownership of the Fund.** Contributions to the Fund do not constitute an irrevocable gift to CIF. At all times during the term of this Services Agreement, assets of the Fund shall not be property of, nor belong to, CIF. As such, the Fund is not intended to be a component part of CIF as defined in Section 1.170A-9(f)(11) of the Income Tax Regulations or a donor-advised fund under Section 4966(d) of the Code, and shall not be subject to any claim against CIF or attachment by a CIF creditor. This Agreement shall be interpreted in a manner consistent with the foregoing intention.

8. **CIF's Tax Status.** All transfers of property under this Agreement are subject to the condition that the CIF, as of the date of transfer, is classified in good standing by the Internal Revenue Service as an organization (i) described in Section 501(c)(3) of the Code and (ii) which is not a private foundation as defined in Section 509(a) of the Code. Nothing in this Agreement shall affect the status of CIF as an organization (i) described in Section 501(c)(3) of the Code and (ii) which is not a private foundation within the meaning of Section 509(a) of the Code.

9. **California Law.** The Fund created by this Services Agreement shall be administered in and under the laws of the State of California, and this Agreement and the validity thereof shall be governed by and construed in accordance with the laws of the State of California.

10. **Accounting.** CIF shall cause to be prepared and delivered to City and HCBF, a monthly statement, sent no later than 10 days from the end of each month, setting forth for such period all monies received into and disbursed from the Fund, including, without limitation, all payments made to HCBF or a third party, all investment profits and losses and all expenses and fees paid to CIF.

11. **Audit.** City or HCBF may, from time to time, and at its expense, conduct or cause an independent, nationally recognized accounting firm ("Accounting Firm") to conduct an audit of any and all records pertaining to the Fund, the handling of funds in the Fund, the application of funds disbursed from the Fund. CIF shall fully cooperate with and provide assistance to any such auditor. The rights contained in this Section 11 shall be independent of any other rights contained in this Services Agreement or under applicable law, and no exercise of any other rights, power or privilege by either party under this Services Agreement or under applicable law shall impair the rights contained in this Section 11 or be construed as a waiver of

any rights contained in this Section 11. The provisions of this Section 11 shall survive the termination or expiration of this Services Agreement.

12. **Compliance with Applicable Laws.** Notwithstanding anything contained in the foregoing or elsewhere in this Services Agreement, CIF shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations.

13. **Business Tax Registration Certificate.** The City of Los Angeles, Office of Finance, requires the implementation and enforcement of Los Angeles Municipal Code Section 21.190. This 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. The City Controller has determined that this Code Section applies to service providers that are doing work for the Los Angeles Harbor Department (“Department”). See Attachment C.

14. **Affirmative Action.** CIF, during the performance of this Services 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 Services Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Attachment D.

15. **Service Contractor Worker Retention Policy and Living Wage Policy Requirements.** The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 5771 on January 13, 1999, agreeing to adopt the provisions of the Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Further, Charter Section 378 requires compliance with the City of Los Angeles’ Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. CCF shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City of Los Angeles to terminate this Services Agreement and otherwise pursue legal remedies that may be available.

16. **Wage and Earnings Assignment Orders/Notices of Assignment.** CIF is obligated to fully comply with all applicable state and federal employment reporting requirements for CIF employees. CIF 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. CIF 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. CIF will maintain such compliance throughout the term of this Services Agreement.

17. **Equal Benefits Policy.** The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. Services Agent shall comply with the policy wherever applicable. Violation of this policy shall entitle the City of Los Angeles to terminate any agreement with CIF and pursue any and all other legal remedies that may be available. See Attachment E.

18. **State Tidelands Grant.** This Services Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created 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, and is, at all times, subject to the limitations, conditions, restrictions and reservations contained in and prescribed therein. CIF agrees that any interpretation of this Services Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

19. **Entire Agreement.** This agreement constitutes the entire agreement between the parties, and supersedes all prior or contemporaneous agreements, negotiations, representations and understandings, oral or written, between the parties hereto with respect to the subject matter of this Agreement.

20. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the City, HCBF and CIF have executed this Agreement as of the date first above written.

