

Harbor Department
 Agreement 10-2912
 City of Los Angeles

**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

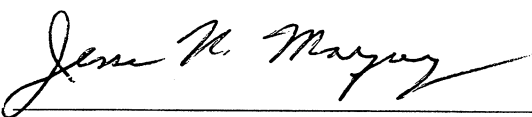
By: Bonnie Holmes

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

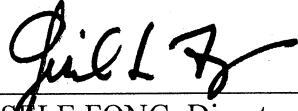
By:



SHANA LAZEROW, Attorney
Communities for a Better Environment

Date: 11/18/2010

By:

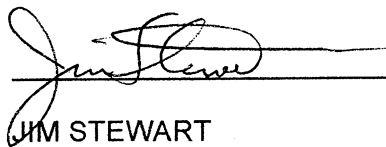


GISELE FONG, Director
Communities for Clean Ports

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

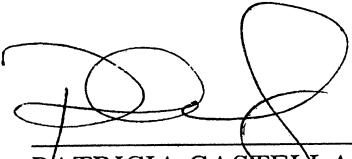
FRANK O'BRIEN, Executive Director
Harbor Watts Economic Development Corporation

By:  _____

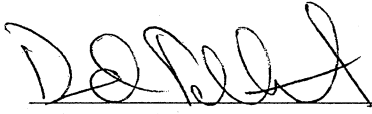
Date: NOV 22, 2010

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:

John Miller MD
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.

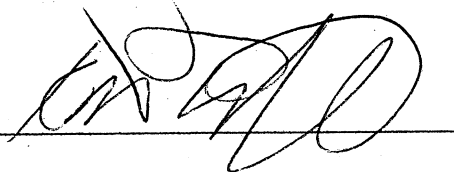
NOW THEREFORE, KATHLEEN WOODFIELD agrees as follows:

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.

Exhibit 1
TraPac Appellants

1. American Lung Association of California
2. Change to Win
3. Coalition for a Safe Environment
4. Coalition for Clean Air
5. Communities for a Better Environment
6. Communities for Clean Ports
7. Earth Day LA
8. Environmental Priorities Network
9. Harbor Watts Economic Development Corporation
10. International Brotherhood of Teamsters
11. Los Angeles Alliance for a New Economy
12. Natural Resources Defense Council
13. Physicians for Social Responsibility
14. San Pedro and Peninsula Homeowners Coalition
15. Sierra Club Harbor Vision Task Force
16. Kathleen Woodfield
17. Chuck Hart

Harbor Department
Agreement 09-2764
City of Los Angeles

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 VBii 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

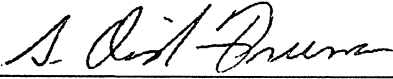
The Appellants hereby release all claims relating to the Port's approval of the TraPac EIR/EIS, including CEQA challenges. Further, this release does not release any of the rights and obligations under this agreement, and shall not extend to any action to enforce or interpret the provisions of this agreement.

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.

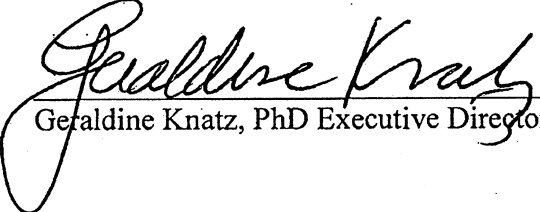
SIGNATURES OF PARTIES:

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

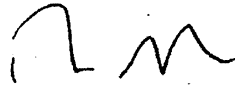
By: /s/ Kathleen Woodfield
Kathleen Woodfield

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.

General Counsel
Port of Los Angeles

EXHIBIT 3
ARTICLES OF INCORPORATION OF

[NAME OF NONPROFIT]

A California Nonprofit Public Benefit Corporation

Article I

The name of this corporation is [THE NONPROFIT] ("Corporation").

Article II

- A. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for **charitable** purposes.
- B. This Corporation is organized and operated exclusively for **charitable** purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

Article III

The name and address in the State of California of this Corporation's initial agent for service of process is [name and street address].

Article IV

This Corporation shall have no members.

Article V

- A. No substantial part of the activities of this Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and this Corporation shall not participate in or intervene in any political campaign (including the publishing or distribution of statements) on behalf of, or in opposition to, any candidate for public office.
- B. Notwithstanding any other provision of these articles of incorporation, this Corporation shall not carry on any activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or (ii) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code.
- C. Notwithstanding any other provision of these articles of incorporation or other governing instrument of this Corporation, during such period or periods, of time, if any, as this

Corporation is treated as a “private foundation” pursuant to Section 509 of the Code: (i) the Corporation’s income must be distributed at such time and in such manner so as not to subject this Corporation to tax under Section 4942 of the Code and (ii) this Corporation is prohibited from (a) engaging in any act of self-dealing (as defined in Section 4941(d) of the Code); (b) retaining any excess business holdings (as defined in Section 4943(c) of the Code) which would subject this Corporation to tax under Section 4943 of the Code; (c) making any investments in such manner so as to subject this Corporation to tax under Section 4944 of the Code; and (d) making any taxable expenditures (as defined in Section 4945(d) of the Code).

Article VI

- A. The property of this Corporation is irrevocably dedicated to charitable purposes. No part of the net income or assets of this Corporation shall ever inure to the benefit of any of its directors or officers, or to the benefit of any private person, except that this Corporation is authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II hereof.

- B. Upon the dissolution or winding up of this Corporation any Tidelands Trust assets or funds (assets or funds received by this Corporation from the City of Los Angeles Harbor Revenue Fund maintained by the Los Angeles Harbor Department pursuant to Public Resources Code § 6306) remaining after payment, or provision for payment, of all debts and liabilities of this Corporation for previously approved Tidelands Trust projects or expenditures, shall be distributed to the Los Angeles Harbor Department to be used for charitable mitigation projects.

- C. Upon the dissolution or winding up of this Corporation, its assets, excluding any assets impressed with the common law Public Trust and the Port’s statutory trust grant (Chapter 656, Statutes of 1911, as amended) (hereinafter referred to as “trust assets”), remaining after payment, or provision for payment, of all debts and liabilities of this Corporation shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under Section 501(c)(3) of the Code. All trust assets owned or operated by the Nonprofit shall be returned to the Port Community Mitigation Trust Fund established in accordance with Harbor Department Agreement No. 09-2764 (TraPac MOU) for purposes consistent with the common law Public Trust Doctrine and the Port’s statutory trust grant (Chapter 656, Statutes of 1911, as amended). In any event, trust assets may only be used to pay for debts and liabilities of this Corporation if they are directly attributable to projects or expenditures previously approved by the City of Los Angeles Board of Harbor Commissioners.

Date: **[Date]**

[Signature]
[Typed Name], *[Incorporator] OR [Director]*

EXHIBIT 4

Bylaws of

The Non-Profit

A California Nonprofit Public Benefit Corporation

TABLE OF CONTENTS

ARTICLE 1	NAME	4
SECTION 1.1	CORPORATE NAME	4
ARTICLE 2	OFFICES	4
SECTION 2.1	PRINCIPAL OFFICE	4
SECTION 2.2	OTHER OFFICES	4
ARTICLE 3	PURPOSES	4
SECTION 3.1	GENERAL PURPOSE	4
SECTION 3.2	SPECIFIC PURPOSE	4
ARTICLE 4	LIMITATIONS	5
SECTION 4.1	POLITICAL ACTIVITIES	5
SECTION 4.2	PROHIBITED ACTIVITIES	5
ARTICLE 5	DEDICATION OF ASSETS	5
SECTION 5.1	PROPERTY DEDICATED TO NONPROFIT PURPOSES	5
SECTION 5.2	DISTRIBUTION OF ASSETS UPON DISSOLUTION	5
ARTICLE 6	MEMBERSHIPS	5
SECTION 6.1	MEMBERS	5
ARTICLE 7	DIRECTORS	5
SECTION 7.1	NUMBER, QUALIFICATIONS, NOMINATION AND ELECTION	5
7.1.1	Number	5
7.1.2	Qualifications, Nomination and Election: First Six (6) years of Corporation's Existence	6
7.1.3	Qualifications, Nomination and Election: After the first six (6) years of the Corporation's existence	7
SECTION 7.2	CORPORATE POWERS EXERCISED BY BOARD	9
SECTION 7.3	TERMS; ELECTION OF SUCCESSORS	9
SECTION 7.4	VACANCIES	9
7.4.1	Events Causing Vacancy	9
7.4.2	Removal	9
7.4.3	No Removal on Reduction of Number of Directors	9
7.4.4	Resignations	10
7.4.5	Election to Fill Vacancies	10
SECTION 7.5	REGULAR MEETINGS AND NOTICE OF MEETINGS TO THE PUBLIC	10
SECTION 7.6	SPECIAL MEETINGS	11
SECTION 7.7	NOTICE OF MEETINGS TO DIRECTORS	11
7.7.1	Manner of Giving to Directors	11
SECTION 7.8	PLACE OF BOARD MEETINGS	11
SECTION 7.9	QUORUM AND ACTION OF THE BOARD	11
7.9.1	Quorum	11
7.9.2	Minimum Vote Requirements for Valid Board Action	12
7.9.3	When a Greater Vote Is Required for Valid Board Action	12
SECTION 7.10	WAIVER OF NOTICE TO DIRECTORS	12
SECTION 7.11	ADJOURNMENT	12
SECTION 7.12	NOTICE OF ADJOURNMENT TO DIRECTORS	12
SECTION 7.13	CONDUCT OF MEETINGS	12
SECTION 7.14	FEES AND COMPENSATION OF DIRECTORS	13
SECTION 7.15	NON-LIABILITY OF DIRECTORS	13

