

**MEMORANDUM OF AGREEMENT**

**AMONG**

**THE CITY OF LOS ANGELES  
ACTING THROUGH THE  
BOARD OF HARBOR COMMISSIONERS,  
THE HARBOR COMMUNITY BENEFIT FOUNDATION,  
AND THE  
CHINA SHIPPING PETITIONERS  
REGARDING THE  
INDEPENDENT AIR QUALITY MITIGATION PROGRAM  
REQUIRED BY THE CHINA SHIPPING AMENDED STIPULATED JUDGMENT**

This Memorandum of Agreement (“Agreement”) is made as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and among the Petitioners in the China Shipping litigation, listed in Exhibit “A” hereto (“Petitioners”), the Harbor Community Benefit Foundation (“HCBF”), a not-for-profit corporation, and the City of Los Angeles (“City”), a municipal corporation, acting by and through its Board of Harbor Commissioners (“BOHC”), who, from time to time herein, shall be referred to individually as “Party” and collectively as “Parties.”

**RECITALS**

WHEREAS, on or about June 14, 2004, the City and Petitioners became bound by the Amended Stipulated Judgment (“ASJ”) to settle the case of *Natural Resources Defense Council, Inc., et al. v. City of Los Angeles, et al.*, Los Angeles County Superior Court Case No. BS 070017, a case brought by Petitioners challenging the environmental impact report and related findings for the China Shipping Container Terminal Project at Berths 99-109 (“the China Shipping Project”), a copy of which ASJ is attached hereto as Exhibit “B”;

WHEREAS, the ASJ required the City to adopt mitigation for the China Shipping Project at the Port of Los Angeles (“Port”), including to provide \$50 million for the mitigation of air quality and aesthetic environmental impacts of Port operations on the communities surrounding the Port, including both the communities of Wilmington and San Pedro, California, which are especially impacted by the operations of the China Shipping Project (the “Mitigation Payment”);

WHEREAS, funds from the Mitigation Payment were used to fund projects that mitigated the environmental impacts of the China Shipping Project (“China Shipping Mitigation Projects”) and were administered by the City of Los Angeles Harbor Department (“Harbor Department”);

WHEREAS, the ASJ provided that the Mitigation Payment be committed for use within five years, but that if at the conclusion of the five years any funds remain that had not been allocated, such funds shall be applied to “an independent air quality mitigation program available to administer the funds and mutually agreeable to the Parties, with

restrictions sufficient to ensure that such funds are used to reduce Port-related emissions.” (ASJ page 24, lines 11–13);

WHEREAS, that five-year term has lapsed, effective June 14, 2009, and approximately \$9,226,944 remains unallocated;

WHEREAS, by way of a separate agreement, \$4,000,000 of the remaining funds will be provided to the South Coast Air Quality Management District to fund a zero-emissions catenary system demonstration project, which the City and the China Shipping Petitioners agree is a project that is reasonably calculated to reduce Port-related air emissions; and

WHEREAS, after considerable and extensive investigation, discussion, and negotiation, the Parties have agreed that \$5,226,944 of these funds shall be disbursed to an independent air quality mitigation program, to be administered by HCBF for the reduction of Port-related air emissions (the “Air Quality Mitigation Fund”);

**NOW, THEREFORE**, the Parties agree as follows:

### **AGREEMENT**

1. Recitals. The Recitals to this Agreement above are hereby incorporated herein and made a part hereof.
2. Effective Date. This Agreement shall become effective on the date of full approval by City, Petitioners, and HCBF (“Effective Date”).
3. Term. The Term of this Agreement is from the date of execution by all the Parties through and until May 31, 2021 and may be renewed for five (5) years by mutual agreement of the Parties.
4. Early Termination. This Agreement may terminate earlier than the duration specified in Paragraph 3 if one of the following occurs: (a) written agreement by the Executive Director of City’s Harbor Department (“Executive Director”) and the Petitioners, or their designated representative(s), that HCBF has fully performed its obligations under this Agreement; (b) the mutual written consent of all Parties; (c) a Party’s unilateral termination of the Agreement, with cause, upon thirty (30) days’ written notice; or (d) a Party’s unilateral termination of the Agreement, without cause, upon ninety (90) days’ written notice; or (e) the ASJ is deemed invalid or unenforceable. Termination under this Section shall trigger obligations set forth under Paragraph 6, Obligations Upon Termination or Expiration, below. If a Party’s unilateral decision to terminate for cause is based on a disputed matter of the performance of one or more of the Parties, then all Parties shall make good faith efforts to resolve any such disputes, including employing the process articulated in Paragraph 11, Dispute Resolution, prior to termination becoming effective.

5. HCBF Administration of the Air Quality Mitigation Fund. HCBF will administer and manage the Air Quality Mitigation Fund (“AQMF”), including but not limited to the development and issuance of requests for proposals, evaluation, funding, and administration of grants, in a manner consistent with this Agreement.
  - a. Independent Financial Manager. The AQMF shall be managed by either JPMorgan Chase Private Bank or by another appropriate independent financial manager (“Independent Financial Manager”), selected by HCBF with BOHC’s approval, which approval shall not be unreasonably withheld. The City must review and approve the agreement between HCBF and the Independent Financial Manager and such agreement must be in full force and effect before the City disburses any funds under this Agreement.
  - b. Program Account. A special program account, to be administered by HCBF, shall be created for the AQMF, which cannot be comingled with any other funds raised or controlled by HCBF.
  - c. Transfer of Funds. Within sixty (60) days after the Effective Date of this Agreement, or thirty (30) days after the effective date of the agreement with the Independent Financial Manager, whichever is later, the City shall transfer \$5,226,944 to the new AQMF special program account held by the Independent Financial Manager selected pursuant to Paragraph 5(a).
  - d. Additional Funding from Other China Shipping Mitigation Projects. If any of the funds currently allocated to other, ongoing China Shipping Mitigation Projects are unspent, Port staff shall provide information about the completed project(s) and the unspent funds to the Petitioners and BOHC within ninety (90) days of completion of the other project(s). Upon determination of project completion and approval of fund transfer by the BOHC, these funds will become part of the Air Quality Mitigation Fund administered by HCBF to use to reduce Port-related air emissions, consistent with this Agreement.
  - e. BOHC Review. The Independent Financial Manager shall disburse funds from the AQMF special program account pursuant only to approvals of the BOHC, in accordance with Paragraph 5(f)(viii), Funding Projects from the AQMF Special Program Account. City and HCBF shall work cooperatively to facilitate the receipt and transfer of funds to/from the AQMF special program account, including, but not limited to subsequent changes in the Independent Financial Manager, if any.
  - f. Project Criteria and Process to Transfer Funds.
    - i. Projects. HCBF shall administer the monies in the AQMF special program account exclusively for projects that are reasonably calculated to reduce Port-related air emissions. This includes emissions resulting from the transport and handling of

cargo within, into, out of, to, or from the Port of Los Angeles, including but not limited to cargo transport and handling by ships, harbor craft, trucks, locomotives, or cargo handling equipment. The projects may include the demonstration of freight movement technologies that have zero or near-zero tailpipe emissions, such as hybrid or electric vehicles and cargo handling equipment, ship emission reduction technologies, or catenary or electric truck technologies, among others. HCBF may solicit projects for funding through one or multiple requests for proposals. All projects to be funded must be consistent with this Agreement, the Tidelands Trust Grant, and all federal, state and local laws.