CITY OF LOS ANGELES, by its
BOARD OF HARBOR COMMISSIONERS

By: _____
Executive Director

Attest: _____
Board Secretary

HARBOR COMMUNITY BENEFIT
FOUNDATION

By: Silvia Prieto
Silvia Prieto
Treasurer

Jesse Marquez
Jesse Marquez
Secretary

CCF COMMUNITY INITIATIVES FUND:
(A Supporting Organization Operated & Controlled
By the California Community Foundation)

By: _____
Steve J. Cobb
Board Chair, CCF Community Initiatives Fund

By: _____
Carolyn Steffen
Treasurer CCF Community Initiatives Fund

Port Community Mitigation Trust Fund

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By: _____
Executive Director

Attest: _____
Board Secretary

HARBOR COMMUNITY BENEFIT
FOUNDATION

By: _____
Silvia Prieto
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Jesse Marquez
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(A Supporting Organization Operated & Controlled
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By: Steven J. Cobb
Steve J. Cobb
Board Chair, CCF Community Initiatives Fund

By: Carolyn Steffen
Carolyn Steffen
Treasurer CCF Community Initiatives Fund

Port Community Mitigation Trust Fund

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APPROVED AS TO FORM AND LEGALITY

10/26, 2011
CARMEN A. TRUTANICH, City Attorney
THOMAS A. RUSSELL, General Counsel

By 
SIMON M. KANN, Deputy

Harbor Department
Agreement 09-2764
City of Los Angeles

ATTACHMENT A

MEMORANDUM OF UNDERSTANDING

I. DEFINITIONS

1. The term "CEQA" shall mean the California Environmental Quality Act (Public Resources Code § 21000 *et seq.*) and the State CEQA Guidelines and applicable case law.
2. The term "City" shall mean the City of Los Angeles.
3. The term "Clean Air Action Plan" shall mean the San Pedro Bay Ports Clean Air Action Plan adopted by the Los Angeles Board of Harbor Commissioners and Long Beach Board of Harbor Commissioners on November 20, 2006.
4. The term "Port" shall mean the Port of Los Angeles Board of Harbor Commissioners.
5. The term "NEPA" shall mean the National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*).
6. The term "Nonprofit" shall mean the entity created by this agreement in section V to execute the Port Community Mitigation Trust Fund.
7. The term "Parties" shall mean the City, Port and Appellants.
8. The terms "Port Community Mitigation Fund" shall mean the fund created under this Agreement between the Parties, and shall be used by the Nonprofit solely to fund mitigation projects.
9. The terms "RFP" shall mean Request For Proposals.
10. The term "TraPac EIR" shall mean the environmental impact report prepared by the Port under CEQA for the container terminal project at Berths 136-147 of the Port.
11. The term "TraPac Project" shall mean the project described in the TraPac EIR.
12. The term "Appellants" shall mean the 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 Teamster, Los Angeles Alliance for a New Economy, Physicians for Social Responsibility—LA, San Pedro and Peninsula Homeowner's Coalition, Sierra Club Harbor Vision Task Force, Kathleen Woodfield, and Chuck Hart, who appealed the Port's approval of the TraPac EIR to the City Council.

II. BACKGROUND

WHEREAS, the Parties desire to resolve the disputes between them arising from the Port's approval of environmental impact reports (EIRs);

WHEREAS, the surrounding communities of Wilmington and San Pedro, however, receive a disproportionate share of negative environmental impact due to port operations;

WHEREAS, the Parties agree to support collaborative efforts to grow and green the port in a manner that provides a concrete way to reduce cumulative environmental impacts on the community while creating jobs and economic prosperity to the surrounding region;

WHEREAS, the Parties agree that there are off-port impacts in the communities of San Pedro and Wilmington; and

WHEREAS, the Parties agree that this agreement does not address all the impacts stemming from port operations.

NOW THEREFORE, the Parties agree as follows:

III. DECLARATION OF GOALS AND PURPOSES

The Parties enter this agreement to address the Port and the City's desire to provide for operation of the TraPac Project without litigation or appeals to the Los Angeles City Council from Appellants. The Parties want to address the outstanding impacts from port operations and growth. The Parties agree that this agreement provides a mechanism for moving forward in cooperation to determine how best to address impacts from current and future port operations. All Parties agree that the mitigation contained within this agreement has a nexus with port operations. The Parties' decision to enter this agreement does not constitute any representation regarding the adequacy of the TraPac EIR.