ARTICLE 8	COMMITTEES.....	13
SECTION 8.1	COMMITTEES OF DIRECTORS	13
SECTION 8.2	MEETINGS AND ACTION OF BOARD COMMITTEES	14
SECTION 8.3	QUORUM RULES FOR BOARD COMMITTEES	14
SECTION 8.4	REVOCATION OF DELEGATED AUTHORITY	14
SECTION 8.5	NONPROFIT INTEGRITY ACT/AUDIT COMMITTEE.....	14
SECTION 8.6	ADVISORY COMMITTEES	15
ARTICLE 9	OFFICERS	15
SECTION 9.1	OFFICERS	15
SECTION 9.2	ELECTION OF OFFICERS	15
SECTION 9.3	REMOVAL OF OFFICERS	15
SECTION 9.4	RESIGNATION OF OFFICERS	15
SECTION 9.5	VACANCIES IN OFFICES	15
SECTION 9.6	RESPONSIBILITIES OF OFFICERS	16
9.6.1	Chairperson of the Board.....	16
9.6.2	President.....	16
9.6.3	Vice President.....	16
9.6.4	Secretary.....	16
9.6.5	Chief Financial Officer.....	17
9.6.6	Additional Officers	17
SECTION 9.7	CHIEF EXECUTIVE.....	17
SECTION 9.8	COMPENSATION OF OFFICERS	18
9.8.1	Salaries Fixed by Board.....	18
9.8.2	Fairness of Compensation	18
ARTICLE 10	TRANSACTIONS BETWEEN CORPORATION AND DIRECTORS OR OFFICERS .	18
SECTION 10.1	CONFLICT OF INTEREST	18
SECTION 10.2	TRANSACTIONS WITH DIRECTORS AND OFFICERS.....	18
SECTION 10.3	LOANS TO DIRECTORS AND OFFICERS	19
SECTION 10.4	INTERLOCKING DIRECTORATES	19
SECTION 10.5	DUTY OF LOYALTY: CONSTRUCTION WITH ARTICLE 11	19
ARTICLE 11	INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS...	19
SECTION 11.1	DEFINITIONS	19
11.1.1	“Agent”.....	19
11.1.2	“Proceeding”.....	19
11.1.3	“Expenses”	19
SECTION 11.2	APPLICABILITY OF INDEMNIFICATION PROVISIONS.....	19
11.2.1	Successful Defense by Agent	20
11.2.2	Settlement or Unsuccessful Defense by Agent.....	20
SECTION 11.3	ACTIONS BROUGHT BY PERSONS OTHER THAN THE CORPORATION.....	20
11.3.1	Scope of Indemnification in Third Party Proceedings.....	20
11.3.2	Required Standard of Conduct for Indemnification in Third Party Proceedings.....	20
SECTION 11.4	ACTION BROUGHT BY OR ON BEHALF OF THE CORPORATION	20
11.4.1	Scope of Indemnification in Proceeding By or On Behalf Of the Corporation.....	20
11.4.2	Required Standard of Conduct for Indemnification in Proceeding By or On Behalf Of the Corporation.....	21
11.4.3	Claims Settled Out of Court	21
11.4.4	Claims and Suits Awarded Against Agent	21
SECTION 11.5	DETERMINATION OF AGENT’S GOOD FAITH CONDUCT.....	21
SECTION 11.6	LIMITATIONS	21
SECTION 11.7	ADVANCE OF EXPENSES	22
SECTION 11.8	CONTRACTUAL RIGHTS OF NON-DIRECTORS AND NON-OFFICERS	22
SECTION 11.9	INSURANCE.....	22

ARTICLE 12	CORPORATE RECORDS, REPORTS AND SEAL	22
SECTION 12.1	MINUTE BOOK	22
SECTION 12.2	BOOKS AND RECORDS OF ACCOUNT	22
SECTION 12.3	ARTICLES OF INCORPORATION AND BYLAWS	22
SECTION 12.4	MAINTENANCE AND INSPECTION OF FEDERAL TAX EXEMPTION APPLICATION AND ANNUAL INFORMATION RETURNS.....	22
SECTION 12.5	ANNUAL REPORT; STATEMENT OF CERTAIN TRANSACTIONS	23
SECTION 12.6	DIRECTORS' RIGHTS OF INSPECTION.....	23
SECTION 12.7	CORPORATE SEAL.....	23
ARTICLE 13	EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS	23
SECTION 13.1	EXECUTION OF INSTRUMENTS.....	24
SECTION 13.2	CHECKS AND NOTES	24
SECTION 13.3	DEPOSITS	24
SECTION 13.4	GIFTS	24
ARTICLE 14	CONSTRUCTION AND DEFINITIONS	24
ARTICLE 15	AMENDMENTS	24
SECTION 15.1	AMENDMENT BY DIRECTORS.....	24
CERTIFICATE OF SECRETARY	26

DEFINED TERMS USED IN THIS DOCUMENT

- “annual meeting” – Section 7.5
- “Articles of Incorporation” – Section 7.2
- “Attorney General” – Section 7.4.4
- “Board” – Section 7.2
- “California Nonprofit Corporation Law” – Section 3.1
- “Chairperson” – Section 9.6.1
- “Code” –Section 4.2
- “Committees” – Section 8.1
- “Corporation” – Section 1.1
- “Directors” – Section 7.1.1
- “e-mail” – Section 7.7.1
- “Officers” – Section 9.1
- “President” – Section 9.6.2
- “Secretary” – Section 9.6.4
- “Chief Financial Officer” – Section 9.6.5
- “Vice President” – Section 9.6.3

ARTICLE 1 NAME

Section 1.1 Corporate Name

The name of this corporation is _____ (the "Corporation").

ARTICLE 2 OFFICES

Section 2.1 Principal Office

The principal office for the transaction of the business of the Corporation shall be established in the City of Los Angeles by resolution of the Board.

Section 2.2 Other Offices

The Board may at any time establish branch or subordinate offices at any place or places where the Corporation is qualified to transact business.

ARTICLE 3 PURPOSES

Section 3.1 General Purpose

The Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Corporation Law of California ("California Nonprofit Corporation Law") for charitable purposes.

Section 3.2 Specific Purpose

The specific purpose of the Corporation shall include, but not be limited to, providing mitigation projects related to impacts from operations at the Port of Los Angeles and in accordance with Harbor Department Agreement No. 09-2764 (the "TraPac MOU"). The Nonprofit may develop and fund off-port wetlands restoration and coastal trail projects.

Section 3.3 Tidelands Trust Funds

One of the purposes of the Corporation shall include the receipt, expenditure, and accounting of any funds originating from the Port Community Mitigation Trust Fund ("PCMTF") under Harbor Department Agreement No. 09-2764 (the "TraPac MOU"). The Corporation shall comply with the TraPac MOU, the Operating Agreement for the TraPac Nonprofit, the Tidelands Trust (the common law Public Trust Doctrine, Chapter 656, Statutes of 1911 as amended, and the California Constitution), and other applicable law with respect to Port Trust assets (assets received from the PCMTF including any proceeds from investments thereon).

Section 3.4 Public Participation

The Board shall call, notice, and conduct all meetings pursuant to the provisions of Section 54950 et. seq. of the Government Code ("Government Code" or "Ralph M. Brown Act") as amended from time to time, relating to meetings of local agencies. Should any section of these bylaws fail to comport with the provisions of the Ralph M. Brown Act, then the provisions of the Government Code shall control. Subject to the foregoing, nothing herein is intended as a representation regarding the Act's applicability to this Corporation or its future applicability should this Corporation no longer receive or expend Port Trust funds.

ARTICLE 4 LIMITATIONS

Section 4.1 Political Activities

The Corporation has been formed under California Nonprofit Corporation Law for the charitable purposes described in Article 3, and it shall be nonprofit and nonpartisan. No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in any political campaign (including the publishing or distribution of statements) on behalf of, or in opposition to, any candidate for public office.

Section 4.2 Prohibited Activities

The Corporation shall not, except in any insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes described in Article 3. The Corporation may not carry on any activity for the profit of its Officers, Directors or other persons or distribute any gains, profits or dividends to its Officers, Directors or other persons as such. Furthermore, nothing in Article 3 shall be construed as allowing the Corporation to engage in any activity not permitted to be carried on (i) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") or (ii) by a corporation, contributions to which are deductible under section 170(c)(2) of the Code.

ARTICLE 5 DEDICATION OF ASSETS

Section 5.1 Property Dedicated to Nonprofit Purposes

The property of the Corporation is irrevocably dedicated to charitable purposes. No part of the income statement or balance sheet of this Corporation shall ever inure to the benefit of any of its Directors or Officers, or to the benefit of any private person, except that the Corporation is authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 3 hereof.

