

AGREEMENT NO. _____

AGREEMENT AMONG THE
CITY OF LOS ANGELES AND
SHORE TERMINALS, LLC AND ULTRAMAR, INC

This Agreement (the "Agreement") is entered into by and among the CITY OF LOS ANGELES, a municipal corporation ("City" or "Harbor Department"), acting by and through its Board of Harbor Commissioners ("Board") and SHORE TERMINALS, LLC, a Delaware Limited Liability Company, 19003 IH-10 West, San Antonio, Texas 78257 and ULTRAMAR, INC., a Nevada Corporation, c/o Valero Companies, 1 Valero Way, San Antonio, TX 78249 (individually, "Applicant" and collectively, the "Applicants").

RECITALS

WHEREAS, Applicants have each previously and independently submitted to the Harbor Department Applications for Port Permit ("APP") 180430-070 (NuStar Energy) and 150306-030 (Valero) to comply with the Marine Oil Terminal Engineering and Maintenance Standards ("MOTEMS") to protect public health, safety and the environment; and

WHEREAS, each Applicant's original project description consisted of the construction and repair of wharf and landside structures located on their respective leased premises; and

WHEREAS, the Applicants now desire to submit a revised MOTEMS project concept and/or revised APP which involves the demolition of the existing wharf and landside structures and construction and sharing of one MOTEMS-compliant berth within the Port of Los Angeles ("Project") with the Applicant, ULTRAMAR, INC., as the primary responsible party for making timely reimbursement payments in accordance with this Agreement on behalf of the Applicants; and

WHEREAS, Harbor Department, as the lead agency for purposes of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq. ("CEQA")), has determined that environmental review of the Project must be conducted in accordance with applicable environmental laws, including but not limited to CEQA, prior to consideration of Project approval(s); and

WHEREAS, it is anticipated that the Project concept will involve unknown and potentially substantial changes to the environmental work product that had previously been prepared by the Harbor Department; and

WHEREAS, Applicants have agreed to reimburse the Harbor Department for all costs for preparation and review of the documentation required for (a) compliance with CEQA ("Environmental Documents") and (b) making discretionary decisions related to the Project (together, "Project Documents") and costs incurred for legal defense (if

necessary) of the Project, including but not limited to all costs for engaging the services of a consultant(s) to prepare the Project Documents and reimbursement of all related Port staff and Port consultant(s) costs;

NOW, THEREFORE, in reliance on the foregoing recitals and in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Applicants hereby agree as follows:

1. ENVIRONMENTAL REVIEW AND ENTITLEMENTS.

A. Harbor Department, as the CEQA lead agency, is providing oversight review of any Environmental Documents to be prepared for Applicants' proposed Project as required by law in order for the City to consider making discretionary decisions to grant entitlements for and approve the proposed Project.. It is understood by Applicants that the Harbor Department, as the CEQA lead agency, has the principle responsibility for carrying out or approving any project which may have an impact on the environment; is responsible for the adequacy of any document required by CEQA and other environmental laws related to the Project; and must ensure that any such document reflects the independent judgment of the lead agency in terms of adequacy and objectivity.

B. Applicants acknowledge they are responsible for obtaining all necessary permits for the Project, including any federal permits that would be subject to federal lead agency review under the National Environmental Policy Act ("NEPA").

2. NO APPROVAL; NO WAIVER OF CITY'S DISCRETIONARY AUTHORITY.

Applicants and City expressly acknowledge and agree that this Agreement does not grant Applicants or City any right or obligation to enter into any other binding agreement or amendment of agreement relative to the design, engineering, construction, development, operation, or lease related to the proposed Project, nor obligate City to take any action to adopt or approve the Environmental Documents or to approve the proposed Project, or any lease, permit or entitlement related to the proposed Project. The proposed Project shall be subject to the discretionary review and approval of all underlying entitlements and approvals to the extent required by the law and by City's Charter, Administrative Code, policies, rules and regulations. City retains its sole and unfettered discretion to make decisions regarding the proposed Project, including by not limited to: determination of any Project Documents' compliance with CEQA and environmental laws related to the Project; whether or not to approve the proposed Project; and whether or not to require modification of or select alternatives to the proposed Project, including the "no project" alternative in order to comply with CEQA. Furthermore, Harbor Department retains its sole and unfettered discretion to undertake any studies, peer review or inquiries it deems necessary and/or appropriate to ensure preparation of legally adequate Environmental Documents.