- ii. HCBF shall prioritize funding the demonstration or implementation of zero or near-zero emission freight movement technologies and other emerging technologies that seek to demonstrate significant emissions reductions from conventional diesel-fueled vehicles and equipment that operate in and around the Port (including ships, harbor craft, trucks, locomotives, or cargo handling equipment). Not less than a majority of AQMF funds shall be spent towards the demonstration or implementation of such technologies. Priority shall also be given to technologies that, if they were widely deployed, would significantly reduce air emissions and/or air quality related health risks from the largest sources of air pollution from port operations, namely ships, harbor craft, trucks, locomotives, or cargo handling equipment.
- iii. Geographical Boundaries. The projects funded by the AQMF are expected primarily to benefit the communities of San Pedro and Wilmington. Projects funded by HCBF shall demonstrate achievable emissions reduction benefits in communities within approximately 25 miles of the San Pedro Bay, with a primary benefit occurring in the communities of San Pedro and Wilmington, although the benefits may also extend beyond the 25-mile boundary. With respect to demonstration projects funded by HCBF under this Agreement, such projects shall be deployed or implemented within this same 25-mile geographic boundary. A map delineating the 25-mile boundary is attached hereto as Exhibit "C".
- iv. Project Criteria. HCBF shall develop and adopt project criteria for the purpose of HCBF's solicitation, development, and evaluation of project proposals to ensure that projects approved and funded through the AQMF special program account shall reduce Port-related air emissions, and are consistent with the

Tidelands Trust and this Agreement. HCBF shall consult with the Petitioners and City regarding HCBF's criteria, including sharing draft criteria with the Petitioners and City and soliciting the Petitioners' and City's input. Such criteria shall include the organizational capacity of the applicant to complete the project, the benefits of the project, the project's community impact, cost-effectiveness, feasibility, potential for reducing emissions and/or health risks, the project's potential to advance deployment of near zero or zero emission technologies or emerging technologies, whether the project is or will receive other additional funding such that the AQMF funds are being leveraged, and other relevant criteria to ensure reduction of Port-related air emissions.

- v. Evaluation. HCBF staff will research whether a proposed project, through information provided in the proposals and any other sources of information that it may in its discretion choose to use, meets the project criteria developed by HCBF, and HCBF staff shall make a recommendation of its findings to the Board of Directors of HCBF.
- vi. Presentation of HCBF Proposal to BOHC. If the HCBF Board of Directors approves a proposal for funding, HCBF shall forward a report to the BOHC that includes (a) a resolution from HCBF's Board of Directors that the project(s) conform(s) to the requirements of this Agreement; (b) demonstration that the project(s) will reduce direct or indirect Port-related air emissions connected with the transport and handling of cargo within, into, out of, to, or from the Port of Los Angeles; (c) a description of the progress of previously approved projects and the balance of AQMF funds at the time of the report; (d) demonstration that the budget and schedule for funding drawdowns are appropriate for the type of project; (e) demonstration that the project is consistent with the Tidelands Trust Act, and (f) the HCBF Board approved substantial form of contract for the project(s).
- vii. BOHC Review and Approval. Upon receipt of a request from HCBF, the Executive Director of the Harbor Department shall place on the agenda of a BOHC meeting to be held within sixty days of receipt of the request an agenda item to receive, consider, and vote on a report from HCBF, as described above. The BOHC shall review each project, its associated budget, and schedule for funding as to consistency with this Agreement. The BOHC may not decline to approve release of the funds for a project that is consistent with the terms of this Agreement. Should the BOHC decline to approve release of the funds for a

project, it shall provide written findings relating to the reasons for the rejection based on the project's inconsistency with this Agreement.

- viii. Funding Projects from the AQMF Special Program Account. Upon approval by the BOHC of one or more projects, within the later of (a) two weeks from BOHC approval or (b) the sixth City Council meeting day after BOHC approval, HCBF staff shall issue a letter to be jointly executed by the City and HCBF, instructing the Independent Financial Manager to transfer funds from the AQMF special program account to HCBF. Funding shall be disbursed from the AQMF special program account to HCBF in a lump sum.
  - ix. Project Contracts. Contracts for approved projects and all other AQMF expenditures shall be executed solely between HCBF and its vendors or grantees. HCBF may either contract directly with an entity to complete an approved project, complete a project using its own staff, or generate a Request for Proposals ("RFP") for certain projects to be funded by the AQMF. HCBF shall award contracts based on a fair and competitive process.
  - x. Disbursement Schedules. HCBF shall establish a disbursement schedule for each grantee, according to the unique needs and performance benchmarks of each project, and shall disburse funds to the grantee(s) at its sole discretion, in adherence to said schedule.
- g. Administrative Costs. HCBF shall annually withdraw funds from the AQMF special program account to pay for actual administrative costs. HCBF shall work with Harbor Department staff and SCAQMD when and where possible to reduce administrative costs by obtaining subject matter expertise and cost containment. Withdrawals to cover actual administrative costs generally shall not exceed 10% (ten percent) of the dollar amount of the grants approved annually by the BOHC after the first year from the Effective Date. Administrative costs may include, but are not limited to, costs for staff time managing and overseeing the implementation of this Agreement, insurance, legal costs including without limitation those related to mediation and arbitration under this Agreement, program management to ensure timely progress and oral/written reporting, contract administration time for contracts and invoices, and technical staff time for review of contractor work and expertise on project work. Technical and legal support for the purpose of determining whether a proposed project is consistent with this Agreement shall be treated as part of the administrative costs of HCBF. In the event HCBF determines that the amount of

administrative costs will exceed the 10% (ten percent) limit, HCBF may request an increase in this amount in any given year by submitting a request to the Harbor Department.