Section 5.2 Distribution of Assets Upon Dissolution

Upon the dissolution or winding up of the Corporation, Port Trust assets and funds remaining after payment, or provision for payment, of all debts and liabilities for previously approved Tidelands Trust projects or expenditures of the Corporation shall be distributed to the PCMTF to be used solely for charitable mitigation purposes consistent with the TraPac MOU and Tidelands Trust. All non-Tidelands Trust related funds shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under Section 501(c)(3) of the Code.

ARTICLE 6 MEMBERSHIPS

Section 6.1 Members

The Corporation shall have no members within the meaning of section 5056 of the California Nonprofit Corporation Law.

ARTICLE 7 DIRECTORS

Section 7.1 Number, Qualifications, Nomination and Election

7.1.1 Number

The authorized number of directors of the Corporation ("Directors") shall be seven (7) members.

7.1.2

Qualifications, Nomination and Election: First Six (6) years of Corporation's Existence

Qualifications

Each director position that may be authorized during the first six years of the Corporation's existence has been identified by a letter and a description of any specific qualifications that are to be a prerequisite for service in that position. The specific qualifications for Directors A through G respectively are as follows:

Director A: This Director shall be selected by the TraPac Appellants ("TraPac Appellants"), an unincorporated association, and shall be an individual TraPac Appellant or a member or employee of an organizational TraPac Appellant who lives or works in the community of Wilmington.

Director B: This Director shall be selected by the TraPac Appellants and shall be an individual TraPac Appellant or a member or employee of an organizational TraPac Appellant who lives or works in the community of San Pedro.

Director C: This Director shall be nominated by the Los Angeles City Council member representing the 15th Council District and shall work in coastal conservation, community economic development, environmental sciences, or safety.

Director D: This Director shall be nominated by the Mayor of Los Angeles and shall have a demonstrated commitment to labor in the Los Angeles area and must have experience working in coalition with both community and environmental groups

Director E: This Director shall be jointly selected by an officer of the USC Keck School of Medicine ("Keck"), an officer of the USC Program for Environmental and Regional Equity ("PERE"), and the TraPac Appellants, with the concurrence of the Board of Harbor Commissioners or its designee. The representatives of each of Keck, PERE, and the TraPac Appellants responsible for selecting this Director shall cooperate to identify and meet at least once to discuss the selection of this Director

Director F: This Director shall be jointly selected by an officer of the Los Angeles County Department of Public Health ("LADPH") and the TraPac Appellants, with the concurrence of the Board of Harbor Commissioners or its designee. The representatives of both the LADPH and the TraPac Appellants selecting this Director shall cooperate to identify and meet at least once to discuss the selection of this Director.

Director G: This Director shall be jointly selected by an officer of the Luskin Center at the UCLA Department of Urban Planning ("Luskin Center") and the TraPac Appellants, with the concurrence of Board of Harbor Commissioners or its designee. The representatives of both the Luskin Center and the TraPac Appellants selecting this Director shall cooperate to identify and meet at least once to discuss the selection of this Director.

In addition, at least one of the foregoing Directors shall have significant knowledge of financial management issues.

No Director shall be a current or former employee of the Harbor Department, nor shall he or she be a relative of such an employee of the Harbor Department. Unless he or she is also a current member of a trade union, no Director shall be a current or former employee of a direct paid contractor of the Harbor Department. No Director shall be a current member of the Los Angeles City County Council or the Board of Harbor Commissioners or a relative of such council member or commissioner. No Director shall be a current or former employee of this Corporation or a

relative of such current or former employee. Relatives for the purpose of this section shall include parents, parents-in-law, sons, daughters, spouses, domestic partners, brothers, sisters, aunts, uncles, grandparents, and brothers-in-law and sisters-in-law.

Notwithstanding the foregoing, a former employee of the Harbor Department or of its direct paid contractors or of this Corporation shall be eligible to serve as a Director once he or she has been separated from such employment for at least one (1) year.

Further, in no event shall more than two (2) Directors serving at any one time be either an individual or organizational representative of the TraPac Appellants.

For the purposes of these bylaws, the membership of the TraPac Appellants shall be as set forth in its governing documents as amended from time to time. While a group may elect to withdraw from the TraPac Appellants, no additional members may be added to the TraPac Appellants for the purposes of selecting the Directors of this Nonprofit. Currently, the members of the TraPac Appellants are: Communities for a Better Environment, American Lung Association, Change to Win, the International Brotherhood of Teamsters, Los Angeles Alliance for a New Economy, Coalition for Clean Air, Natural Resources Defense Council, the San Pedro Peninsula Homeowners Coalition, Coalition for a Safe Environment, Kathleen Woodfield, Chuck Hart, Environmental Priorities Network, Earth Day LA, Communities for Clean Ports, Harbor Watts Economic Development Corporation, and Physicians for Social Responsibility.

Election of Initial Board

Directors A and B of the initial Board of Directors of the Corporation (the "Board") must be elected by a majority vote of the Executive Committee of the TraPac Appellants; the exact procedure and rules of the election shall be determined by the Executive Committee of the TraPac Appellants.

Director positions A and B for the initial Board must be filled before any other Director positions, and all positions must be filled in accordance with the qualifications and restrictions described above.

Additional Responsibilities of Directors

All Directors must agree in writing to fulfill their responsibilities to the organization, including fulfilling the duties of a Director, promoting the organization, and participating and contributing in a positive manner in organizational activities.

All Directors must agree in writing to assist in raising funds for the organization in an amount to be determined by the board.

7.1.3 Qualifications, Nomination and Election: After the first six (6) years of the Corporation's existence

Qualifications

After the first six years of the Corporation's existence, each Director position must be filled according to its respective specified qualifications, if any, in alphabetical order (A-G), provided however that in no event shall more than two (2) Directors be an individual or organizational representative of the TraPac Appellants.

Director A: This Director has no specified qualifications.

Director B: This Director shall live or work in the community of Wilmington.

Director C: This Director shall live or work in the communities of San Pedro.

Director D: This Director shall work in coastal conservation, community economic development, environmental science, or safety.

Director E: This Director shall have a demonstrated commitment to environmental justice.

Director F: This Director shall have technical expertise in public health, including but not limited to a medical degree or a master's degree or doctoral degree in Public Health, Law, or related fields.

Director G: This Director shall have a demonstrated commitment to labor in the Los Angeles area and must have experience working in coalition with both community and environmental groups.

In addition, at least one of the foregoing Directors shall have significant knowledge of financial management issues.

No Director shall be a current or former employee of the Harbor Department, nor shall he or she be a relative of such an employee of the Harbor Department. Unless he or she is also a current member of a trade union, no Director shall be a current or former employee of a direct paid contractor of the Harbor Department. No Director shall be a current member of the Los Angeles City County Council or the Board of Harbor Commissioners or a relative of such council member or commissioner. No Director shall be a current or former employee of this Corporation or a relative of such current or former employee. Relatives for the purpose of this section shall include parents, parents-in-law, sons, daughters, spouses, domestic partners, brothers, sisters, aunts, uncles, grandparents, and brothers-in-law and sisters-in-law.

Notwithstanding the foregoing, a former employee of the Harbor Department or of its direct paid contractors or of this Corporation shall be eligible to serve as a Director once he or she has been separated from such employment for at least one (1) year.

Nomination

After the first six years of the Corporation's existence, each candidate for a Director position must be nominated by a current Director.

The names of such nominee or nominees shall be presented to the Board of Directors of the Corporation for election by majority vote.

Additional Responsibilities of Directors

All Directors must agree in writing to fulfill their responsibilities to the organization, including fulfilling the fiduciary duties of a Director, promoting the organization, and participating and contributing in a positive manner in organizational activities.

All Directors must agree in writing to assist in raising funds for the organization, in an amount to be determined by the Board.

Section 7.2 Corporate Powers Exercised by Board

Subject to the provisions of the Articles of Incorporation of the Corporation (the "Articles of Incorporation"), California Nonprofit Corporation Law and any other applicable laws, the business and affairs of the Corporation shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board. The Board may delegate the management of the activities of the Corporation to any person or persons, management company or committee however composed, provided that the activities and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

Section 7.3 Terms; Election of Successors

Directors shall be elected at each annual meeting of the Board for two year terms. Each Director, including a Director appointed or elected to fill a vacancy, shall hold office until the expiration of the term for which he or she was appointed or elected and until the appointment or election and qualification of a successor, or until that Director's earlier resignation or removal in accordance with these Bylaws and California Nonprofit Corporation Law. By resolution, the Board may arrange for terms to be staggered. No Director shall serve for more than three terms, inclusive of partial terms, whether or not such terms are consecutive.

Section 7.4 Vacancies

7.4.1 Events Causing Vacancy

A vacancy or vacancies on the Board shall be deemed to exist on the occurrence of the following: (i) the death, resignation, or removal of any Director; (ii) whenever the number of authorized Directors is increased; or (iii) the failure to appoint or elect the full authorized number of Directors.

In the event that any Director becomes ineligible pursuant to the specifications of Section 7.1.3 and Section 7.1.2, then that Director Position shall become vacant automatically without further action required for removal.

7.4.2 Removal

The Board may by resolution declare vacant the office of a Director who has been declared of unsound mind by an order of court, or convicted of a felony, or found by final order or judgment of any court to have breached a duty under California Nonprofit Corporation Law.

The Board may by resolution declare vacant the office of a director who fails to attend three (3) consecutive Board meetings during any calendar year.