3. TERM AND TERMINATION.

3.1 Subject to the provisions of Charter Section 245, the effective date

of this Agreement ("Effective Date") shall be the date of its execution by the Harbor Department's Executive Director ("Executive Director") following authorization of the Board. The term of this Agreement shall commence upon the Effective Date and, unless terminated earlier as provided herein, shall continue until three (3) years has lapsed from the Effective Date of this Agreement and, as it relates to Applicants' obligations under Section 7 of this Agreement, upon the expiration of all periods of legal challenge, litigation and appeal under applicable law of the Project Documents approved by Board ("Term").

3.2 Termination for Convenience. Prior to the expiration of the Term of this Agreement, either party (in the case of the Applicants both must agree in writing) may withdraw, in writing, from the preparation of the Project Documents as contemplated by this Agreement and terminate this Agreement upon giving the other party ten (10) days-written notice of its election to cancel and terminate this Agreement. Should the decision be made by either party to terminate this Agreement, City shall immediately take action not to incur any additional obligations, costs or expenses, except as may be reasonable and necessary to terminate its activities.

3.2.1 If Applicants withdraw, in writing, and terminate this Agreement pursuant to Subsection 3.2, Applicants shall pay City allowable costs incurred by City under this Agreement and those reasonable and necessary costs incurred by City to effect the termination. Thereafter, City shall have no further claims against Applicants under this Agreement.

3.2.2 If City withdraws, in writing, and terminates this Agreement pursuant to Subsection 3.2, Applicants shall be entitled to full reimbursement of payments made to City by Applicants under this Agreement. Thereafter, Applicant shall have no further claims against City under this Agreement.

3.3 Termination for Breach of Agreement. Except as to the provisions contained in Section 7 of this Agreement; if Applicants fail to (1) provide reimbursement to City in accordance with the terms hereof, or (2) cooperate with or timely perform any acts reasonably requested by City to assist in completing the Project Documents within the time requested by City in writing, City may give Applicants written notice of default. City's default notice will indicate whether the default may be cured and the time period to cure the default to the sole reasonable judgment of the Executive Director. Additionally, City's default notice may offer an opportunity to provide City with a plan to cure the default, which shall be submitted to City within the time period allowed by City. At Executive Director's sole discretion, City may accept or reject Applicants' plan. If the default cannot be cured or if Applicants fail to cure within the period allowed by City then City may terminate this Agreement due to Applicant's breach of this Agreement. In the event of termination pursuant to this Subsection 3.3, as determined in the sole and absolute discretion of the Executive Director, Applicants shall pay City its costs allowed under this Agreement through the effective date of termination and those reasonable and necessary costs incurred by City to effect the termination.

3.4 Following approval of the final Environmental Documents by the Board, this Agreement shall terminate in accordance with Section 3.1 above.

4. REIMBURSEMENT. Applicants agree to reimburse City for One Hundred Percent (100%) of all City staff, Consultant(s), and outside counsel costs for the preparation, review and legal defense (if necessary) of the Project Documents, as follows:

A. Consultant Selection: Harbor Department, as the lead agency for purposes of CEQA, has consulting agreements in place for as-needed CEQA environmental services. In support of preparing the Project Documents, Harbor Department may, in its sole discretion, select a consultant to perform project management oversight and quality assurance/quality control services, the cost for which shall also be the responsibility of Applicants.

B. Scope of Work and Cost Estimate: An estimated scope of work and budget to complete the Environmental Documents and the associated oversight review are set forth in the attached Exhibit A ("Cost Estimate"). The Harbor Department shall provide a modified estimated budget if any changes to the proposed Environmental Documents or review work are required. The Scope of Work and Cost Estimate does not impact Applicants' financial obligations under Section 7, below, which does not contemplate an estimated or a not to exceed amount.

C. Process for Cost Reimbursement: After selection of Consultant(s), Harbor Department shall submit invoices on a monthly basis to ULTRAMAR, INC. (the "Monthly Invoice") listing the monthly charges generated for the ongoing oversight review and completion of the Environmental Documents. The Monthly Invoice shall include a progress report describing the activities performed during the subject month, along with the charges associated with such activities. The Monthly Invoice shall be due for payment to Harbor Department within thirty (30) days after receipt by Applicant. All amounts owed by Applicants in accordance with the terms set out herein are to be paid without setoff or deduction within thirty (30) days after receipt of an invoice. If Applicants, in good faith, dispute the accuracy of the amount invoiced, Applicants shall pay the amount of the invoice and provide written notice stating the reasons why the invoice amount is incorrect, along with supporting documentation acceptable in industry practice. Within thirty (30) days of receipt of written notice of a disputed invoice, a determination as to the adjusted amount due (if any) to a disputed invoice shall be made at the sole and absolute discretion of the Director of Environmental Management. Any invoice adjustment amount shall be reflected in the next invoice following the adjustment amount determination or payable within thirty (30) days from the adjustment amount determination if the final invoice is disputed.