- i. Initial Payment. City hereby approves an advance of administrative costs of \$250,000 to HCBF from the AQMF special program account to administer development and issuance of the initial Requests for Proposals. Within two weeks from the Effective Date of this Agreement, HCBF staff may issue a letter to be jointly executed by the City's Executive Director and HCBF, instructing the Independent Financial Manager to transfer to HCBF from the AQMF special program account Two Hundred Fifty Thousand Dollars (\$250,000) within thirty (30) days of the request for payment.
- ii. Subsequent Payments. All subsequent payments to HCBF for administrative costs shall be issued by the Independent Financial Manager in accordance with the same procedure described in Paragraph 5(f)(vii).

h. Annual Budget. Not later than the one year anniversary of the receipt of the advance provided for in Paragraph 5(g)(i) above, and annually thereafter, HCBF shall provide to the Executive Director of the Harbor Department an accounting of the annual administrative costs (no less than 6 months accrued and no more than 6 months projected), coupled with an annual budget and funding request for the anticipated administrative costs for the subsequent year. Subject to the terms, conditions and limitations of this Agreement and other provisions of the law, the Harbor Department shall approve adequate funding to HCBF to meet the administrative needs of program administration. The Harbor Department shall not arbitrarily or unreasonably decline or reduce an annual budget request from HCBF. Should the Harbor Department decline or reduce a budget request from HCBF, it shall provide written findings relating to the reasons for the rejection.

#### 6. Obligations Upon Termination or Expiration.

- a. If this Agreement is terminated under Paragraph 4, Early Termination, HCBF shall be entitled to retain all necessary funding already disbursed to HCBF from the AQMF in order that HCBF receive compensation for all work reasonably expended under this Agreement, including work already performed and work still required to be performed, and in order that HCBF be able to pay all pending or future disbursements required by contracts authorized under this Agreement.

- b. Upon expiration under Paragraph 3, Term, or earlier termination under Paragraph 4, Early Termination, of this Agreement, HCBF shall return all monies to the AQMF it has received from the AQMF, net of any funds it is entitled to retain under Paragraph 6(a), above. All such funds returned to the AQMF shall be allocated to an independent air quality mitigation program in accordance with the ASJ (ASJ page 24, lines 11–15). Similarly, all funds remaining in the AQMF shall be allocated to an independent air quality mitigation program in accordance with the ASJ (ASJ page 24, lines 11–15).
- i. If this Agreement is terminated under Section 4, Early Termination, and the termination is by a Party other than HCBF and is a termination without cause, either (1) HCBF shall be relieved of all of HCBF’s responsibilities for any and all contractual obligations relating to projects undertaken by HCBF under this Agreement, including but not limited to making scheduled disbursements and administering the work under those contracts, and the City in consultation with the remaining Parties will assume those responsibilities; or (2) upon mutual agreement among all Parties to this Agreement, that provides for sufficient funding for HCBF to retain responsibility for such contractual responsibilities, HCBF may retain those responsibilities to the extent agreed among the Parties to this Agreement.
  - ii. Subject to the provisions of Paragraphs 6(b) and 6(b)(i) above, if this Agreement is terminated under Section 4, Early Termination, or upon expiration of this Agreement pursuant to Paragraph 3, Term, HCBF shall be relieved of all its responsibilities under this Agreement and the remaining funds in the Air Quality Mitigation Fund shall be allocated to an independent air quality mitigation program in accordance with the ASJ.
  - iii. HCBF shall ensure that the agreement with the Independent Financial Manager selected to manage the AQMF (either JPMorgan Chase Private Bank or by another appropriate Independent Financial Manager) selected by HCBF with BOHC’s approval contains a provision that provides in pertinent part:  
  
“Termination of Independent Financial Manager Obligation.  
  
In the event that the agreement between HCBF, the City of Los Angeles and the China Shipping Petitioners that established the Independent Air Quality Mitigation Program and the AQMF is terminated or expires, or in the event that HCBF, or its successor, is declared by City to be in default under said agreement, or in the event there are no projects

funded under the AQMF special program account for a period longer than eighteen (18) months, unless excused by the Executive Director, the obligation of the Independent Financial Manager shall be terminated and all documents, money, or other items held by the Independent Financial Manager shall be disbursed, delivered and returned to the City of Los Angeles, Harbor Department within thirty (30) days of the occurrence of such event. In the event of the termination of the AQMF special program account, whether it shall result from the request of the principals or otherwise, the fees and charges due to it for its costs, charges, fees, and expenses, including expenditures incurred for insurance and other purposes, shall be paid from the remaining funds in the AQMF special program account prior to the disbursement of the remaining funds to the City of Los Angeles Harbor Department.”

- iv. Within sixty (60) days of the expiration or earlier termination of this Agreement, HCBF must report to the BOHC (1) the amount of all remaining funds, if any, including any interest accrued during the term of the Agreement that HCBF did not allocate towards projects aimed at reducing Port-related air emissions or to administrative costs; (2) the amount of all remaining funds already disbursed to HCBF from the AQMF special program account, and (3) the funding, if any, needed for administration, recordkeeping, and final reporting expenditures required by this Agreement.
- c. Within sixty (60) days of final completion of all reporting, tax, and agency filings necessary to administer this Agreement, HCBF shall return to the BOHC all remaining funds, including any interest accrued during the term of the Agreement that HCBF is not legally obligated to expend on previously approved projects aimed at reducing Port-related air emissions or that are necessary for reasonable and actual administrative costs.
- d. If this Agreement is terminated under Paragraph 4, Early Termination, HCBF shall use its best efforts to facilitate a smooth transition of all pending or uncompleted responsibilities or tasks under this Agreement, including providing copies of all necessary documentation to the other Parties to this Agreement and providing reasonable cooperation with the other Parties to this Agreement. HCBF shall bear no other responsibilities under this Agreement upon termination, other than those set forth herein. In addition, HCBF shall undertake all necessary actions and execute all necessary documents to ensure that any funds held by the Independent Financial Manager are disbursed to the City of Los Angeles, Harbor Department.

7. Third Party Approvals. The Parties acknowledge that the implementation of Port-related air emission reduction projects funded by HCBF pursuant to this Agreement may need the review and approval of third parties, such as regulatory agencies. Project grantees, and not HCBF, shall have the obligation to seek and obtain any third party approvals required to undertake and complete projects under this Agreement. Funding for third party approvals (including, but not limited to, verification) will be included as part of the grant project funding agreement, where appropriate, or as matching funds. To the extent that the lack of a third party's approval precludes HCBF's performance of this Agreement, such nonperformance shall not constitute a breach of this Agreement so long as HCBF acted in good faith and used its best efforts to perform its obligations under this Agreement.
  