The Board may, by a majority vote of the Directors who meet all of the required qualifications to be a Director set forth in Section 7.1.2 during the first six years of the Corporation's existence and 7.1.3 thereafter, declare vacant the office of any Director who fails or ceases to meet any required qualification that was in effect at the beginning of that Director's current term of office.

Directors may be removed for good cause by a majority of Directors then in office.

7.4.3 No Removal on Reduction of Number of Directors

No reduction of the authorized number of Directors shall have the effect of removing any Director before that Director's term of office expires unless the reduction also provides for the removal of that specified Director in accordance with these Bylaws and California Nonprofit Corporation Law.

7.4.4 Resignations

Except as provided in this Section 7.4.4, any Director may resign by giving written notice to the Chairperson, the President, the Secretary, or the Board. Such a written resignation will be effective on the later of (i) the date it is delivered or (ii) the time specified in the written notice that the resignation is to become effective. No Director may resign if the Corporation would then be left without a duly elected Director or Directors in charge of its affairs, except upon notice to the California Attorney General (the "Attorney General").

7.4.5 Election to Fill Vacancies

Should a vacancy occur in the office of a Director during the first six years of this Corporation's existence, the vacancy shall be filled as soon as practicable pursuant to the nomination provisions and restrictions for that Director's position as specified in Section 7.1.2. Should a vacancy occur in the office of a Director after the first six years of this Corporation's existence, the vacancy shall be filled as soon as practicable pursuant to the nomination provisions and restrictions for that Director's position as specified in Section 7.1.3.

Should a vacancy occur in the office of any Director during the first six years of the Corporation's existence, including a vacancy created by the removal of a Director, the Chairman of the Board shall immediately notify the Executive Committee of the TraPac Appellants.

If a vacancy occurs, the names of such nominee or nominees shall be presented to the Board of Directors of the Corporation for election by majority vote. If there is a vacancy on the Board, the Board shall fill such vacancy by electing an additional, qualified director as soon as practicable after the vacancy occurs, provided that the nomination process shall conform to Section 7.1.2 and Section 7.1.3. If the number of Directors then in office is less than a quorum, additional directors may be elected to fill such vacancies by (i) the unanimous written consent of the Directors then in office, (ii) the affirmative vote of a majority of the Directors in office at a meeting held according to notice or waivers complying with section 5211 of the California Nonprofit Corporation Law, or (iii) a sole remaining Director.

Whenever the positions for Director A and/or B are vacant at the same time that one or more additional Director positions are vacant, the vacancies for Directors A and B shall be filled first.

Section 7.5 Regular Meetings and Notice of Meetings to the Public

Each year, the Board shall hold at least one meeting, at a time and place fixed by the Board, for the purposes of the appointment or election of Directors, appointment of Officers, review and approval of the corporate budget and transaction of other business. This meeting is sometimes referred to in these Bylaws as the "annual meeting."

Other regular meetings of the Board, subject to exception for good cause, must be held at least each month such time and place as the Board may fix from time to time by resolution.

Notice. The Board shall post Notice of Regular Meetings at least 72 hours before the start of the Meeting, by resolution, bylaw, or other rule that is required for the conduct of business. The Board may post Notice of Special Meetings or all other Meetings less than 72 hours before the start of the meeting if a shorter notice period is permitted by the Ralph M. Brown Act. Notice shall include the time, place, and a brief general description of each item of business to be transacted or discussed at the meeting, including any items addressed in a closed session. Items of business shall be described with sufficient clarity to provide interested persons with an understanding of the

subject matter under consideration. But no items of business not stated in the notice shall be introduced at any Meeting.

Section 7.6 Special Meetings

Special meetings of the Board for any purpose may be called at any time by the Chairperson, or the President, or the Vice President (if any), or the Secretary, or any two Directors, and shall conform to all applicable notice provisions pursuant to the Government Code.

Section 7.7 Notice of Meetings to Directors

7.7.1 Manner of Giving to Directors

Except when the time and place of a regular meeting is set by the Board by resolution in advance (as permitted by Section 7.5), notice of the time and place of all regular and special meetings shall be given to each Director by one of the following methods:

- (a) Personal delivery of oral or written notice;
- (b) First-class mail, postage paid;
- (c) Telephone, including a voice messaging system or other system or technology designed to record and communicate messages; or
- (d) Facsimile, electronic mail ("e-mail") or other means of electronic transmission if the recipient has consented to accept notices in this manner.

All such notices shall be given or sent to the Director's address, phone number, facsimile number or e-mail address as shown on the records of the Corporation. Any oral notice given personally or by telephone may be communicated directly to the Director or to a person who would reasonably be expected to promptly communicate such notice to the Director. Notice of regular meetings may be given in the form of a calendar or schedule that sets forth the date, time and place of more than one regular meeting.

Section 7.8 Place of Board Meetings

Regular and Special Meetings of the Board shall not take place outside of Los Angeles County, except as otherwise permitted by the Government Code.

Teleconferenced Meetings

Any meeting may be held by telephone or other communications equipment permitted by California Nonprofit Corporation Law, as long as all Directors participating in the meeting can communicate with one another and all other requirements of California Nonprofit Corporation Law are satisfied. All such Directors shall be deemed to be present in person at such meeting. The teleconferenced meeting shall comply with the Ralph M. Brown Act at all times.

Section 7.9 Quorum and Action of the Board

7.9.1 Quorum

A majority of Directors then in office (but no fewer than four (4) Directors) shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 7.11.

7.9.2 Minimum Vote Requirements for Valid Board Action

Every act taken or decision made by a vote of the majority of the Directors present at a meeting duly held at which a quorum is present is the act of the Board, unless a greater number is expressly required by California Nonprofit Corporation Law, the Articles of Incorporation or these Bylaws. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors from the meeting, if any action taken is approved by at least a majority of the required quorum for that meeting.

7.9.3 When a Greater Vote Is Required for Valid Board Action

The following actions shall require a vote by a majority of all Directors then in office in order to be effective:

- (a) Approval of contracts or transactions in which a Director has a direct or indirect material financial interest as described in Section 10.1 (provided that the vote of any interested Director(s) is not counted);
- (b) Creation of, and appointment to, Committees (but not advisory committees) as described in Section 8.1;
- (c) Removal of a Director without cause as described in Section 7.4.2; and
- (d) Indemnification of Directors as described in Article 11.

Section 7.10 Waiver of Notice to Directors

The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (i) a quorum is present, and (ii) either before or after the meeting, each of the Directors who is not present at the meeting signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent does not need to specify the purpose of the meeting. All waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Also, notice of a meeting is not required to be given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice. Directors can protest the lack of notice only by presenting a written protest to the Secretary either in person, by first-class mail addressed to the Secretary at the principal office of the Corporation as contained on the records of the Corporation as of the date of the protest, or by facsimile addressed to the facsimile number of the Corporation as contained on the records of the Corporation as of the date of the protest.

Section 7.11 Adjournment

A majority of the Directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place specified in the notice of adjournment.

Section 7.12 Notice of Adjournment to Directors

Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than 24 hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

Section 7.13 Conduct of Meetings

Meetings of the Board shall be presided over by the Chairperson, or, if there is no Chairperson or the Chairperson is absent, the President or, if the President and Chairperson are both absent, by the Vice President (if any) or, in the absence of each of these persons, by a chairperson of the meeting,

chosen by a majority of the Directors present at the meeting. The Secretary shall act as secretary of all meetings of the Board, provided that, if the Secretary is absent, the presiding officer shall appoint another person to act as secretary of the meeting. Meetings shall be governed by rules of procedure as may be determined by the Board from time to time, insofar as such rules are not inconsistent with or in conflict with these Bylaws, with the Articles, or with any provisions of law applicable to the Corporation.

Section 7.14 Fees and Compensation of Directors

The Corporation shall not pay any compensation to Directors for services rendered to the Corporation as Directors or Officers, except that: (1) Directors may be reimbursed for expenses incurred in the performance of their duties to the Corporation, in reasonable amounts as approved by the Board and (2) Directors may receive a stipend that may not exceed the amount of stipends for service allocated to members of the Board of Harbor Commissioners, whether or not the Board of Harbor Commissioners members have waived their stipends.

Also, Directors may not be compensated for rendering services to the Corporation in a capacity other than as Directors.

Section 7.15 Non-Liability of Directors

The Directors shall not be personally liable for the debts, liabilities, or other obligations of the Corporation.

