

**AGREEMENT BETWEEN THE CITIES OF
LONG BEACH AND LOS ANGELES
TO SHARE THE COST OF HOSTING
THE PORT-OWNED DRAYAGE TRUCK REGISTRY**

This agreement (the “Agreement”) is entered into by the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners (“Long Beach”), and the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners (“Los Angeles”) (Long Beach and Los Angeles shall be collectively referred to herein as the “Ports”).

1. Recitals.

This Agreement is entered into in the context of the following facts and objectives:

1.1 Los Angeles and Long Beach have jointly developed the Port-owned Drayage Truck Registry (“PDTR”), a database containing information regarding registered trucks and motor carriers that is used by the Ports to manage their respective Clean Truck Programs.

1.2 Long Beach has agreed to host the PDTR on its servers and provide the staff to operate and maintain the PDTR.

1.3 Los Angeles has agreed to reimburse Long Beach for half of its cost in hosting the PDTR.

2. Term.

The term of this Agreement shall commence on the date of the last execution by the parties and shall terminate on the date which is three (3) years following the commencement of term, unless earlier terminated by a party as provided in Section 3 of this Agreement.

3. Termination.

Either party shall have the right to terminate this Agreement upon 180 calendar days written notice to the other party, provided however that termination shall not affect the obligations of the terminating party for any reimbursement due under this Agreement prior to the effective date of termination. If either party terminates this Agreement, both parties agree to work cooperatively together to make alternative arrangements for hosting the PDTR, if necessary.

4. Scope of Work.

The anticipated scope of work for hosting the PDTR is attached hereto as Exhibit A and incorporated herein by this reference.

5. Hosting Obligations.

Long Beach agrees to take responsibility for hosting the PDTR and provide the services described in Exhibit A, including providing and maintaining appropriate servers, providing staff to operate and maintain the PDTR, and contracting for and paying for outside support services.

6. Reimbursement Obligations.

Los Angeles agrees to pay Long Beach fifty percent (50%) of PDTR hosting costs as detailed in Exhibit A. Los Angeles shall pay Long Beach a one-time charge for PDTR hosting equipment, hardware, software and initial work of \$21,189.50, as well as prior 28 months of monthly costs of \$21,000 (\$750 per month x 28 months) for a total of \$42,189.50 within thirty (30) days after the effective date of this Agreement.

Commencing after the effective date of this Agreement, Los Angeles shall pay Long Beach 50% of the \$1,500 monthly hosting charges, i.e., \$750 per month. Long Beach

will send an annual invoice to Los Angeles for the prior 12-month period in the amount of (i) monthly charges of \$9,000 (\$750 per month x 12 months) and (ii) fifty percent (50%) of any additional PDTR hosting costs agreed upon in writing by the Chief Information Officers of the two Ports, up to a maximum amount not to exceed \$25,000 per year.

7. Termination Due To Non-Appropriation Of Funds

This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes Los Angeles from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof. Los Angeles, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, Los Angeles is under no legal obligation to do so. Long Beach is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the City. If in any subsequent fiscal year funds are not appropriated by the City for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

8. Ownership of Data and Records.

Nothing in this Agreement shall affect the parties' joint ownership of the PDTR and all records, work product and data therein for which costs are shared pursuant to this Agreement or other agreements concerning the PDTR, including without limitation, the Agreement for Information Technology Services with TetraTech, Inc. dated as of

October 1, 2009 (Los Angeles Agreement No. 09-2797 and Long Beach Agreement No. HD-7537), and the Agreement for Information Technology Services with Natoma Technologies, Inc. dated as of January 8, 2009 (Los Angeles Agreement No. 09-2732 and Long Beach Agreement No. HD-7422).

9. Notices.

Any notices to be given under this Agreement shall be served by mail or by personal delivery effective two calendar days after the date of mailing or upon personal delivery. Unless otherwise provided in writing by the parties, the address for Los Angeles shall be the Executive Director, Port of Los Angeles, P.O. Box 151, San Pedro, California 90733 and for Long Beach shall be the Executive Director, Port of Long Beach, P.O. Box 570, Long Beach, California, 90801.

10. Cooperation.

The parties agree to work cooperatively to implement this Agreement, to resolve any disputes regarding this Agreement at the appropriate level and from time to time to review the actual costs of hosting the PDTR and to amend this Agreement to reflect an appropriate reimbursement amount. The Los Angeles Chief Information Officer and Long Beach Director of Information Management shall work together to resolve all disputes associated with reimbursement amounts, and the maintenance, enhancements, operational management, disaster recovery, and infrastructure support of the PDTR. In the event that they cannot resolve the dispute, the respective Deputy Executive Directors shall work together to resolve the dispute.

<p>CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners</p>	<p>CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners</p>
<p>By: _____ Executive Director</p> <p>Attest: _____ Board Secretary</p>	<p>By: _____ Executive Director</p> <p>Attest: _____ Board Secretary</p>
<p>APPROVED AS TO FORM: _____, 20__ ROBERT E. SHANNON, City Attorney</p> <p>By: _____</p>	<p>APPROVED AS TO FORM: _____, 20__ CARMEN A. TRUTANICH, City Attorney</p> <p>By: _____</p>

EXHIBIT A

SCOPE OF WORK AND COSTS

Long Beach shall furnish all staffing, services, materials, equipment, and all other items necessary to perform the Scope of Work at its cost and expense. Long Beach shall warrant that its personnel or subcontractors are qualified to perform the services as determined in its reasonable discretion.