8. Recordkeeping and Audit Rights. HCBF shall keep and maintain full, complete, and accurate books of accounts and records of the monies expended pursuant to this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records shall be accessible to and open for inspection and copying at HCBF's offices upon fifteen (15) work days prior written request to perform a record inspection or a full audit through an independent third party auditor, through City staff, or otherwise. Any audit or inspection shall be conducted during HCBF's normal business hours. The Party initiating the audit or inspection shall bear its full cost, including the retrieval and copying of documents, and may not pay for the audits with the funds in the AQMF. During the term of this Agreement, the BOHC, the City, or Petitioners 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) of HCBF arising from or related to this Agreement, whether such writings are (a) prepared by HCBF or any individual or entity acting for or on behalf of HCBF, and (b) without regard to whether such writings have previously been provided to City or Petitioners. HCBF shall keep records for three years following the close of any project funded under this Agreement.
  
9. Reporting and Meeting Requirements.
  - a. Reporting Requirements. HCBF will submit an annual report to the Parties that describes the requests for proposals, grants, and administrative costs for the prior year. This report will also describe HCBF's progress in allocating the monies in the AQMF and how the grants issued under this Agreement reduce Port-related air emissions. This report may be submitted concurrently with the report of administrative needs under the TraPac MOU Port Community Mitigation Trust Fund ("PCMTF") specified in the Operating Agreement of the TraPac MOU, Harbor Department Agreement No. 10-912, Paragraph 5(F). The report shall be followed with a presentation to the BOHC, concurrent with the BOHC's consideration of the PCMTF administrative budget under the TraPac MOU.

b. Meeting Requirements.

- i. HCBF shall convene meetings with the Petitioners before the HCBF makes a final decision to make an award to a Grantee. The purpose of such meetings will be to obtain Petitioners' input on HCBF's evaluation of proposals and potential grantees.
- ii. HCBF shall convene meetings with all the Grantees and the Parties, at least once a year to monitor, evaluate, and report on the projects funded from the AQMF, and to facilitate collaboration among the Grantees and the Parties. Such meetings may include technical experts and technology company representatives. The City, BOHC, and the Petitioners' participation in these meetings is encouraged but not required. At such meetings, HCBF will provide updates regarding HCBF's administration of the funds.

10. Affect of the Agreement on Other HCBF Programs. This Agreement shall not affect the implementation or funding for projects that HCBF may have in connection with the TraPac MOU or any other programs.

11. Dispute Resolution. Any dispute arising from this Agreement shall be resolved pursuant to Section 4 hereof, if it concerns early termination, and the arbitration provisions outlined in the ASJ, Section VII, if it concerns any other matter.

12. Indemnification. Each Party agrees to indemnify, defend, and hold harmless the other Parties with respect to any loss, cost, expense or liability incurred by such other Parties with respect to the indemnifying Party's own obligations, including without limitation funding obligations, under this Agreement; provided, however, that no Party shall be obligated to indemnify another Party for any loss, cost, expense, or liability that is caused by the gross negligence or willful misconduct of such other Party.

13. Independent Contractor. HCBF, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of City. HCBF 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 HCBF is acting as an independent contractor and not as an agent or employee of HCBF, the Harbor Department, or the City.

14. Compliance with Applicable Laws. The Parties shall comply with all federal, state, municipal, local, and departmental laws, ordinances, rules, regulations, and orders. If in any instance a City standard is more stringent than a state, federal, or other requirement, the City standard shall be followed.

- a. Affirmative Action. HCBF, 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. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit "D."

- b. Small/Very Small Business Enterprise Program And Local Business Preference Program. It is the policy of the BOHC to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises and all Other Business Enterprises (MBE/WBE/DVBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. HCBF shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement. See Exhibit "E."

It is also the policy of the BOHC to support an increase in local and regional jobs. The BOHC's Local Business Preference Program aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector. HCBF shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for Local Business Enterprises to achieve participation in subcontracts where such participation opportunities present themselves.

NOTE: Prior to being awarded a contract with the City, HCBF and all subcontractors must be registered on the City's Contracts Management and Opportunities Database, Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>.

- c. Conflict Of Interest. It is hereby understood and agreed that the Parties to this Agreement have read and 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. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

- d. Trademarks, Copyrights, And Patents. HCBF agrees to save, keep, hold harmless, protect and indemnify the City and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by City of any materials supplied by HCBF in the performance of this Agreement.
- e. Proprietary Information. City disclaims any and all ownership or proprietary rights to any and all discoveries, inventions, developments, specifications, patents, know-how, trade secrets, computer programs or other proprietary information developed by HCBF or HCBF's contractors, subcontractors, or grantees for the projects funded under this Agreement.
- f. Service Contractor Worker Retention Policy And Living Wage Policy Requirements. The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 5771 on January 13, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. HCBF shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this Agreement and otherwise pursue legal remedies that may be available.
- g. Wage And Earnings Assignment Orders / Notices Of Assignments. HCBF and/or any contractors are obligated to fully comply with all applicable state and federal employment reporting requirements for the HCBF and/or contractors' employees.

The HCBF and/or contractors 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 HCBF and/or contractors 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 HCBF or contractors will maintain such compliance throughout the term of this Agreement.

- h. Equal Benefits Policy. The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. HCBF shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any Agreement with HCBF and pursue any and all other legal remedies that may be available. See Exhibit "F."
  
- i. Compliance With Los Angeles City Charter Section 470(c)(12). HCBF, contractors, and their principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the agreement is valued at \$100,000 or more and requires approval of a City elected official. Additionally, HCBF is required to provide and update certain information to the City as specified by law. Any contractor subject to Charter Section 470(c)(12), shall include the following notice in any contract with a contractor expected to receive at least \$100,000 for performance under this Agreement:

Notice Regarding Los Angeles Campaign Contribution and  
Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a contractor on Harbor Department Agreement No. \_\_\_\_\_. Pursuant to City Charter Section 470(c)(12), contractor and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the Agreement is signed. Contractor is required to provide to HCBF names and addresses of the contractor's principals and contact information and shall update that information if it changes during the 12 month time period. Contractor's information must be provided to HCBF within 10 business days. Failure to comply may result in termination of the Agreement or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213-978-1960.

HCBF, contractors, and their principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available.