ARTICLE 8 **COMMITTEES**

Section 8.1 Committees of Directors

The Board may, by resolution adopted by a majority of the Directors then in office, create one or more Board Committees ("Committees"), including an executive committee, each consisting of two or more Directors, to serve at the discretion of the Board. Should the number of Directors on any Committee be equal or greater than the number constituting quorum for the Board, then the Committee must conduct its proceedings in accordance with the Government Code. Any Committee, to the extent provided in the resolution of the Board, may be given the authority of the Board except that no Committee may:

- (a) approve any action for which the California Nonprofit Corporation Law also requires approval of the members or approval of a majority of all members;
- (b) fill vacancies on the Board or in any Committee which has the authority of the Board;
- (c) fix compensation of the Directors for serving on the Board or on any Committee;
- (d) amend or repeal Bylaws or adopt new Bylaws;
- (e) amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- (f) appoint any other Committees or the members of these Committees;
- (g) expend corporate funds to support a nominee for Director after more persons have been nominated than can be elected; or

- (h) approve Projects on behalf of the full Board for recommendation to the Board of Harbor Commissioners

Section 8.2 Meetings and Action of Board Committees

Meetings and action of Committees shall be governed by, and held and taken in accordance with, the provisions of Article 7 concerning meetings of Directors, with such changes in the context of Article 7 as are necessary to substitute the Committee and its members for the Board and its members, except that the time for regular meetings of Committees may be determined by resolution of the Board, and special meetings of Committees may also be called by resolution of the Board. Minutes shall be kept of each meeting of any Committee and shall be filed with the corporate records. The Committee shall report to the Board from time to time as the Board may require. The Board may adopt rules for the governance of any Committee not inconsistent with the provisions by these Bylaws. In the absence of rules adopted by the Board, the Committee may adopt such rules.

Section 8.3 Quorum Rules for Board Committees

A majority of the Committee members shall constitute a quorum for the transaction of Committee business, except to adjourn. A majority of the Committee members present, whether or not constituting a quorum, may adjourn any meeting to another time and place. Every act taken or decision made by a majority of the Committee members present at a meeting duly held at which a quorum is present shall be regarded as an act of the Committee, subject to the provisions of the California Nonprofit Corporation Law relating to actions that require a majority vote of the entire Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Committee members, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 8.4 Revocation of Delegated Authority

The Board may, at any time, revoke or modify any or all of the authority that the Board has delegated to a Committee, increase or decrease (but not below two) the number of members of a Committee, and fill vacancies in a Committee from the members of the Board.

Section 8.5 Nonprofit Integrity Act/Audit Committee

In any fiscal year in which the Corporation receives or accrues gross revenues of two million dollars or more (excluding grants from, and contracts for services with, governmental entities for which the governmental entity requires an accounting of the funds received), the Board shall (i) prepare annual financial statements using generally accepted accounting principles that are audited by an independent certified public accountant ("CPA") in conformity with generally accepted auditing standards; (ii) make the audit available to the Attorney General and to the public on the same basis that the Internal Revenue Service Form 990 is required to be made available; and (iii) appoint an Audit Committee.

The Audit Committee shall not include paid or unpaid staff or employees of the Corporation, including, if staff members or employees, the President or chief executive officer or chief financial officer (if any). If there is a finance committee, members of the finance committee shall constitute less than 50% of the membership of the Audit Committee and the chairperson of the Audit Committee shall not be a member of the finance committee. Subject to the supervision of the Board, the Audit Committee shall:

- (a) make recommendations to the Board on the hiring and firing of the CPA;

- (b) confer with the CPA to satisfy Audit Committee members that the financial affairs of the Corporation are in order;
- (c) approve non-audit services by the CPA and ensure such services conform to standards in the Yellow Book issued by the United States Comptroller General; and
- (d) if requested by the Board, negotiate the CPA's compensation on behalf of the Board.

Section 8.6

Advisory Committees

The Board may create one or more advisory committees to serve at the pleasure of the Board. Appointments to such advisory committees need not, but may, be Directors. The Board shall appoint and discharge advisory committee members. All actions and recommendations of an advisory committee shall require ratification by the Board before being given effect.

ARTICLE 9 OFFICERS

Section 9.1 Officers

The officers of the Corporation ("Officers") shall be either a President or a Chairperson, or both, a Secretary, and a Chief Financial Officer. Other than the Chairperson, these persons may, but need not be, selected from among the Directors. The Board shall have the power to designate additional Officers, including a Vice President, who also need not be Directors, with such duties, powers, titles and privileges as the Board may fix, including such Officers as may be appointed in accordance with Section 9.6.6. Any number of offices may be held by the same person, except that neither the Secretary nor the Chief Financial Officer may serve concurrently as either the President or the Chairperson.

Section 9.2 Election of Officers

The Officers, except those appointed in accordance with Section 9.6.6, shall be elected by the Board at the annual meeting of the Corporation for a term of one year, and each shall serve at the discretion of the Board until his or her successor shall be elected, or his or her earlier resignation or removal. Officers may be elected for [4] four (4) consecutive terms.

Section 9.3 Removal of Officers

Subject to the rights, if any, of an Officer under any contract of employment, any Officer may be removed, with or without cause, (i) by the Board, at any regular or special meeting of the Board, or at the annual meeting of the Corporation, or (ii) by an Officer on whom such power of removal may be conferred by the Board.

Section 9.4 Resignation of Officers

Any Officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any of the Corporation under any contract to which the Officer is a party.

Section 9.5 Vacancies in Offices

A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office, provided that such vacancies shall be filled as they occur and not on an annual basis. In the

event of a vacancy in any office other than the President or one appointed in accordance with Section 9.6.6, such vacancy shall be filled temporarily by appointment by the President, or if none, by the Chairperson, and the appointee shall remain in office for 60 days, or until the next regular meeting of the Board, whichever comes first. Thereafter, the position can be filled only by action of the Board.

Section 9.6 Responsibilities of Officers

9.6.1 Chairperson of the Board

The chairperson of the Board (the "Chairperson"), if any, shall be a Director and shall preside at meetings of the Board and exercise and perform such other powers and duties as may from time to time be assigned to him by the Board or prescribed by these Bylaws. If the Board designates both a Chairperson and a President, the Board shall, by resolution, establish the specific duties carried by each position.

9.6.2 President

The president of the Corporation (the "President") shall, if there is no Chairperson, or in the Chairperson's absence, preside at meetings of the Board and exercise and perform such other powers and duties as may from time to time be assigned to him by the Board or prescribed by these Bylaws. If no other person is designated as the chief executive, the President shall, in addition, be the chief executive and shall have the powers and duties prescribed in Section 9.7.

9.6.3 Vice President

The vice president of the Corporation (the "Vice President") shall, in the absence or disability of the President, perform all the duties of the President and, when so acting, have all the powers of and be subject to all the restrictions upon, the President. The Vice President shall have such other powers and perform such other duties as may be prescribed by the Board.

9.6.4 Secretary

The secretary of the Corporation (the "Secretary") shall attend to the following:

9.6.4.1 Bylaws

The Secretary shall certify and keep or cause to be kept at the principal office of the Corporation the original or a copy of these Bylaws as amended to date.

9.6.4.2 Minute Book

The Secretary shall keep or cause to be kept a minute book as described in Section 12.1.

9.6.4.3 Notices

The Secretary shall give, or cause to be given, notice of all meetings of the Board in accordance with these Bylaws.

9.6.4.4 Corporate Records

Upon request, the Secretary shall exhibit or cause to be exhibited at all reasonable times to any Director, or to his or her agent or attorney, these Bylaws and the minute book.

9.6.4.5 Corporate Seal and Other Duties

The Secretary shall keep or cause to be kept the seal of the Corporation, if any, in safe custody, and shall have such other powers and perform such other duties incident to the office of Secretary as may be prescribed by the Board or these Bylaws.

9.6.5 Chief Financial Officer

The Chief Financial Officer of the Corporation (the "Chief Financial Officer") shall attend to the following:

9.6.5.1 Books of Account

The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements. The books of account shall be open to inspection by any Director at all reasonable times. The books and records of accounts shall contain separate identifiable entries of all receipts and expenditures of funds received or expended pursuant to that certain Agreement, the Memorandum of Understanding by and between the City of Los Angeles Harbor Department and the Appellants dated as of July 15, 2009..

9.6.5.2 Financial Reports

The Chief Financial Officer shall prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.

9.6.5.3 Deposit and Disbursement of Money and Valuables

The Chief Financial Officer shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board; shall disburse, or cause to be disbursed, the funds of the Corporation as may be ordered by the Board; shall render, or cause to be rendered to the President and Directors, whenever they request it, an account of all of his or her transactions as Chief Financial Officer and of the financial condition of the Corporation; and shall have other powers and perform such other duties incident to the office of Chief Financial Officer as may be prescribed by the Board or these Bylaws.

9.6.5.4 Bond

If required by the Board, the Chief Financial Officer shall give the Corporation a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of his office and for restoration to the Corporation of all its books, papers, vouchers, money, and other property of every kind in his possession or under his control on his death, resignation, retirement, or removal from office.

9.6.6 Additional Officers

The Board may empower the Chairperson, President, or chief executive, to appoint or remove such other Officers as the business of the Corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board from time to time may determine.

Section 9.7 Chief Executive

Subject to such supervisory powers as may be given by the Board to the Chairperson or President, the Board may hire a chief executive who shall be the general manager of the Corporation, and subject to the control of the Board, shall supervise, direct and control the Corporation's day-to-day activities, business and affairs. The chief executive (who may be referred to as the "chief executive officer" or "executive director" shall be empowered to hire, supervise and fire all of the employees of the Corporation, under such terms and having such job responsibilities as the chief executive shall determine in his or her sole discretion, subject to the rights, if any, of the employee

under any contract of employment. The chief executive may delegate his or her responsibilities and powers subject to the control of the Board. He or she shall have such other powers and duties as may be prescribed by the Board or these Bylaws. Additionally, the Board may, by resolution, appoint the chief executive as an Officer.