IV. FUTURE COOPERATION BETWEEN THE PORT, CITY, AND APPELLANTS

The Parties or their designated representative shall cooperate to implement this agreement. In addition, the Parties or their designated representative shall agree to cooperatively address and respond to future port-related environmental issues at the Port and in San Pedro and Wilmington. Upon the Port's request, Appellants engaged in the EIR process for specific projects, agree to individually or as a collective group meet and confer in good faith with the Port on such future EIRs on Exhibit B and will make efforts to avoid litigation or appeals to the City Council. The Port will take reasonable efforts to disclose all pertinent information to the Appellants to the extent feasible prior to release of the DEIR to help inform discussion and feedback. To the extent the ports make the information available, Appellants may give Port staff written or oral comments.

Upon the Ports' request, Appellants individually or as a collective group will meet and confer in good faith with the Port after submitting a formal comment letter on a DEIR. After the Port has certified an EIR, Appellants will contact the Port or Port staff prior to filing an appeal or a lawsuit challenging the project within the time constraints imposed by law.

V. PORT COMMUNITY MITIGATION TRUST FUND

The Port shall establish a Port Community Mitigation Trust Fund to be operated by a Nonprofit established for the purpose of overseeing grants from the Port Community Mitigation Trust Fund. A Nonprofit will be set up to provide off port mitigation projects for the communities of Wilmington and San Pedro related to impacts from port operations. The Nonprofit may also fund community adjacent wetlands, supporting habitat zones and appropriate public access and viewing sites to same projects that may occur on-port lands. The Nonprofit may get funding from other sources to execute its mission, and it may also make recommendations to the Board of Harbor Commissioners on mitigation projects.

A. PURPOSE OF THE NONPROFIT

A Nonprofit will be established to address off-port impacts created by existing and future Port operations in the communities of Wilmington and San Pedro, including but not limited to off-Port impacts from the TraPac Project in Wilmington and San Pedro.

Specifically, the Nonprofit's mission shall be to allocate money for projects that will protect, improve and assess public health by offsetting past, present, and future off-port impacts from Port operations, including the CEQA categories of noise, land use, blight/aesthetics, recreation, natural resources, light/glare, safety, air quality, community resources, cultural resources, geology and soils, population and housing, public services, water quality, and future categories of impacts identified under CEQA. Such projects shall be geared towards addressing the cumulative off-port impacts created by Port operations. The Nonprofit shall not allocate money for goods movement infrastructure projects. The Port and City agree that monies provided by the Port to the Nonprofit for such projects shall be allocated in a manner consistent with Section VB of this Agreement.

Funds allocated to the Nonprofit shall not be used to fund CEQA/NEPA mitigation for future projects and/or mitigation already designated within the TraPac EIR/EIS or other future CEQA/NEPA documents. It is assumed that projects subject to CEQA/NEPA will include all mitigation that is legally required and that the Port and/or project applicant will be responsible for the costs associated with that mitigation. In other words, the establishment of the Port Community Mitigation Trust Fund does not eliminate or reduce the Port's obligations to mitigate the adverse impacts of its projects consistent with CEQA, NEPA, and CAAP, whether inside or outside of the Port. In the first year, the Nonprofit shall ensure that the projects described in "Exhibit A" are prioritized for

funding before other projects are approved for funding. Specifically within "Exhibit A," categories A, B, and C shall have greatest priority for initial funding. In addition, the Nonprofit shall develop project criteria to ensure that all other projects approved and funded through the Port Community Mitigation Trust Fund are consistent with this section of this Agreement. The funding provided by the Port to the Port Community Mitigation Trust Fund shall be determined according to the calculus laid out in section VB.

B. FUNDING

- i. \$500,000 up front for organizational costs.
- ii. \$11,240,000 for the TraPac project contribution for the Exhibit A Projects— This \$11.24 million comes from the following two contributions:
 - a. Approximately \$6 million for air filtration systems in schools;
 - b. \$5.24 million for other projects identified in Exhibit A from the projected increase in TEUs from the TraPac project ($\$3.50 \times 1,497,142$ TEUs).
- iii. \$300,000 for off port impact study articulated in section VI A.

Total Year 1 contribution: \$12.04 million

From year 2 forward, the sum of:

- iv. \$2.00 per TEU for the increase in TEUs over the prior calendar year from facilities existing in 2007, and continued for the incremental increase in the four remaining years of this agreement.
- v. If Port expansion projects from Exhibit B proceed, the Port will make a one-time additional contribution at a rate of \$3.50 per TEU (or \$1.50 for px and 0.15 per ton) per project for growth associated from such expansion projects. The funds will be transferred into the Port Community Mitigation Trust Fund on approval by the Port of each individual project. This provision is not to be interpreted that all of the projects from "Exhibit B" must proceed before transferring individual project contributions into the Port Community Mitigation Trust Fund.