Monthly Invoice shall be submitted to:

Ultramar Inc.
1 Valero Way, Bldg. F2-155
San Antonio, TX 78249
Attn: Chris Meldner

With a copy to:

Shore Terminals, LLC
19003 IH-10 West
San Antonio, Texas 78257
Attn: AccountsPayable.PO.USA@nustarenergy.com

D. Exceedance of Budgeted Amount. If at any time during the Term of this Agreement the costs to complete the Scope of Work are expected to exceed the Budgeted Amount, the Harbor Department shall provide Applicants with a modified estimated budget for consideration by the Applicants. Applicants will not unreasonably withhold approval of increases in the Budgeted Amount provided the proposed increases are reasonable given the circumstances. If the parties hereto are unable to mutually agree on an adjustment in the Budgeted Amount, any party shall have the right to terminate this Agreement in accordance with Section 3.2; provided, however, Section 3.2.2 shall not apply. The Scope of Work and Budgeted Amount do not impact Applicants' financial obligations under Section 7, below, which does not contemplate an estimated or a not to exceed amount.

5. STANDARD OF CARE. Harbor Department hereby represents that the work performed to complete the Environmental Documents shall be performed with at least the same or similar degree of care, skill and diligence as other professionals performing the same or similar service.

6. LEAD AGENCY'S INDEPENDENT JUDGMENT. The CEQA Environmental review must reflect the lead agency's independent judgment (CEQA Section 21082.1(c) and 14 C.C.R. Section 15084). Accordingly, the final responsibility and final authority on all questions concerning the content and quality of the CEQA review and related tasks lies in the sole discretion of Harbor Department. Applicants understand and agree that any consultant(s) employed by Harbor Department to perform services hereunder only owes a duty to Harbor Department and said consultant(s) will be accountable to Harbor Department alone and not to Applicants or to any other third- person or entity.

7. DEFENSE AND INDEMNIFICATION.

7.1 Obligation to Defend, Indemnify, and Hold Harmless. Applicants undertake and hereby agree to defend, indemnify, and hold harmless City, and/or any of its Boards, officers, agents, employees, assigns and successors in interest ("Indemnitees") from and against any claim, action, or proceeding ("Proceeding") brought against the Indemnitees to attack, challenge, revise, amend, set aside, void or annul: (i) the approval of the Project Documents, including but not limited to any and all entitlements necessary for development of land or conditions of approval related to the Project Documents; or (ii) the validity or legality of the Project and its Project Documents which action is brought within the applicable time periods of the State Government Code and Public Resources Code, California Coastal Act and other applicable rules or codes ("Claim(s)"). City shall promptly notify the Applicants in writing of any Claim and City shall not act unreasonably towards cooperating in the defense of such Claim. If City fails to

promptly notify Applicants of any such Claim, or if City acts unreasonably towards its obligation to cooperate in the defense, Applicants shall not thereafter be responsible to defend, indemnify, or hold harmless City. However, if Applicants have actual written notice of the Proceeding, it shall not be relieved of the obligations imposed hereunder, notwithstanding the failure of City to provide prompt written notice of the Proceeding. City shall be considered to have failed to give prompt written notification of a Proceeding if City, after being served with a lawsuit or other legal process challenging the approvals, unreasonably delays in providing written notice thereof to Applicants. As used herein, "unreasonably delays" shall mean any delay that materially adversely impacts Applicants' ability to defend the Proceeding. The obligations imposed in this Section 7 shall apply notwithstanding any allegation or determination in the Proceedings that City acted contrary to applicable laws. Upon demand along with receipt of supporting documentation, Applicants shall, within sixty (60) days, reimburse City for any court costs and attorney's fees which City may be required to pay, including counsel, as a result of any Claim. City shall make all decisions with respect to its representation in any legal proceeding regarding the Claims, including, but not limited to, the selection of attorneys and the content and procedure of the defense of the Claims. Although Applicants may be a defendant or the real party in interest in the Claim, City may, at its sole discretion, participate at its own expense in the defense of the Claim, but such participation shall not relieve Applicants of any obligation under this Section 7.1. Nothing in this Section shall be construed to mean that Applicants shall hold City harmless and/or defend it from any claims arising from its intentional misconduct or sole negligence in the performance of this Agreement by City or Indemnitees. City shall have the right to approve any settlement or compromise of any Claim. Rights and remedies available to City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and City.