Section 9.8 Compensation of Officers

9.8.1 Salaries Fixed by Board

The salaries of Officers, if any, shall be fixed from time to time by resolution of the Board or by the person or Committee to whom the Board has delegated this function, provided however that no Director who serves as an Officer shall be eligible for compensation, except for reimbursement for reasonable expenses and the stipend, if any, authorized pursuant to Section 7.14. In all cases, any salaries received by Officers shall be reasonable and given in return for services actually rendered for the Corporation which relate to the performance of the public benefit purposes of the Corporation. Officers may not be compensated for rendering services to the Corporation in a capacity other than as an Officer.

9.8.2 Fairness of Compensation

The Board shall periodically review the fairness of compensation, including benefits, paid to every person, regardless of title, with powers, duties, or responsibilities comparable to the president, chief executive officer or chief financial officer (i) once such person is hired, (ii) upon any extension or renewal of such person's term of employment, and (iii) when such person's compensation is modified (unless all employees are subject to the same general modification of compensation).

ARTICLE 10 TRANSACTIONS BETWEEN CORPORATION AND DIRECTORS OR OFFICERS

Section 10.1 Conflict of Interest

A conflict of interest may exist when the interests of any director, officer or employee of the Corporation, or the interests of that person's close relative, or of any individual, group or organization to which that person may have allegiance, may be seen as competing with the interests of the Corporation, or may impair such person's independence or loyalty to the Corporation. All such competing interests, including but not limited to any contract or transaction between the Corporation and its directors, officers or employees, shall be subject to the Corporation's conflict of interest policy or policies from time to time in place, and applicable sections of the Law and the Internal Revenue Code governing standards of conduct between a nonprofit tax-exempt organization and its directors, officers or employees.

Section 10.2 Transactions with Directors and Officers

The Corporation shall not be a party to any transaction:

- (a) in which one or more of its Directors or Officers has a material financial interest, or
- (b) with any corporation, firm, association, or other entity in which one or more Directors or Officers has a material financial interest. An Officer shall not be deemed to have a material financial interest in a transaction that fixes the compensation of an Officer.

Section 10.3 Loans to Directors and Officers

The Corporation shall not make any loan of money or property to or guarantee the obligation of any Director or Officer; except that, however, the Corporation may advance money to a Director or Officer for expenses reasonably anticipated to be incurred in the performance of duties of such Director or Officer, if in the absence of such advance, such Director or Officer would be entitled to be reimbursed for such expenses by the Corporation.

Section 10.4 Interlocking Directorates

No contract or other transaction between the Corporation and any corporation, firm or association of which one or more Directors are directors is either void or voidable because such Director(s) are present at the Board or Committee meeting that authorizes, approves or ratifies the contract or transaction, if (i) the material facts as to the transaction and as to such Director's other directorship are fully disclosed or known to the Board or Committee, and the Board or Committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the common Director(s) (subject to the quorum provisions of Article 7); or if (ii) the contract or transaction is just and reasonable as to the Corporation at the time it is authorized, approved or ratified.

Section 10.5 Duty of Loyalty; Construction with Article 11

Nothing in this Article 10 shall be construed to derogate in any way from the absolute duty of loyalty that every Director and Officer owes to the Corporation. Furthermore, nothing in this Article 10 shall be construed to override or amend the provisions of Article 11. All conflicts between the two articles shall be resolved in favor of Article 11.

ARTICLE 11 INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS

Section 11.1 Definitions

For purpose of this Article 11,

11.1.1 "Agent"

means any person who is or was a Director, Officer, employee, or other agent of the Corporation, or is or was serving at the request of the Corporation as a Director, Officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a Director, Officer, employee, or agent of a foreign or domestic corporation that was a predecessor corporation of the Corporation or of another enterprise at the request of the predecessor corporation;

11.1.2 "Proceeding"

means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and

11.1.3 "Expenses"

includes, without limitation, all attorneys' fees, costs, and any other expenses reasonably incurred in the defense of any claims or proceedings against an Agent by reason of his or her position or relationship as Agent and all attorneys' fees, costs, and other expenses reasonably incurred in establishing a right to indemnification under this Article 11.

Section 11.2 Applicability of Indemnification Provisions

11.2.1 Successful Defense by Agent

To the extent that an Agent has been successful on the merits in the defense of any proceeding referred to in this Article 11, or in the defense of any claim, issue, or matter therein, the Agent shall be indemnified against expenses actually and reasonably incurred by the Agent in connection with the claim.

11.2.2 Settlement or Unsuccessful Defense by Agent

If an Agent either settles any proceeding referred to in this Article 11, or any claim, issue, or matter therein, or sustains a judgment rendered against him, then the provisions of Section 11.3 through Section 11.6 shall determine whether the Agent is entitled to indemnification.

Section 11.3 Actions Brought by Persons Other than the Corporation

This Section 11.3 applies to any proceeding other than an action "by or on behalf of the corporation" as defined in Section 11.4. Such proceedings that are not brought by or on behalf of the Corporation are referred to in this Section 11.3 as "Third Party proceedings."

11.3.1 Scope of Indemnification in Third Party Proceedings

Subject to the required findings to be made pursuant to Section 11.3.2, the Corporation *may* indemnify any person who was or is a party, or is threatened to be made a party, to any Third Party proceeding, by reason of the fact that such person is or was an Agent, for all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the proceeding.

11.3.2 Required Standard of Conduct for Indemnification in Third Party Proceedings

Any indemnification granted to an Agent in Section 11.3.1 above is conditioned on the following. The Board must determine, in the manner provided in Section 11.5, that the Agent seeking reimbursement acted in good faith, in a manner he or she reasonably believed to be in the best interest of the Corporation, and, in the case of a criminal proceeding, he or she must have had no reasonable cause to believe that his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or on a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or in a manner he or she reasonably believed to be in the best interest of the Corporation or that he or she had reasonable cause to believe that his or her conduct was unlawful.

Section 11.4 Action Brought By or On Behalf Of the Corporation

This Section 11.4 applies to any proceeding brought (i) by or in the right of the Corporation, or (ii) by an Officer, Director or person granted relator status by the Attorney General, or by the Attorney General, on the ground that the defendant Director was or is engaging in self-dealing within the meaning of section 5233 of the California Nonprofit Corporation Law, or (iii) by the Attorney General or person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust (any such proceeding is referred to in these Bylaws as a proceeding "by or on behalf of the Corporation").

11.4.1 Scope of Indemnification in Proceeding By or On Behalf Of the Corporation

Subject to the required findings to be made pursuant to Section 11.4.2, and except as provided in Sections 11.4.3 and 11.4.4, the Corporation may indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding by or on behalf of the Corporation, by reason of the fact that such person is or was an Agent, for all expenses actually and reasonably incurred in connection with the defense or settlement of such action.

11.4.2 Required Standard of Conduct for Indemnification in Proceeding By or On Behalf Of the Corporation

Any indemnification granted to an Agent in Section 11.4.1 is conditioned on the following. The Board must determine, in the manner provided in Section 11.5, that the Agent seeking reimbursement acted in good faith, in a manner he or she believed to be in the best interest of the Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

11.4.3 Claims Settled Out of Court

If any Agent settles or otherwise disposes of a threatened or pending action brought by or on behalf of the Corporation, with or without court approval, the Agent shall receive no indemnification for amounts paid pursuant to the terms of the settlement or other disposition. Also, in cases settled or otherwise disposed of without court approval, the Agent shall receive no indemnification for expenses reasonably incurred in defending against the proceeding, unless the proceeding is settled with the approval of the Attorney General.

11.4.4 Claims and Suits Awarded Against Agent

If any Agent is adjudged to be liable to the Corporation in the performance of the Agent's duty to the Corporation, the Agent shall receive no indemnification for amounts paid pursuant to the judgment, and any indemnification of such Agent under Section 11.4.1 for expenses actually and reasonably incurred in connection with the defense of that action shall be made only if both of the following conditions are met:

- (a) The determination of good faith conduct required by Section 11.4.2 must be made in the manner provided for in Section 11.5; and
- (b) Upon application, the court in which the action was brought must determine that, in view of all of the circumstances of the case, the Agent is fairly and reasonably entitled to indemnity for the expenses incurred. If the Agent is found to be so entitled, the court shall determine the appropriate amount of expenses to be reimbursed.

Section 11.5 Determination of Agent's Good Faith Conduct

The indemnification granted to an Agent in Section 11.3 and Section 11.4 is conditioned on the findings required by those Sections being made by:

- (a) the Board by a majority vote of a quorum consisting of Directors who are not parties to the proceeding; or
- (b) the court in which the proceeding is or was pending. Such determination may be made on application brought by the Corporation or the Agent or the attorney or other person rendering a defense to the Agent, whether or not the application by the Agent, attorney, or other person is opposed by the Corporation.

Section 11.6 Limitations

No indemnification or advance shall be made under this Article 11, except as provided in Section 11.2.1 or Section 11.5(b), in any circumstances when it appears:

- (a) that the indemnification or advance would be inconsistent with a provision of the Articles of Incorporation, as amended, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

- (b) that the indemnification would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Section 11.7 Advance of Expenses

Expenses incurred in defending any proceeding may be advanced by the Corporation before the final disposition of the proceeding on receipt of an undertaking by or on behalf of the Agent to repay the amount of the advance unless it is determined ultimately that the Agent is entitled to be indemnified as authorized in this Article 11.