15. Notices. In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is both deposited in the United

States mail, postage prepaid and sent via e-mail. When so given, such notice shall be effective from the date of the e-mail. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice shall be directed to the following individuals representing the Parties to this Agreement:

City's Harbor Department:  
Los Angeles Harbor Department  
P.O. Box 151  
San Pedro, California 90733-0151  
Attn: Executive Director  
Email: gene\_seroka@portla.org

Petitioners:  
c/o Natural Resources Defense Council  
1314 Second Street  
Santa Monica, CA 90401  
Attn: Melissa Lin Perrella  
Email: mlinperrella@nrdc.org

Harbor Community Benefit Foundation  
302 W. 5<sup>th</sup> Street, Suite 300  
San Pedro, CA 90731  
Attn: Executive Director Ben Schirmer  
Email: ben@hcbf.org

Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

16. Taxpayer Identification Number ("TIN"). The Internal Revenue Service ("IRS") requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. HCBF declares that its authorized TIN is: 45-2487333. No payments will be made under this Agreement without a valid TIN.
17. 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. Parties agree that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions, and reservations.
18. Harbor Revenue Fund. The Parties acknowledge that the Harbor Revenue Fund, as that term is defined in Section 656 of City's Charter, constitutes the funding source for all funds paid or expended under this Agreement and that, as such,

the laws, rules, and regulations applicable to such Harbor Revenue Fund must be complied with in the performance of this Agreement, including without limitation California Public Resources Code Sections 6009.1 and 6306.

19. Changes to the ASJ. To the extent that the ASJ is modified or interpreted by a court of law to allow any portion of the Mitigation Payment to be allocated to purposes other than to reduce Port-related air emissions, this Agreement shall enable and govern the administration of such funds.
20. Construction of Agreement. This Agreement shall not be construed against the Party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all Parties had jointly prepared this Agreement and it shall be deemed their joint work product; and any uncertainty or ambiguity shall not be interpreted against any one Party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting Party shall not be applicable.
21. Titles and Captions. The Parties have inserted the paragraph and section titles in this Agreement only as a matter of convenience and for reference, and the 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.
22. 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.
23. 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.
24. Governing Law. This Agreement is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced, and governed under and by the laws of the State of California, without reference to choice of law rules.
25. 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 work together to revise the part, term, condition, or provision such that they mutually agree to it and that it complies with the applicable law or public policy and to effect the original intent of the Parties as closely as possible.

26. Jurisdiction. The Parties consent to the sole jurisdiction of the courts of the State of California for the enforcement of this Agreement.
27. 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.**
28. Interpretation of the ASJ. The City and Petitioners acknowledge and agree as follows: (i) references to the “Port” and “City” in the ASJ shall be interpreted to be to the same legal entity, the City of Los Angeles, acting by and through its Board of Harbor Commissioners, not to the Board of Harbor Commissioners itself; and (ii) City’s approximate \$ 5,226,944 commitment of funds to HCBF under this Agreement shall constitute partial performance of the City’s obligations to provide for an independent air quality program under the ASJ and under Section VIII.B.; (iii) all amounts committed under this Agreement shall be committed pursuant to Section VIII of the ASJ, Mitigation of China Shipping Terminal and Other Port Impacts. If any of the aforementioned \$5,226,944 is returned to the City, however, the City shall to the best of its ability allocate those funds for use in accordance with the ASJ (page 24, lines 11–13), and Petitioners reserve any and all rights to ensure such allocation.
29. Exhibits; Sections. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, except with regard to the ASJ, the terms of the body of the Agreement shall control. References to paragraphs and sections are to paragraphs and sections of this Agreement unless stated otherwise.
30. 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, or other cause beyond such Party’s reasonable control.
31. 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.

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

**HARBOR COMMUNITY BENEFIT FOUNDATION**

By: \_\_\_\_\_  
Ben Schirmer, Executive Director  
Harbor Community Benefit Foundation

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Eugene D. Seroka, Executive Director

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Board Secretary

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY  
MICHAEL N. FEUER, Los Angeles City Attorney  
JANNA B. SIDLEY, General Counsel

By: \_\_\_\_\_  
Christopher B. Bobo, Assistant

Date: \_\_\_\_\_

**PETITIONERS:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Melissa Lin Perrella  
Natural Resources Defense Council

By: \_\_\_\_\_ Date: \_\_\_\_\_  
San Pedro and Peninsula Homeowners'  
Coalition

By: \_\_\_\_\_ Date: \_\_\_\_\_  
San Pedro Peninsula Homeowners  
United, Inc.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Coalition for Clean Air, Inc.

EXHIBIT A

PETITIONERS IN THE CHINA SHIPPING LITIGATION

1. Natural Resources Defense Council, Inc.  
1314 Second Street  
Santa Monica, CA 90401
2. San Pedro and Peninsula Homeowners' Coalition  
P.O. Box 1106  
San Pedro, CA 90733
3. San Pedro Peninsula Homeowners United, Inc.  
822 Eastman Place  
San Pedro, CA 90731
4. Coalition for Clean Air, Inc.  
800 Wilshire Blvd., Suite 1010  
Los Angeles, CA 90017

COPY

Exhibit B

ORIGINAL FILED

JUN 14 2004

LOS ANGELES  
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

NATURAL RESOURCES DEFENSE  
COUNCIL, INC., SAN PEDRO AND  
PENINSULA HOMEOWNERS' COALITION,  
SAN PEDRO PENINSULA HOMEOWNERS  
UNITED, INC., and COALITION FOR CLEAN  
AIR, INC.,

Petitioners,

v.

CITY OF LOS ANGELES, a Municipal  
Corporation, PORT OF LOS ANGELES, and  
LOS ANGELES BOARD OF HARBOR  
COMMISSIONERS,

Respondents.

CHINA SHIPPING HOLDING COMPANY,  
LTD., and DOES I-V,

Real Parties in Interest.

Case No.: BS 070017

<sup>SB</sup>  
~~PROPOSED~~ AMENDED  
STIPULATED JUDGMENT,  
MODIFICATION OF STAY, AND  
ORDER THEREON

Dept: 85, Honorable Dzintra Janavs

~~PROPOSED~~ AMENDED STIPULATED JUDGMENT, MODIFICATION OF STAY, AND ORDER THEREON



1           **WHEREAS**, the Court of Appeal has denied Respondents' request for a rehearing, the  
2 California Supreme Court has denied Respondents' petition for review and their request for a  
3 stay of the Court of Appeal's order, and the Los Angeles Superior Court has directed the  
4 Respondents and Petitioners to prepare and submit an order and writ in accordance with the  
5 Court's direction given at a hearing on February 6, 2003; and  
6

7           **WHEREAS**, Petitioners desire to ensure that an adequate environmental review of the  
8 impacts of container terminal operations at Berths 97-109 is prepared and considered by  
9 Respondents in compliance with CEQA, Respondents desire to provide for the operation of  
10 Phase I of the China Shipping Terminal while the China Shipping EIR is being prepared, and  
11 Petitioners and Respondents (the "Parties") seek to provide a mechanism to resolve future  
12 disputes over the China Shipping EIR; and  
13