"Exhibit C" provides a sample of how potential contributions to the Port Community Mitigation Trust Fund could work in 2008.

C. REQUIREMENTS FOR NONPROFIT

The requirements for compliance for the Nonprofit entity with respect to delegation of authority and compliance with tidelands trust requirements will be determined in connection with the establishment of the Nonprofit. The Nonprofit's bylaws and the Port's agreement with the Nonprofit shall provide for adequate oversight of the

Nonprofit. Prior to the release of any funds, the City Attorney's office shall prepare the necessary documents to ensure compliance with all laws, including the City of Los Angeles Charter and Administrative Code and the Tidelands trust. The Port Community Mitigation Trust Fund will at all times be subject to the applicable local and state laws pertaining to certain legal matters.

D. PHASE IN PERIOD

Within 60 days of entering into this agreement, the Parties will agree to an interim entity that will be responsible for assisting in the creation of the Port Community Mitigation Trust Fund and the Nonprofit to administer the fund. The interim entity will facilitate and coordinate the development of bylaws, organizational structure, and a multi-year strategic plan by working and soliciting input from the Parties. The interim entity may have the responsibility for funding a small subset of Exhibit A projects with Year 1 funds and the studies articulated in section VI upon the direction of the Appellants and the Representative for Council District 15. The allocation within section VB could go towards consultants and/or experts to assist in development of bylaws, organizational structure, and a multi-year strategic plan.

VI. OFF-PORT IMPACT STUDIES

A. The Port will fund an initial study of off-Port impacts, with a maximum price of \$300,000. If the cost of the study exceeds this amount, then money shall be augmented from section VB funds. The study will consist of an analysis of off-port impacts on health and land use in Wilmington and San Pedro. The land-use analysis will take into consideration the applicability of the California Air Resources Board's April 2005 study "Air Quality and Land Use Handbook: A Community Health Perspective" and the health impacts analysis will take into consideration the applicability of the biannual survey by the UCLA Center for Health Policy Research called the California Health Interview Survey, which already does a more concentrated interview process in LA County. A third party entity selected through an RFP process shall carry out the study. It is envisioned that this initial study will take six months. The Port will not be involved in the execution of this study, but rather, this initial study shall be commissioned by the interim entity identified within section VC. A report on the scope of the study as articulated within the RFP shall be made to the Trade, Commerce and Tourism Committee of the Los Angeles City Council before being issued. In addition, periodic updates on the study progress shall be made to the Trade, Commerce and Tourism Committee of the Los Angeles City Council.

B. Once the Nonprofit has been established, it will fund from section VBii funds a second, more expansive study of off-Port impacts examining aesthetics, light and glare, traffic, public safety and effects of vibration, recreation, and cultural resources related to port impacts on harbor area communities, including Ranchos Palos Verdes, with a maximum price of \$300,000. The Port will not be involved in the selection of the third party entity or execution of this study. If the cost of the study exceeds this amount, then additional funds from section VBii shall be used to complete the study. A third

party entity selected through an RFP process shall carry out the study. The results of the study will be presented to the Trade, Commerce and Tourism Committee of the Los Angeles City Council.

VII. BUFFER ZONE

The Board of Harbor Commissioners will take necessary actions to place a deed restriction on the Wilmington buffer to ensure the property remains as public open space in perpetuity.

VIII. RELEASE OF CLAIMS


The Appellants hereby release all claims relating to the Port's approval of the TraPac EIR/EIS, including CEQA challenges. Further, this release does not release any of the rights and obligations under this agreement, and shall not extend to any action to enforce or interpret the provisions of this agreement.

IX. RENEWAL OF AGREEMENT

After a period of 5 years, the agreement may be renewed for a successive 5 year period by mutual agreement of the Port and a majority of the Appellants.