System Support

Los Angeles and Long Beach agree that Long Beach will maintain staff support for the PDTR during standard working hours, M-F, 7:30am-4:30pm. Los Angeles is aware that Long Beach allows staff to work an Alternate Work Schedule, taking off every other Friday, and that Long Beach will manage all schedules to maintain proper staffing and service levels.

Los Angeles and Long Beach agree that off-hours systems support will be predetermined and assigned on a published schedule. Long Beach agrees to provide notification to Los Angeles of staffing, schedule or support changes via periodic e-mails.

PDTR Costs

Hosting Costs

Los Angeles and Long Beach agree to share equally in PDTR support charges which include any third party costs for customer service, software changes, PDTR application support, and charge card management. All new work such as software changes shall be authorized by the Chief Information Officers of the two Ports. Los Angeles agrees to reimburse Long Beach for fifty percent (50%) of those costs up to a maximum not-to-exceed \$25,000 per year.

One Time Charges

Los Angeles and Long Beach agree that Los Angeles shall pay a lump sum at this time for certain costs incurred in the past for the set-up and initial operation of the PDTR system. These costs include the Equipment and Software Costs, Setup and Configuration Costs and a lump sum payment of the monthly hosting charge for services rendered for the two years prior to the effective date of this Agreement. Equipment and Software costs are for purchase of 4 Dell servers, MS Windows & SQL Server licenses and network and infrastructure monitoring licenses. Setup and Configuration costs include Long Beach staff time to set up the PDTR hosting on site at Long Beach. Monthly charges cover Los Angeles' 50% share of the monthly hosting cost already incurred for services rendered for the period September 2009 through December 2011.

New Equipment & Software:	\$16,433.50
Setup & Configuration:	\$ 4,756
Monthly Hosting Charges from the period 9/09 thru 12/11:	<u>\$21,000</u>
TOTAL One Time Payment	\$42,189.50

Monthly Charges Over 3 Years

The monthly charges include Long Beach staff time and a percentage of infrastructure costs/charges, including SAN space, NOC tools, Internet bandwidth, power, 3rd party charges and disaster planning & recovery site(s).

Monthly Hosting Charge: \$ 1,500 per month

On an annual basis, Long Beach will prepare and send an invoice of Monthly Hosting Charges for the prior 12-month period, with a prior year breakdown showing total hosting costs, and a charge allocated at 50% for payment by Los Angeles. Any adjustments to the \$1,500 monthly hosting charge will require agreement by both the Los Angeles CIO and Long Beach Director IM, and then this agreement will be brought back to the respective Boards of Harbor Commissioners of Long Beach and LA for amendment..

Detailed Cost Breakdown

Total actuals to date and projected future costs are as follows:

	Total Cost	Cost Share Breakdown – 3 Years	
		POLB	POLA
Actual Start Up Cost	\$42,379.00	\$21,189.50	\$21,189.50
Monthly Cost to date (9/09 - 12/11)	\$42,000.00	\$21,000.00	\$21,000.00
Projected Monthly Cost (11/11-11/14)	\$54,000.00	\$27,000.00	\$27,000.00
Additional Hosting Costs – Maximum amount not to exceed	\$150,000.00	\$75,000.00	\$75,000.00
Total:	\$288,379.00	\$144,189.50	\$144,189.50

Service Level Agreement Targets & Reporting

Los Angeles and Long Beach desire to have excellent application service availability. Los Angeles and Long Beach agree that Long Beach Information Management team shall make commercially reasonable efforts to ensure the PDTR is available 24 hours per day, every day of the year, except for scheduled maintenance periods during low activity. Scheduled maintenance periods will be clearly stated on the Login page of the PDTR web

portal and communicated via e-mail to the registered PDTR users at least 3 days before the period.

Los Angeles and Long Beach agree that the targeted system quality is:

- At least 99.95% full system availability during non-maintenance periods.
- No more than 70% average CPU utilization over any 5 minute period of time for any server.
- No less than 20% free space on any hard disk storage system used by the system.
- Level 1 Errors – Begin professional resolution efforts within 1 hour of receiving error notification. Summary of efforts must be e-mailed every 2 hours detailing issues and attempts at resolution.
- Level 2 Errors – Begin professional resolution efforts within 4 hours of receiving error notification. Summary of efforts must be e-mailed every 4 hours detailing issues and attempts at resolution.
- Level 3 Errors – Begin professional resolution efforts within 8 business hours of receiving error notification. Summary of efforts must be emailed every 8 business hours detailing issues and attempts at resolution.

Error Level Definitions:

- Level 1 Error – PDTR and/or PDTR Web Portal is unavailable to all users
- Level 2 Error – PDTR and/or PDTR Web Portal is experiencing updating or processing errors, reporting capabilities not working properly, but the system is substantially usable and available to all users
- Level 3 Error – PDTR and/or PDTR Web Portal is exhibiting minor field or page display errors, but the system is substantially usable and available to all users

Los Angeles and Long Beach agree that Long Beach will publish a report to the PDTR website certifying the measurements above by the 5th working day after the end of the preceding month.

Disaster Planning & Recovery

Los Angeles and Long Beach agree to Long Beach developing, planning, and testing of the PDTR disaster recovery process. Los Angeles agrees to participate in the testing and verification of the disaster recovery process and share equally in the incidental costs, if any, of the testing and verification.