Section 11.8 Contractual Rights of Non-Directors and Non-Officers

Nothing contained in this Article 11 shall affect any right to indemnification to which persons other than Directors and Officers of the Corporation, or any of its subsidiaries, may be entitled by contract or otherwise.

Section 11.9 Insurance

The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any Agent, as defined in this Article 11, against any liability asserted against or incurred by any Agent in such capacity or arising out of the Agent's status as such, whether or not the Corporation would have the power to indemnify the Agent against the liability under the provisions of this Article 11.

ARTICLE 12 CORPORATE RECORDS, REPORTS AND SEAL

Section 12.1 Minute Book

The Corporation shall keep a minute book in written form which shall contain a record of all actions by the Board or any committee including (i) the time, date and place of each meeting; (ii) whether a meeting is regular or special and, if special, how called; (iii) the manner of giving notice of each meeting and a copy thereof; (iv) the names of those present at each meeting of the Board or any Committee thereof; (v) the minutes of all meetings; (vi) any written waivers of notice, consents to the holding of a meeting or approvals of the minutes thereof; (vii) all written consents for action without a meeting; (viii) all protests concerning lack of notice; and (ix) formal dissents from Board actions.

Section 12.2 Books and Records of Account

The Corporation shall keep adequate and correct books and records of account. "Correct books and records" includes, but is not necessarily limited to: accounts of properties and transactions, its assets, liabilities, receipts, disbursements, gains, and losses.

Section 12.3 Articles of Incorporation and Bylaws

The Corporation shall keep at its principal office, the original or a copy of the Articles of Incorporation and Bylaws as amended to date.

Section 12.4 Maintenance and Inspection of Federal Tax Exemption Application and Annual Information Returns

The Corporation shall at all times keep at its principal office a copy of its federal tax exemption application and, for three years from their date of filing, its annual information returns. These documents shall be open to public inspection and copying to the extent required by the Code.

Section 12.5 Annual Report; Statement of Certain Transactions

The Board shall cause an annual report prepared by an independent outside auditor to be sent to each Director within 120 days after the close of the Corporation's fiscal year containing the following information:

- (a) The assets and liabilities of the Corporation as of the end of the fiscal year;
- (b) The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- (c) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for this fiscal year;
- (d) The expenses or disbursements of the Corporation for both general and restricted purposes during the fiscal year;
- (e) A statement of any transaction (i) to which the Corporation, its parent, or its subsidiary was a party, (ii) which involved more than \$50,000 or which was one of a number of such transactions with the same person involving, in the aggregate, more than \$50,000, and (iii) in which either of the following interested persons had a direct or indirect material financial interest (a mere common directorship is not a financial interest):
 - (1) Any Director or Officer of the Corporation, its parent, or its subsidiary;
 - (2) Any holder of more than 10% of the voting power of the Corporation, its parent, or its subsidiary.

The statement shall include: (i) a brief description of the transaction; (ii) the names of interested persons involved; (iii) their relationship to the Corporation; (iv) the nature of their interest in the transaction, and; (v) when practicable, the amount of that interest, provided that, in the case of a partnership in which such person is a partner, only the interest of the partnership need be stated.

- (f) A brief description of the amounts and circumstances of any loans, guaranties, indemnifications, or advances aggregating more than \$10,000 paid during the fiscal year to any Officer or Director under Article 10 or Article 11.

Section 12.6 Directors' Rights of Inspection

Every Director shall have the absolute right at any reasonable time to inspect the books, records, documents of every kind, and physical properties of the Corporation and each of its subsidiaries. The inspection may be made in person or by the Director's agent or attorney. The right of inspection includes the right to copy and make extracts of documents.

Section 12.7 Corporate Seal

The corporate seal, if any, shall be in such form as may be approved from time to time by the Board. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

ARTICLE 13 EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS

Section 13.1 Execution of Instruments

The Board, except as otherwise provided in these Bylaws, may by resolution authorize any Officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no Officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

Section 13.2 Checks and Notes

Except as otherwise specifically determined by resolution of the Board, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Corporation shall be signed by the Chief Financial Officer and countersigned by the President.

Section 13.3 Deposits

All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board may select.

Section 13.4 Gifts

The Board may accept on behalf of the Corporation any contribution, gift, bequest, or devise for the charitable or public purposes of the Corporation.

ARTICLE 14 CONSTRUCTION AND DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions of California Nonprofit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both the Corporation and a natural person. All references to statutes, regulations and laws shall include any future statutes, regulations and laws that replace those referenced.

ARTICLE 15 AMENDMENTS

Section 15.1 Amendment by Directors

The Board may adopt, amend or repeal bylaws. Such power is subject to the following limitations:

- (a) Where any provision of these Bylaws requires the vote of a larger proportion of the Directors than otherwise is required by law, such provision may not be altered, amended or repealed except by the vote of such greater number.
- (b) No amendment may extend the term of a Director beyond that for which such Director was elected.
- (c) If bylaws are adopted, amended or repealed at a meeting of the Board, such action is authorized only at a duly called and held meeting for which written notice of such meeting, setting forth the proposed bylaw revisions with explanations therefore, is given in accordance with these Bylaws, unless such notice is waived in accordance with these Bylaws.

- (d) Notwithstanding the foregoing, as long as the 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 Board of Harbor Commissioners 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.

CONFIDENTIAL

CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting Secretary of _____, a California nonprofit public benefit corporation; that these Bylaws, consisting of *[20]* pages, are the Bylaws of this Corporation as adopted by the Board of Directors on _____; and that these Bylaws have not been amended or modified since that date.

Executed on _____ at _____, California.

[NAME]
Secretary

CONFIDENTIAL

EXHIBIT 5

CONFLICT OF INTEREST POLICY

OF

[The Nonprofit]

A California Nonprofit Public Benefit Corporation

This Conflict of Interest Policy is subject to any and all legal requirements and restrictions applicable to directors, officers, employees and volunteers of the Corporation. To the extent this Conflict of Interest Policy is inconsistent with such legal requirements and restrictions, those legal requirements and restrictions shall apply and displace this Conflict of Interest Policy. Notwithstanding anything to the contrary herein, the Nonprofit's 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, shall comply with the requirements and restrictions governing public officials until such time the California Fair Political Practices Commission determines that such laws do not apply.

ARTICLE I. INTRODUCTION AND PURPOSE

[The NonProfit] (the "Corporation") requires its directors, officers, employees and volunteers to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. The Board of Directors (the "Board") of the Corporation, recognizing that it is entrusted with resources devoted to charitable purposes and that comprise Tidelands Trust Funds pursuant to the California Public Tidelands Trust (the "Trust Doctrine"), has adopted this Conflict of Interest Policy (the "Policy"). The purpose of this Policy is to protect the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a director, officer or other person in a position of authority within the Corporation. The Corporation strives to avoid conflicts of interest to ensure that it continues to operate in accordance with its tax-exempt purpose and consistently with the Trust Doctrine. This Policy is intended to supplement but not replace any state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations.

ARTICLE II. DEFINITIONS

Section 1. Duty of Loyalty of Interested Persons. Conflicts of interest can place personal interests at odds with the fiduciary “duty of loyalty” owed to the Corporation. The duty of loyalty requires that a director, manager, principal, officer, or member of a committee with governing board-delegated powers (each, an “Interested Person”), refrain from using his or her position for personal gain, and avoid acting on issues in which his or her personal or financial interests could conflict with the interests of the Corporation.

Section 2. Direct and Indirect Conflicts of Interest. Conflicts of interest arise from personal relationships or from a financial interest. Conflicts can arise either directly or indirectly. A direct conflict can arise where an Interested Person has a personal or financial interest in any matter involving the Corporation or has a financial or agency relationship (i.e., is a director, officer, manager, partner, associate, trustee or has a similar agency relationship) with an entity involved in a transaction or other business with the Corporation. An indirect conflict can arise where someone related to an Interested Person by business affiliation, or a “Family Member” (spouse, parents-in-law, ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren) of the Interested Person has dealings with the Corporation. By way of example, an Interested Person has a financial interest if such person has, directly or indirectly, through business, investment or a Family Member:

- (a) an ownership or investment interest in any entity with which the Corporation has a transaction or arrangement;
- (b) a compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement; or
- (c) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

Section 3. Potential and Actual Conflicts of Interest. Acts that mix the personal or financial interests of an Interested Person with the interests of the Corporation are indicative of a conflict of interest. Not every potential conflict is an actual conflict, however. An Interested Person who has a financial interest in a matter involving the Corporation may have a conflict of interest requiring application of the mitigating procedures described in this Policy only if the

appropriate party designated in Article III, Section 3 decides that such a potential conflict of interest is actual or material. However, acts that even have the appearance of a conflict of interest can be damaging to the reputation of the Corporation. Consequently, the Corporation seeks to avoid potential and actual conflicts of interest, as well as the appearance of conflicts.

Section 4. Activities that May Present a Conflict of Interest. Though some of the following activities may be prohibited as to certain classes of Interested Persons by the Bylaws or other policies of the Corporation, the following is offered as a non-exclusive list of the types of activities that may present a conflict of interest and should be disclosed in accordance with Article III.