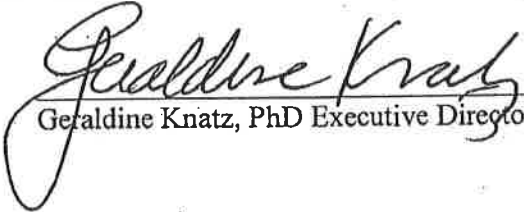
SIGNATURES OF PARTIES:

DATED: 7-15-09
The Los Angeles Board of Harbor Commissioners

By: 
S. DAVID FREEMAN
President

[Signatures Continued On Next Page]

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

DATED: 4/2/2008
Appellants

By: /s/ David Pettit
David Pettit
Natural Resources Defense Council

By: /s/ Colleen Callahan
Colleen Callahan
Manager of Air Quality Policy and Advocacy
American Lung Association of California

By: /s/ Greg Tarpinian
Greg Tarpinian
Executive Director
Change to Win

By: /s/ Jesse Marquez
Jesse Marquez
Executive Director
Coalition for a Safe Environment

By: /s/ Martin Schlageter
Campaign and Advocacy Director
Coalition for Clean Air

By: /s/ Shana Lazerow
Shana Lazerow
Attorney
Communities for a Better Environment

[Signatures Continued On Next Page]

By: /s/ Rupal Patel
Director
Communities for Clean Ports

By: /s/ Jim Stewart
Earth Day LA

By: /s/ Lillian Light
Lillian Light
President
Environmental Priorities Network

By: /s/ Frank O'Brien
Executive Director
Harbor Watts Economic Development Corporation

By: /s/ Chuck Mack
International Vice President and Port Division Director
International Brotherhood of Teamsters

By: /s/ Patricia Castellanos
Co-Director, Ports Campaign
Los Angeles Alliance for a New Economy

By: /s/ Katherine Attar
Health and Environment Program Coordinator
Physicians for Social Responsibility

By: /s/ Andy Mardesich
Andy Mardesich
President
San Pedro and Peninsula Homeowners Coalition

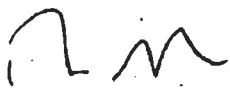
By: /s/ Tom Politeo
Tom Politeo
Co-Chair
Sierra Club Harbor Vision Task Force

By: /s/ Kathleen Woodfield
Kathleen Woodfield

By: /s/ Chuck Hart
Chuck Hart

APPROVED AS TO FORM:

Dated: on 7 April 3, 2008
ROCKARD J. DELGADILLO, City Attorney

By: 
Thomas A. Russell
General Counsel
Port of Los Angeles

EXHIBITS

EXHIBIT A

Projects identified in A, B, and C will occur in Wilmington only.

- A. Installation of sound dampening double paned windows in schools and residences in the zone of greatest impact from TraPac
- B. Installation and maintenance of air filtration systems/HVAC air purifiers in schools impacted from TraPac operations
- C. Provide funds to local clinics, other health service providers, and other organizations aimed at addressing health impacts from air pollution stemming from port operations;
- D. Qualified job training/hiring program associated with the Wilmington off-port mitigation measures identified in A, B, and C above, consistent with the Port and City's workforce development efforts.
- E. An analysis of the impacts of port operations on wetlands and recreational access in Wilmington and San Pedro. Specifically, the study will serve to assess the potential places for wetlands restoration and creation in San Pedro and Wilmington. The recommendations shall be provided to the Port for action.

EXHIBIT B

List of Projects Relating to Section V of this Agreement

1. San Pedro Waterfront Project
2. Channel Deepening Project
3. B226-236: Evergreen Container Terminal Improvements Project
4. Plains All American Oil Marine (Pacific Energy), Pier 400 Project
5. B97-109: China Shipping Development Project
6. B171-181: Pasha Marine Terminal Improvements Project
7. 302-305: APL Container Terminal Improvements Project
8. Wilmington Waterfront Master Plan, (Avalon Blvd. Corridor Project)
9. Port Transportation Master Plan, Port of Los Angeles
10. B206-224: YTI Container Terminal Improvements Project
11. B121-131: Yang Ming Container Terminal Improvements Project
12. Ultramar Lease Renewal Project
13. Terminal Island On-Dock Rail Project

EXHIBIT C

The following chart outlines how potential contributions to the Port Community Mitigation Trust Fund could work in 2008.

	Growth	Contribution
Natural growth	365,000 TEUs (@ \$2)	\$730,000
San Pedro Waterfront Project	1,106,787 PX (@ \$1.5)	\$1,661,805
B97-109: China Shipping Development Project	1,147,800 TEUs (@ \$3.50)	\$4,017,300
Plains All American Oil Marine (Pacific Energy), Pier 400 Project	34,845,841 tons (@.15)	\$5,226,876
Total		\$11,635,981

- Assumptions: (1) Natural growth in TEUs at 5%;
(2) Waterfront Development adds 1,106,787 passengers;
(3) China Shipping Project assumes an additional 1,147,800 TEUs;
(4) Pacific Energy Partners add 34,845,841 tons; and
(5) The projects within this table proceed.