72 Defending the Project Documents and Project Approvals. Subject to 7.1 above, Applicants shall have the obligation to timely retain legal counsel to defend against any Proceeding to set aside, void or annul, all or any part of any Project Documents and/or Project Approval. The above notwithstanding, City shall have the right, if it so chooses, to defend the Proceeding utilizing in-house legal staff, in which case Applicants shall be liable for all legal costs and fees reasonably incurred by City, including charges for staff time. In the event of a conflict of interest which prevents Applicants' legal counsel from representing City, and in the event City does not have the in-house legal resources to defend against the Proceeding, City shall also have the right to retain outside legal counsel provided that retaining outside legal counsel causes no delays, in which case Applicants shall be liable for all legal costs and fees reasonably incurred by City. Provided that Applicants are not in breach of the terms of this Section, City shall not enter into any settlement of the Proceeding which involves modification to any Project Approval or otherwise results in Applicants incurring liabilities or other obligations, without the consent of Applicants.

73 Breach of Obligations. Actions constituting a breach of the obligations imposed in this Section 7 shall include, but not be limited to (i) the failure to timely retain qualified legal counsel to defend against the Proceedings after written notice and receipt of supporting documentation; (ii) the failure to pay City, within thirty (30) days

of the written demand along with receipt of supporting documentation, for any attorney's fees or other legal costs for which City is liable pursuant to a judgment or settlement agreement in the Proceeding seeking to set aside, void or annul all or part of any Project Approval; or (iii) the breach of any other obligation imposed in this Section 7. In each case, it shall be deemed a breach of the obligations imposed in this Section 7 after written notice from City and a reasonable period of time in which to cure the failure, not to exceed thirty (30) days. For purposes of this Section 7, Applicants shall be considered to have failed to timely retain qualified legal counsel if such counsel is not retained within thirty (30) days following City's provision of the notice of Proceedings to Applicants required hereunder. In the event that Applicants breach the obligations imposed in this Section 7, City shall have no obligation to defend against the Proceedings, and by not defending against the Proceedings, City shall not be considered to have waived any rights in this Section 7. Further, in the event of breach, City shall have the option to hire counsel to defend itself at Applicants' reasonable expense.

74 Cooperation. City shall cooperate with Applicants in the defense of the Proceeding, provided, however, that such obligation of City to cooperate in its defense shall not require City to (i) assert a position in its defense of the Proceeding which it has determined, in its sole discretion, has no substantial merit; (ii) advocate in its defense of the Proceeding legal theories which it has determined, in its sole discretion, lack substantial merit; or (iii) advocate in its defense of the Proceeding legal theories which it has determined, in its sole discretion, are contrary to its best interests or to public policy. Nothing contained in this Section shall require Applicants to refrain from asserting in its defense of the Proceeding positions or legal theories that do not satisfy the foregoing requirements.

75 Waiver of Right to Challenge. Applicants hereby waive the right to challenge the validity of the obligations imposed in this Section 7; provided that such waiver shall not include a waiver by Applicants of the right to contest whether any particular claim for indemnification by City falls within the scope of Applicants' obligations under this Section 7.

76 Survival. The obligations imposed in this Section 7 shall survive any decision invalidating the Project Approvals, including, but not limited to, decisions by any governmental agency or judicial decision.

77 Preparation of Administrative Record. Applicants and City acknowledge that, upon the commencement of legal Proceedings, the administrative record of proceedings relating to the Project Documents and Project Approvals must be prepared ("Record of Proceedings"). Those documents must also be certified as complete and accurate by City. Applicants, as part of its defense obligation imposed in this Section 7, shall prepare at its sole cost and expense the Record of Proceedings in a manner which complies with all applicable laws; in accordance with reasonable procedures established by City; and subject to City's obligation to certify the administrative Record of Proceedings and City's right to reasonably oversee the preparation of such Record of Proceedings. Applicants agree that its failure to prepare the Record of Proceedings as set forth herein, and in compliance with all time deadlines imposed by law, shall constitute a breach of its

obligation to defend City. In the event that Applicants fail to prepare the Record of Proceedings, City may do so. If City prepares the Record of Proceedings City shall be entitled to be reimbursed by Applicants for all reasonable costs associated with preparation of the Record of Proceedings, including reasonable charges for staff time.