- (a) **Adverse Interest.** Participation by an Interested Person in decisions or negotiations related to a contract, transaction or other matter between the Corporation and: (i) the Interested Person; (ii) an entity in which the Interested Person or a Family Member of such person has financial interest; or (iii) an entity with which the Interested Person has an agency relationship.
- (b) **Competing Interests.** Competition by an Interested Person, either directly or indirectly, with the Corporation in the purchase or sale of property or property rights, interests, or services, or, in some instances, competition directly for the same donor or external resources.
- (c) **Use of Resources.** Use of the Corporation's resources (for example, staff, contracts, donor lists, or name) for personal purposes of the Interested Person or a Family Member of such person.
- (d) **Inside Information.** Disclosure or exploitation by an Interested Person of information pertaining to the Corporation's business for the personal profit or advantage of such person or a Family Member of such person or a person/entity with whom the Interested Person has an agency relationship.

Section 5. Disclosure. The primary obligation of any person subject to this Policy who may be involved in a conflict of interest situation is to bring it to the attention of those designated under the disclosure procedures in Article III so that the potential conflict can be evaluated and addressed. An Interested Person should not make the decision about whether a conflict of interest exists unilaterally.

ARTICLE III. PROCEDURES TO DISCLOSE AND RESOLVE CONFLICTS

Section 1. Duty to Self-Disclose.

- (a) An Interested Person shall make an appropriate disclosure of all material facts, including the existence of any financial interest, at any time that any actual or potential conflict of interest arises. This disclosure obligation includes instances in which an Interested Person who is a director knows of the potential for a self dealing transaction as described in Section 4, or a transaction involving common directorship as described in Section 7, related to his or her interests. It also includes instances in which the Interested Person plans not to attend a meeting of the Board or a Board committee with governing board-delegated powers (a "Committee") at which he or she has reason to believe that the Board or Committee will act regarding a matter about which he or she may have a conflict. Depending on the circumstances, this disclosure may be made to the Chairperson of the Board, or, if the potential conflict of interest first arises in the context of a Board or Committee meeting, the entire Board or the members of the Committee considering the proposed transaction or arrangement that relates to the actual or possible conflict of interest.
- (b) In addition, Interested Persons shall, in accordance with Article VI, make an annual disclosure of on-going relationships and interests that may present a conflict of interest.

Section 2. Disclosure of Conflicts of Others. If an Interested Person becomes aware of any potential self dealing or common directorship transaction or other conflict of interest involving another Interested Person, he or she should report it in accordance with the requirements of this Article III.

Section 3. Evaluation of Potential Conflict.

- (a) After disclosure of all material facts and any follow-up discussion with the Interested Person with a potential conflict of interest, a determination must be made about whether a material financial interest, self dealing transaction or other kind of actual conflict exists, and whether the proposed transaction is permissible under the Bylaws or other policies of the Corporation. If the potential conflict is first disclosed during a Board or Committee meeting at which the Interested Person with the potential conflict is in attendance, the Interested Person shall leave the meeting while the determination of whether a conflict of interest exists is either discussed and voted upon or referred to Committee for further consideration. In either event, the decision-making body will evaluate the disclosures by the Interested Person, and will determine on a case-by-case basis whether the disclosed activities constitute an actual conflict of interest or an

impermissible activity. If the disclosure is made outside of the context of a meeting, then the determination of whether a conflict exists will be referred to *the Board of Directors or the Executive Committee, if such a committee exists*, for decision and action. Factors the decision-making body may consider when determining whether an actual conflict or impermissible activity exists include (i) the proximity of the Interested Person to the decision-making authority of the other entity involved in the transaction, (ii) whether the amount of the financial interest or investment is *de minimis* relative to the overall financial situation of the Corporation, (iii) the degree to which the Interested Person might benefit personally if a particular transaction were approved, and (iv) any act or action by the Interested Person that is determined to be in violation of Sections 1090, et seq., and 87100, et seq., of the California Government Code, as well as the Los Angeles Municipal Code Municipal Ethics and Conflict of Interest provisions of Section 49.5.1, et seq., and the Conflict of Interest Codes of the City of Los Angeles.

- (b) If it is determined that an actual conflict of interest exists which is not a “self dealing” transaction, but involves participation by the Interested Person in decisions or negotiations related to a permissible material contract, transaction or other matter between the Corporation on the one hand and (i) the Interested Person, (ii) an entity in which the Interested Person or a Family Member of such person has financial interest, or (iii) an entity with which the Interested Person has an agency relationship on the other hand, then the matter in question can only be authorized if approved by the vote described in Section 6(b) after the Corporation has followed the procedures set forth in Section 5.
- (c) In all other circumstances where it is determined that an actual conflict of interest exists, the decision-making body will recommend an appropriate course of action to protect the interests of the Corporation. All disclosures and the outcome of the deliberation about whether a conflict of interest exists will be recorded in the minutes of the appropriate deliberative meeting.

Section 5. Procedures for Addressing a Conflict of Interest. Prior to voting on a contract, transaction or matter in which an actual conflict of interest is found to exist, the Board or Committee will follow the procedures described in this Section 5.

- (a) The Interested Person may make a presentation at the Board or Committee meeting at which such transaction is being considered, but after the presentation, he or she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

- (b) The Chairperson of the Board or Committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- (c) After exercising due diligence, the Board or Committee shall determine whether the Corporation could obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

Section 7. Interlocking Directorships.

Section 5234 of the California Corporations Code permits transactions between corporations having common directors so long as all material facts regarding the transaction and the relevant directorships are known to the respective boards of directors, and the matters are approved in good faith by a vote sufficient without counting the vote of the common director(s). Such transactions are not self dealing transactions subject to Section 4.

Section 8. Violations of the Conflict of Interest Policy.

- (a) If the Board has reasonable cause to believe that an Interested Person has failed to disclose actual or possible conflicts of interest, it shall inform the Interested Person of the basis for such belief and afford the Interested Person an opportunity to explain the alleged failure to disclose.
- (b) If, after hearing the Interested Person's response and after making further investigation as warranted by the circumstances, the Board determines the Interested Person has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

ARTICLE IV. RECORDS OF PROCEEDINGS

The minutes of the Board or Committee meeting convened to consider a transaction subject to the mitigating procedures described in Article III shall contain:

- (a) The names of the Interested Persons who disclosed or whom otherwise were found to have a financial or other interest in connection with an actual or possible conflict of interest, the nature of the financial or other interest, any action taken to determine whether a conflict of interest was present, and the Board's or Committee's decision as to whether a conflict of interest in fact existed.
- (b) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any

alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

ARTICLE V. COMPENSATION

Section 1. No voting member of the Board shall receive compensation of any form, directly or indirectly, from the Corporation except for reimbursement of expenses and a reasonable stipend that shall not exceed the amount allocated to members of the Los Angeles Board of Harbor Commissioners.

ARTICLE VI. ANNUAL STATEMENTS

Each person subject to this Policy shall annually sign a statement on the conflict of interest disclosure form ("Conflict of Interest Disclosure Form," attached as **Schedule 1**) or such other form as the Board adopts, which at a minimum affirms that such person:

- (a) has received a copy of the Policy;
- (b) has read and understands the Policy;
- (c) has agreed to comply with the Policy; and
- (d) understands the Corporation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

In addition, Interested Persons shall make an annual disclosure of on-going relationships and interests that may present a conflict of interest. Disclosures should address current affiliations, as well as past affiliations for the prior two years. Conflict of interest disclosure forms will be submitted to the *Treasurer* annually, and when appropriate, at or prior to action on relevant business transactions.

To the extent applicable, the Corporation shall comply with the reporting requirements of the California Political Reform Act, and all other applicable and relevant laws, statutes, ordinances, and rules and regulations.

ARTICLE VII. PERIODIC REVIEWS

To ensure the Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- (a) Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining; and
- (b) Whether partnerships, joint ventures and arrangements with management companies conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

This periodic compensation review shall be in addition to the Board's statutory obligation to periodically review the fairness of compensation, including benefits, paid to the President and Chief Financial Officer of the Corporation (i) once such officer is hired; (ii) upon any extension or renewal of the officer's term of employment; and (iii) when the officer's compensation is modified (unless all employees are subject to the same general modification of compensation).

ARTICLE VIII. USE OF OUTSIDE EXPERTS

When conducting the periodic reviews as provided for in Article VII, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of the responsibilities for ensuring periodic reviews are conducted.

CONFIDENTIAL

CONFLICT OF INTEREST POLICY

SCHEDULE 1: CONFLICT OF INTEREST DISCLOSURE FORM

The undersigned, as a director, manager, principal, officer, or member of a committee with governing board-delegated powers, of (the "Corporation"), acknowledges that:

1. he or she has received a copy of the Corporation's Conflict of Interest Policy (the "Policy");
2. he or she has read and understands the Policy;
3. he or she has agreed to comply with the Policy;
4. he or she understands the Corporation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes; and
5. the following on-going relationships and interests may present a conflict of interest: *(disclosures should address current affiliations, as well as past affiliations for the prior two years, and should include all of the following: the undersigned's employer, all corporations (nonprofit and for-profit) of which the undersigned is a board member or officer, and the names of such of the undersigned's Family Members or business affiliates or any other relationships the undersigned has which the undersigned believes may present a potential conflict)*

CONFIDENTIAL

Name: _____

Title: _____

Signature: _____

Date: _____

CONFIDENTIAL