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

Among

The City of Los Angeles acting through
Board of Harbor Commissioners,
The PORT COMMUNITY MITIGATION FOUNDATION,
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 PORT COMMUNITY MITIGATION FOUNDATION ("the Nonprofit"), and the TRAPAC APPELLANTS¹ ("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.

¹ Instead of signing this Operating Agreement as a party, some Appellants have executed a separate CONSENT AND RELEASE REGARDING TRAPAC MEMORANDUM OF UNDERSTANDING REGARDING FORMATION OF NONPROFIT TO OPERATE THE PORT COMMUNITY MITIGATION TRUST FUND.

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, the 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. 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. Contracts for approved Projects and all other PCMTF expenditures shall be executed solely between the Nonprofit and its vendors or grantees.
- 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.

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: March 25, 2011
The Los Angeles Board of Harbor Commissioners

By: Cindy Miscikowski
CINDY MISCIKOWSKI
President

DATED: March 25, 2011
The City of Los Angeles Harbor Department and the City
Of Los Angeles by its Board of Harbor Commissioners

By: Geraldine Knatz
GERALDINE KNATZ, PhD
Executive Director

DATED: MARCH 23, 2011
PORT COMMUNITY MITIGATION FOUNDATION

By: Jesse N. Marquez
Jesse N. Marquez, Incorporator

APPELLANTS SIGNATURES OR CONSENTS ON SEPARATE PAGES

APPROVED AS TO FORM AND LEGALITY:

DATED: March 24, 2011
CARMEN A. TRUTANICH, City Attorney

By: Thomas A. Russell
THOMAS A. RUSSELL
General Counsel
Port of Los Angeles

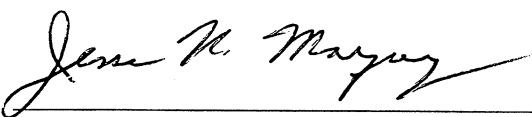
By: Bonnie Holmes

BONNIE HOLMES-GEN
Manager of Air Quality Policy and Advocacy
American Lung Association of California

Date: 12-1-10

By: Tom Woodruff
TOM WOODRUFF, Executive Director
Change to Win

Date: 12/14/2010

By: 
JESSE N. MARQUEZ, Executive Director
Coalition For A Safe Environment

Date: 11-28-2010

By:




MARTIN SCHLAGETER
Campaign and Advocacy Director
Coalition for Clean Air

Date:

11/15/10

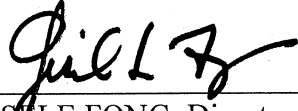
By:



SHANA LAZEROW, Attorney
Communities for a Better Environment

Date: 11/18/2010

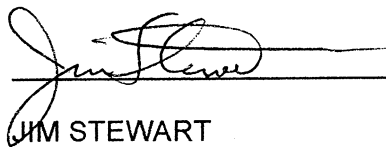
By:



GISELE FONG, Director
Communities for Clean Ports

Date: 11/15/10

By:



JIM STEWART

Earth Day LA

Date: 11/10/10

By:

Lillian Light

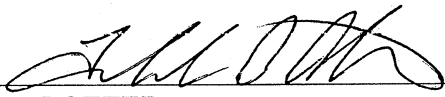
LILLIAN LIGHT, President
Environmental Priorities Network

Date: 11-26-10

By: Frank O'Brien

Date: 11 12 2010

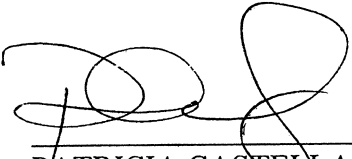
FRANK O'BRIEN, Executive Director
Harbor Watts Economic Development Corporation

By:  _____

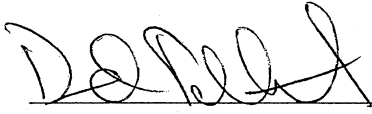
Date: Nov 22, 2010

FRED POTTER

International Vice President and Port Division Director
International Brotherhood of Teamsters

By:  _____ Date: 11/19/10
PATRICIA CASTELLANOS, Co-Director, Ports Campaign
Los Angeles Alliance for a New Economy

By:



DAVID PETTIT
Natural Resources Defense Council

Date:

12/3/10

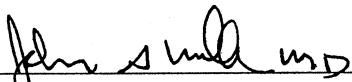
By:



MARTHA DINA ARGUELLO
Executive Director
Physicians for Social Responsibility

Date: 11-22-2010

By:



DR. JOHN MILLER, President
San Pedro and Peninsula Homeowner's Coalition

Date: 3/3/2011

CONSENT AND RELEASE OF CHUCK HART
REGARDING TRAPAC MEMORANDUM OF UNDERSTANDING
REGARDING FORMATION OF NONPROFIT TO
OPERATE THE PORT COMMUNITY MITIGATION TRUST FUND

WHEREAS, on or about April 3, 2008, for a lawful public purpose and valuable consideration, the City of Los Angeles, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City"), entered into a Memorandum of Understanding to settle Appellants' administrative appeals and potential legal claims against the City relating to the environmental impact report and related findings for the TraPac Berths 136-147 Container Terminal Project ("TraPac MOU");

WHEREAS, Chuck Hart is an Appellant and signatory to the TraPac MOU;

WHEREAS, on October 26, 2010, the Board of Harbor Commissioners approved an Operating Agreement of the TraPac Memorandum of Understanding ("Operating Agreement"); and

WHEREAS, notwithstanding Chuck Hart's decision to refrain from signing the Operating Agreement as a party, Chuck Hart supports the Operating Agreement and the creation of the Nonprofit and Port Community Mitigation Trust Fund as set forth therein.

NOW THEREFORE, Chuck Hart agrees as follows:

1. Chuck Hart consents to Appellants' entrance into the Operating Agreement with the City.
2. Chuck Hart waives and releases any current and future rights or claims provided to it under the TraPac MOU to void in part or in full the Operating Agreement.
3. Chuck Hart acknowledges and agrees that City's execution and fulfillment of the Operating Agreement constitutes full and satisfactory performance of its obligations under the TraPac MOU Section V. to form a nonprofit entity to operate the Port Community Mitigation Trust Fund.

December 15th, 2010

By 

Chuck Hart

CONSENT AND RELEASE OF KATHLEEN WOODFIELD
REGARDING TRAPAC MEMORANDUM OF UNDERSTANDING
REGARDING FORMATION OF NONPROFIT TO
OPERATE THE PORT COMMUNITY MITIGATION TRUST FUND

WHEREAS, on or about April 3, 2008, for a lawful public purpose and valuable consideration, the City of Los Angeles, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City"), entered into a Memorandum of Understanding to settle Appellants' administrative appeals and potential legal claims against the City relating to the environmental impact report and related findings for the TraPac Berths 136-147 Container Terminal Project ("TraPac MOU");

WHEREAS, KATHLEEN WOODFIELD is an Appellant and signatory to the TraPac MOU;

WHEREAS, on October 26, 2010, the Board of Harbor Commissioners approved an Operating Agreement of the TraPac Memorandum of Understanding ("Operating Agreement"); and

WHEREAS, notwithstanding KATHLEEN WOODFIELD's decision to refrain from signing the Operating Agreement as a party, KATHLEEN WOODFIELD supports the Operating Agreement and the creation of the Nonprofit and Port Community Mitigation Trust Fund as set forth therein.

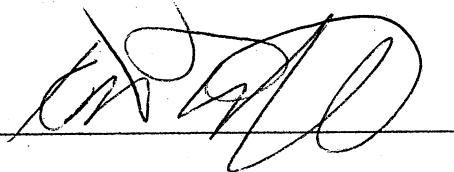
NOW THEREFORE, KATHLEEN WOODFIELD agrees as follows:

1. KATHLEEN WOODFIELD consents to Appellants' entrance into the Operating Agreement with the City.
2. KATHLEEN WOODFIELD waives and releases any current and future rights or claims provided to it under the TraPac MOU to void in part or in full the Operating Agreement.
3. KATHLEEN WOODFIELD acknowledges and agrees that City's execution and fulfillment of the Operating Agreement constitutes full and satisfactory performance of its obligations under the TraPac MOU Section V. to form a nonprofit entity to operate the Port Community Mitigation Trust Fund.