8. NO CONFIDENTIALITY. The parties may reveal all or part of this Agreement to others as required by law.

9. ASSIGNMENTS. Each of the Applicants may not assign their respective rights or obligations under this Agreement to any third party, but may assign the entire Agreement to any subsidiary or affiliate of Applicants approved by City. Any assignment by Applicants shall not relieve Applicants from their duties hereunder. Any prohibited assignment or purported assignment shall be null and void, and Applicants shall bear sole responsibility for any consequences resulting from such prohibited or purported assignment. Harbor Department may not assign its rights or obligations under this Agreement.

10. APPLICABLE LAW. This Agreement shall be governed by and constructed under the laws of the State of California without regard to conflicts of laws principles. Any action or proceeding arising out of or related to this Agreement shall be filed and litigated in the state or federal courts located in the County of Los Angeles, State of California, in the judicial district mandated by applicable court rules.

11. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same document, which shall be binding and effective as to each of the parties hereto. A facsimile shall be deemed to be an original.

12. LEGAL CAPACITY. Each individual executing this Agreement hereby represents and warrants that he/she has the capacity set forth on the signature pages hereof with the full power and authority to bind the party on whose behalf he/she is executing this Agreement to the terms hereof.

13. NOTICES. Any notice or correspondence to be provided by any party shall be in writing and dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service or courier service or by U.S. Postal Service). A notice shall be deemed to have been given, (i) in the case of first class, registered or certified mail, when delivered or the first attempted delivery on a business day, or (ii) in the case of expedited prepaid delivery and facsimile, upon the first attempted delivery on a business day. The following addresses shall serve as the locations to which notices and other correspondences relating to this Agreement between Applicants and Harbor Department shall be sent:

To Applicants: Shore Terminals, LLC
19003 IH-10 West
San Antonio, Texas 78257
Attn: Danko Barisic
With a copy to:
Legal.Notices@nustarenergy.com

Ultramar Inc.
1 Valero Way, Bldg. F2-155
San Antonio, TX 78249
Attn: Chris Meldner

With a copy to: City of Los Angeles Harbor Department
425 S. Palos Verdes Street
San Pedro, CA 90733-0151
Attn: Director, Environmental Management

With a copy to: Office of the City Attorney
425 S. Palos Verdes Street
San Pedro, CA 90733-0151
Attn: General Counsel

Invoices shall be directed to:

Ultramar Inc.
1 Valero Way, Bldg. F2-155
San Antonio, TX 78249
Attn: Chris Meldner

14. MODIFICATION. This Agreement may be modified only by a 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.

(Signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

Dated: _____, 2019

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

Dated: December 19, 2019

SHORE TERMINALS, LLC
By: _____
DANIEL S. OLIVER, SVP
(Print/type name and title)

Attest: _____
Mariè Mendiola Admin Assistant
(Print/type name and title)

Dated: December 17, 2019

ULTRAMAR INC.
By: _____
Eric Hougman
(Print/type name and title)

APPROVED LEGAL

Attest: _____
Cindy Rehberg Executive Assistant
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

Dec 27, 2019
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By: JOHN T. DRISGOLL, Deputy


EXHIBIT A

SCOPE OF WORK AND ESTIMATED BUDGET

Consultant Scope and Cost

Port Consultants to prepare an environmental document, in compliance with the California Environmental Quality Act (CEQA), associated with Marine Oil Terminal Wharf Engineering and Maintenance Standards (MOTEMS) improvements at Berths 163-164.

- a. Preparation of project documents, including air quality, greenhouse gas, and energy technical appendices and historical/cultural review. The estimated cost is \$600,000.
- b. Project Management for preparation of project documents including but not limited to scheduling; coordinating data requests and analysis; setting up meetings; and reviewing technical analysis, response to comments, Board of Harbor Commission materials, and the project documents. The estimated cost is \$100,000.

Estimated amount: **\$700,000**

Port Staff Scope and Cost

Port Staff to review and provide oversight of the Berths 163-164 MOTEMS project documents.

Estimated amount: **\$42,500**

Project Fees

County Clerk Filing Fees

Estimated fee is \$2,500.

Metropolitan News Advertising Fees

Estimated fee is \$5,000.

Estimated amount: **\$7,500**

Total Estimated Cost:

Note: The amount and/or allocation of costs between the Consultant and Port Staff and other estimated fees are subject to change. This estimate also does not include legal defense costs given the uncertainty of their nature and/or necessity as of the Effective Date. Should legal defense costs and fees become necessary, an estimate will be made available upon request.