14           **WHEREAS**, the Parties desired to settle the disputes between them, to have an  
15 agreement and stipulated judgment (the "Stipulated Judgment") entered as a stipulated  
16 judgment in this Action, and further desired that the Los Angeles Superior Court confirm and  
17 approve this Stipulated Judgment and modify the terms of the injunction consistent with this  
18 Stipulated Judgment; and  
19

20           **WHEREAS**, the Court entered the Stipulated Judgment on March 6, 2003; and  
21

22           **WHEREAS**, Petitioners initiated arbitration under the Stipulated Judgment as entered on  
23 March 6, 2003, and at the same time, the Port asserted it would respond by arbitrating a separate  
24 group of issues, including that certain provisions of the Stipulated Judgment are not feasible or  
25 otherwise excused; and  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**WHEREAS, the Parties have met and conferred and agree to amend this Stipulated Judgment and further desire that the Court confirm and approve this Amended Stipulated Judgment.**

///  
///

1 NOW, THEREFORE, EACH OF THE PARTIES TO THIS AMENDED STIPULATED  
2 JUDGMENT AND MODIFICATION OF STAY AGREE, AND THIS COURT HEREBY  
3 FINDS, ORDERS, ADJUDGES AND DECREES AS FOLLOWS:  
4

5  
6 I

7 JURISDICTION

8 This Court has subject matter jurisdiction over this matter and has personal jurisdiction  
9 over the Petitioners and Respondents in this action. The Parties intend, and the Court hereby  
10 does, retain continuing jurisdiction over this Judgment to administer and enforce its terms.  
11

12 II

13 PARTIES BOUND

14 The provisions of this Judgment shall apply to and be binding upon the Parties, their  
15 officers, directors, and successors. The undersigned representatives of the respective signatories  
16 certify that they are fully authorized by the party that they represent to enter into the terms and  
17 conditions of this Judgment, to execute this Judgment on behalf of the party that they represent,  
18 and to legally bind the party that they represent.  
19

20 III

21 DEFINITIONS

22 Words used in this Stipulated Judgment are to be taken and understood in their natural  
23 and ordinary sense unless this Stipulated Judgment indicates that a different meaning was  
24 intended. Whenever the following terms are used in this Stipulated Judgment, the following  
25 meanings shall apply:  
26  
27  
28

1           A.     The term “this Agreement” or “this Stipulated Judgment” or “this Judgment”  
2 or “this Amended Stipulated Judgment” shall mean this Stipulated Judgment, as amended.

3           B.     The terms “Lease” or “China Shipping Lease” shall mean Permit 999 granted by  
4 the Port and City to the China Shipping Holding Co., Ltd. on March 28, 2001 and May 8, 2001,  
5 respectively.  
6

7           C.     The term “China Shipping Project” or “Project” shall mean the project to  
8 construct and operate the three-phase container terminal at Berths 97-109 in the West Basin area  
9 of the Port of Los Angeles described in the Lease.  
10

11          D.     The term “China Shipping EIR” shall mean the project-specific EIR to be  
12 prepared for the China Shipping Project pursuant to section VI of this Agreement.

13          E.     The term “CEQA” shall mean the California Environmental Quality Act (Public  
14 Resources Code § 21000 *et seq.*) and the State CEQA Guidelines and applicable case law.  
15

16          F.     The term “Parties” shall mean Petitioners and Respondents.

17          G.     The term “Petitioners” shall mean Petitioners Natural Resources Defense  
18 Council, Inc.; San Pedro and Peninsula Homeowners Coalition; San Pedro Peninsula  
19 Homeowners United, Inc; and the Coalition for Clean Air, Inc.  
20

21          H.     The term “Port of Los Angeles Community Advisory Committee” or “PCAC”  
22 shall mean that entity entitled the Port of Los Angeles Community Advisory Committee as  
23 created by resolution of the Board of Harbor Commissioners on October 10, 2001.

24          I.     The term “Respondents” shall mean Respondents the City of Los Angeles, the  
25 Port of Los Angeles, and the Los Angeles Board of Harbor Commissioners.  
26

27          J.     The term “Phase I” shall mean Phase I of the China Shipping Project as defined  
28 in the Lease.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

IV

DECLARATION OF GOALS AND PURPOSES

The Parties have stipulated to enter this Stipulated Judgment to address Respondents' desire to provide for the operation of Phase I of the China Shipping Project while the China Shipping EIR is prepared and to modify the stay and injunction imposed by the Court of Appeal to allow such operation, Petitioners' desire to ensure that an adequate environmental review of the impacts of container terminal operations at Berths 97-109 is prepared and considered by Respondents in compliance with CEQA and the Parties desire to seek to provide a mechanism to resolve any future disputes concerning the China Shipping EIR.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

V

OPERATION OF PHASE ONE OF THE  
CHINA SHIPPING/BERTH 97-109 PROJECT  
PENDING COMPLETION OF A NEW EIR

A. Phase One Operation May Proceed. In consideration of the additional mitigation and other terms of this Judgment, the Port may complete construction and commence or allow operation of Phase I of the China Shipping Project, as described in the Lease, immediately upon the effective date of this Judgment. The Port may also continue to operate or allow the operation of Phase I while the China Shipping EIR is being prepared, and while any legal disputes regarding the China Shipping EIR are resolved. However, nothing in this Judgment shall prevent Petitioners from requesting the superior court to stay construction and/or operation of Phase I of the China Shipping Project on the basis of an inadequacy of the China Shipping EIR that is significant enough to warrant a stay in light of the agreed upon mitigation measures in this Stipulated Judgment, or for a material failure to implement the mitigation measures set forth in

1 section VIII of this Judgment, provided such request is first submitted to the Arbitrator. The Port  
2 shall be subject to the capacity cap set forth in section XI of this Judgment, below, during the  
3 period that the China Shipping EIR is being prepared and while any legal disputes regarding the  
4 China Shipping EIR are resolved.

5  
6 B. Modification of Stay and Injunction. In its October 30, 2002 decision in this  
7 Action, the Second District Court of Appeal remanded this Action to this Court with directions  
8 that this Court issue a writ of mandate requiring preparation of "an EIR in connection with all  
9 three phases of the China Shipping project" and issue an injunction incorporating the terms of the  
10 stay issued by the Court of Appeal on October 23, 2002. A copy of that stay order is attached to  
11 this Judgment as Exhibit "A". The Parties agree that the injunction shall be modified to allow  
12 the following, subject to the provisions of section V.D of this Judgment: completion of the  
13 wharf at Berth 100, erection and operation of the four cranes at Berth 100, subject to the  
14 provisions of section VIII.A.2 of this Judgment, and operation of Phase I of the China Shipping  
15 Project, subject to the capacity cap set forth in section XI of this Judgment. The injunction of  
16 Phases II and III of the China Shipping Project is not modified by this provision, and shall stay in  
17 place until lifted by a court of competent jurisdiction, consistent with the writ of mandate issued  
18 by the Los Angeles Superior Court.