Dated

12/15/2010

By



KATHLEEN WOODFIELD

CONSENT AND RELEASE OF THE SIERRA CLUB
REGARDING TRAPAC MEMORANDUM OF UNDERSTANDING
REGARDING FORMATION OF NONPROFIT TO
OPERATE THE PORT COMMUNITY MITIGATION TRUST FUND

WHEREAS, on or about April 3, 2008, for a lawful public purpose and valuable consideration, the City of Los Angeles, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City"), entered into a Memorandum of Understanding to settle Appellants' administrative appeals and potential legal claims against the City relating to the environmental impact report and related findings for the TraPac Berths 136-147 Container Terminal Project ("TraPac MOU");

WHEREAS, The Sierra Club is an Appellant and signatory to the TraPac MOU;


WHEREAS, on October 26, 2010, the Board of Harbor Commissioners approved an Operating Agreement of the TraPac Memorandum of Understanding ("Operating Agreement"); and

WHEREAS, notwithstanding The Sierra Club's decision to refrain from signing the Operating Agreement as a party, The Sierra Club supports the Operating Agreement and the creation of the Nonprofit and Port Community Mitigation Trust Fund as set forth therein.

NOW THEREFORE, The Sierra Club agrees as follows:

1. The Sierra Club consents to Appellants' entrance into the Operating Agreement with the City.
2. The Sierra Club waives and releases any current and future rights or claims provided to it under the TraPac MOU to void in part or in full the Operating Agreement.
3. The Sierra Club acknowledges and agrees that City's execution and fulfillment of the Operating Agreement constitutes full and satisfactory performance of its obligations under the TraPac MOU Section V. to form a nonprofit entity to operate the Port Community Mitigation Trust Fund.

Dated 27-February-2010

By 
Tom Politeo
Sierra Club Harbor Vision Task Force
Cochair.

ATTACHMENT C

BUSINESS TAX REGISTRATION CERTIFICATE (BTRC) NUMBER

The City of Los Angeles Office of Finance requires all firms that engage in any business activity within the City of Los Angeles to pay City business taxes. Each firm or individual (other than a municipal employee) is required to obtain the necessary Business Tax Registration Certification (BTRC) and pay business tax. (Los Angeles Municipal Code Section 21.09 et seq.)

All firms and individuals that do business with the City of Los Angeles will be required to provide a BTRC number or an exemption number as proof of compliance with Los Angeles City business tax requirements in order to receive payment for goods or services. Beginning October 14, 1987, payments for goods or services will be withheld unless proof of tax compliance is provided to the City.

The Tax and Permit Division of Los Angeles Office of Finance has the sole authority to determine whether a firm is covered by business tax requirements. Those firms not required to pay will be given an exemption number.

If you do NOT have a BTRC number contact the Tax and Permit Division at the office listed below, or log on to www.lacity.org/finance to download the business tax registration application.

MAIN OFFICE

LA City Hall

201 N. Main Street, Rm. 101 (213) 473-5901

ATTACHMENT D - AFFIRMATIVE ACTION PROGRAM PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

- A. During the performance of City contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. The contractor shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify on an electronic or hard copy form to be supplied, that the contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- D. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

ATTACHMENT D - AFFIRMATIVE ACTION PROGRAM PROVISIONS

- E. The failure of any contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.
- F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.
- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it

ATTACHMENT D - AFFIRMATIVE ACTION PROGRAM PROVISIONS

registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve

months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;

ATTACHMENT D - AFFIRMATIVE ACTION PROGRAM PROVISIONS

4. Upgrading training and opportunities;
 5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
- P. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.

ATTACHMENT E

Sec. 10.8.2.1. Equal Benefits Ordinance.

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. Los Angeles law prohibits entities doing business with the City from discriminating in employment practices based on marital status and/or sexual orientation. The City's departments and contracting agents are required to place in all City contracts a provision that the company choosing to do business with the City agrees to comply with the City's nondiscrimination laws.

It is the City's intent, through the contracting practices outlined in this Ordinance, to assure that those companies wanting to do business with the City will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Ordinance are designed to ensure that the City's contractors will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City's property.

(c) Equal Benefits Requirements.

(1) No Awarding Authority of the City shall execute or amend any Contract with any Contractor that discriminates in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(2) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the DAA, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance.

(3) A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." The posted statement must also include a City contact telephone number which will be provided each Contractor when the Contract is executed.

(4) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by the Equal Benefits Ordinance.

(d) Other Options for Compliance. Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

a. The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits; or

b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

(e) Applicability.

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.

(f) **Mandatory Contract Provisions Pertaining to Equal Benefits.** Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.