19  
20  
21  
22 C. Further Actions to Allow Operation. By executing this Judgment, the Parties  
23 intend that the stay imposed by the Court of Appeal and the injunction to be issued in accordance  
24 with that stay shall be modified by the Los Angeles Superior Court as described herein.

25  
26 D. Termination of Lease. The purpose of this Stipulated Judgment from the Port's  
27 perspective is to obtain the ability to complete and operate Phase I of the China Shipping Project.  
28 Accordingly, upon written notice by Respondents to counsel for Petitioners that (1) China

1 Shipping has terminated the Lease, has provided notice of termination of the Lease, or otherwise  
2 will not use Berths 97-109, and (2) that the site will not otherwise be utilized for container  
3 terminal operations, then sections V (A) through (C), VIII, and XI, of this Stipulated Judgment  
4 shall be tolled. In such an event, any money already paid by Respondents pursuant to section  
5 VIII of this Judgment shall not be refunded and shall be fully distributed and used in accordance  
6 with the provisions of section VIII, and the Port shall not be required to make further payments  
7 pursuant to section VIII, except as provided in sections V.D.1 through 3 of this Stipulated  
8 Judgment.  
9 Judgment.  
10

11 1. If China Shipping later intends to commence container terminal operations  
12 at Berths 97-109, whether under the Lease or a new agreement, alone or in combination with any  
13 other company, then Respondents shall provide written notice to counsel for Petitioners and all  
14 the provisions of this Judgment shall become fully effective 30 days after receipt of such written  
15 notice, and any deadlines for payments pursuant to section VIII shall be extended by the period of  
16 tolling.  
17

18 2. If the Port later intends to allow anyone other than China Shipping to  
19 operate Berths 97-109 for container terminal operations, the Port shall provide written notice of  
20 such intent to counsel for Petitioners upon the earliest commitment by the Port to lease Berths  
21 97-109 or otherwise allow Berths 97-109 to be used for container operations, including but not  
22 limited to the execution of a notice of intent or a memorandum of understanding, at which time  
23 section VIII of this Judgment shall become fully effective.  
24

25 3. If section V.A through C of this Judgment is tolled pursuant to this  
26 provision and remains tolled for a period of 90 days, then the Port shall, within one year, either  
27 sell or move the four cranes currently at Berths 97-109 to another location, or pay the additional  
28

1 amount of \$2 million towards community aesthetic mitigation pursuant to section VIII.B of this  
2 Judgment. The obligation to move the cranes or pay additional mitigation shall be extinguished  
3 if container uses commence at Berths 97-109, except as provided in section VIII.A.2 of this  
4 Judgment.  
5

6 4. The Port currently has the right to allow the use of the backlands at Berths  
7 97-109 for container storage pursuant to the decision of the Second District Court of Appeal and  
8 the writ issued by the Los Angeles Superior Court. Notwithstanding the provisions of section  
9 V.D(1) through (3), if section VIII of this Stipulated Judgment is tolled pursuant to this section  
10 V.D, then such use of the backlands limited to that use as specifically allowed by the Court of  
11 Appeal shall not constitute operation of Phase I for purposes of this section V.D. This provision  
12 does not authorize any use of the backlands beyond that allowed by the Court of Appeal and the  
13 Superior Court writ, and does not limit the Port's obligation to conduct CEQA review for any  
14 expansion of such use beyond that allowed by the Court of Appeal and the Superior Court writ.  
15  
16

17 5. If provisions of this Agreement are tolled and remain tolled for a period of  
18 five years, then this Agreement shall terminate.  
19

## 20 VI

### 21 PREPARATION OF A PROJECT-SPECIFIC EIR FOR THE CHINA SHIPPING/BERTH 22 97-109 PROJECT AND RECONSIDERATION OF THE CHINA SHIPPING LEASE AND 23 COASTAL DEVELOPMENT PERMIT

#### 24 A. Preparation of a Project-Specific EIR for the China Shipping Project.

25 1. Project-Specific EIR. The Port shall prepare a project-specific EIR  
26 evaluating the impacts of the construction and operation of all three phases combined of the  
27 China Shipping Project. Such EIR shall be certified by Respondents under CEQA for their use in  
28

1 the reconsideration of the approval of the Lease and Coastal Development Permit or for the  
2 approval of any container terminal use at Berths 97-109, and Respondents shall process and  
3 consider such EIR under CEQA and otherwise comply with all obligations under CEQA  
4 applicable to an EIR which must serve as the basis for any such project approval. The China  
5 Shipping EIR shall: (a) evaluate all project-specific and cumulative impacts from the China  
6 Shipping Project (development and operation of Berths 97-109 as described in the Lease) alone,  
7 and not as part of any larger West Basin project or other project, (b) assess mitigation measures  
8 to reduce those impacts, and (c) consider alternatives to the China Shipping Project with reduced  
9 environmental impacts, including alternative "Port-related uses" other than a shipping terminal at  
10 the site of the China Shipping Project and alternatives to the size, magnitude and configuration of  
11 the proposed China Shipping Project.  
12

13  
14         The Port will analyze in the China Shipping EIR the aesthetic impacts, on and off of Port  
15 lands, from the terminal and its activities at Berths 97-109 including but not limited to the cranes  
16 at those berths (including cumulative aesthetic impacts off of Port lands). The Port is not  
17 prejudging whether these impacts are adverse or significant. As part of this review, the Port will  
18 consider all written and photographic evidence of impacts submitted by the Port Community  
19 Advisory Committee ("PCAC"), any of its subcommittees, or any member of the public. The  
20 Port will consider aesthetic mitigation measures on and off of Port lands. Where significant  
21 impacts are present, the Port will adopt mitigation measures that are feasible as required by  
22 CEQA.  
23

24  
25         The Port shall prepare and distribute a new notice of preparation, conduct and complete a  
26 new scoping process, circulate a new draft EIR for public and agency review, and complete and  
27 certify the China Shipping EIR.  
28

1           Nothing in this agreement shall prevent the Port from preparing and certifying EIRs for  
2 other projects, including, but not limited to, a possible proposal to develop a project that  
3 combines operation of the China Shipping Project with the Berths 121-131 Yang Ming Terminal  
4 and a possible EIR that addresses other terminals in the West Basin and/or the West Basin as a  
5 whole, including Berths 97-109. The Port's preparation of any such other EIR will not supercede  
6 or replace or otherwise alter the Port's obligation to complete and certify the China Shipping EIR  
7 in compliance with CEQA and the provisions of this Judgment and to adopt the mitigation  
8 measures identified in the China Shipping EIR for the China Shipping Project, as provided in  
9 section VI.C below. The Port shall certify the China Shipping EIR prior to or at the same time  
10 that it certifies any other EIR that evaluates the Berth 97-109 site as part of that other EIR's  
11 proposed project.  
12

13           2.       Baseline. The baseline for consideration of impacts from the China  
14 Shipping Project shall be either zero or the baseline for Berths 97-109 prior to approval of the  
15 Lease in March 2001.  
16

17           3.       Scope of Review. The China Shipping EIR will cover all three phases of  
18 the China Shipping Project, as described in the Lease. The China Shipping EIR will evaluate the  
19 following categories of impacts on the Port, the surrounding communities of San Pedro and  
20 Wilmington, and the South Coast Air Basin, and will set forth mitigation measures for any  
21 impacts in these categories which are potentially significant: (a) geology, seismicity, and  
22 topography, (b) groundwater, soils and sediments; (c) meteorology and air quality; (d) toxic  
23 emissions and risk; (e) hydrology, water quality and oceanography; (f) biota and habitats; (g)  
24 ground transportation and circulation; (h) marine vessel transportation; (i) noise; (j) public health  
25  
26  
27  
28

1 and safety; (k) public services; (l) energy; (m) utilities; (n) land use; (o) aesthetics, visual impacts  
2 and light and glare; (p) recreation; (q) cultural resources; and (r) environmental justice.

3  
4 4. Consultant. The primary consultants to prepare the China Shipping EIR  
5 shall be:

6 Lead consultant: CH2M Hill

7 Traffic consultant: Mayer Mohades and Kaku Associates

8 Air quality consultant: CH2M Hill and an additional firm to be determined

9 Aesthetics consultant: CH2M Hill and Takata and Associates.  
10

11 The Port will retain an additional consultant to assist in the air quality impact analysis or review  
12 of such analysis, and shall employ TIAX LLC as that additional air quality consultant if TIAX  
13 LLC meets the contracting requirements of the City of Los Angeles.

14  
15 5. PCAC Follow-up Meeting Regarding Draft China Shipping EIR. Port  
16 staff will meet with the PCAC following the close of the public comment period on the draft EIR  
17 to develop issue resolutions that can be documented for placement in the final EIR.

18 B. Reconsideration of China Shipping Project. Respondents shall reconsider their  
19 approvals of the use of Berths 97-109 as a container terminal, and for that purpose they shall first  
20 consider the China Shipping EIR in the manner prescribed by CEQA and in accordance with the  
21 provisions of this Judgment, and shall certify the China Shipping EIR for that purpose.  
22

23 Following certification of the China Shipping EIR, the Board of Harbor Commissioners  
24 ("Board") shall reconsider its issuance of a Coastal Development Permit for the Project in light  
25 of the new China Shipping EIR and the Port and City shall each reconsider their approvals of the  
26 Lease in light of the new China Shipping EIR. Alternatively, if Berths 97-109 (or any part  
27 thereof) is leased under a different agreement, the Port and City shall first complete the China  
28

1 Shipping EIR and shall consider the approval of any such agreement in light of the new China  
2 Shipping EIR. Nothing in this provision shall prevent Respondents from using the backlands for  
3 container storage as allowed by the Second District Court of Appeal in its October 30, 2002  
4 decision.  
5

6 C. Adoption of Feasible Mitigation Measures. If the Port takes any further action to  
7 approve use of Berths 97-109 as a container terminal, whether through the re-approval of the  
8 China Shipping Lease or the Coastal Development Permit or through any other approval for  
9 container terminal use of Berths 97-109, including in combination with the Yang Ming terminal,  
10 then the Port will adopt all mitigation measures identified in the China Shipping EIR for all  
11 environmental impacts of the China Shipping Project found in the China Shipping EIR to be  
12 significant, provided that the Board finds the measure to be feasible. In addition, if the City takes  
13 any further action to approve use of Berths 97-109 as a container terminal, whether through the  
14 re-approval of the China Shipping Lease or the Coastal Development Permit or through any other  
15 approval for container terminal use of Berths 97-109, including in combination with the Yang  
16 Ming terminal, then the City will adopt all mitigation measures identified in the China Shipping  
17 EIR for all environmental impacts of the China Shipping Project found in the China Shipping  
18 EIR to be significant, provided that the City finds the measure to be feasible. Consistent with the  
19 obligations of a lead agency decisionmaking body under CEQA, the feasibility of mitigation  
20 measures identified in the China Shipping EIR shall be determined by the Board and the City,  
21 respectively, based upon substantial evidence in the record. Where a mitigation measure is  
22 proposed for adoption in the China Shipping EIR in order to reduce a significant impact to  
23 insignificance and that measure is rejected as infeasible by the Board or the City, the Board or the  
24 City shall adopt specific findings based upon substantial evidence explaining such determination,  
25  
26  
27  
28

1 consistent with the requirements of CEQA. Any dispute regarding the "feasibility" of mitigation  
2 measures will be resolved by arbitration, as set forth in section VII below.

3 D. Alternatives. Before the Port or City takes any further action to approve use of  
4 Berths 97-109 as a container terminal, whether through the re-approval of the China Shipping  
5 Lease or the Coastal Development Permit or through any other approval for container terminal  
6 use of Berths 97-109, including in combination with the Yang Ming terminal, each shall consider  
7 the alternatives to the China Shipping Project analyzed in the China Shipping EIR. In addition, if  
8 the Port prepares a separate EIR for a combined China Shipping/Yang Ming terminal, it will  
9 consider the same alternatives for the use of Berths 97-109 in that EIR and it will also consider  
10 the combined terminal as an alternative in the China Shipping EIR.  
11  
12

## 13 VII

### 14 ARBITRATION

15 A. Any disputes between the Parties arising under this Judgment, including but not  
16 limited to disputes regarding the adequacy of the China Shipping EIR, regarding time limits,  
17 regarding the determination of feasibility of mitigation measures identified in the China Shipping  
18 EIR, or relating to Respondents' obligations pursuant to and in compliance with section VIII  
19 shall be submitted to Justice Steven Stone (retired) for non-binding arbitration, with the  
20 exception of disputes submitted to arbitration regarding the feasibility of AMP and related  
21 alternative Air Emissions Mitigation, per Exhibit B, which shall be binding. Should Justice  
22 Stone become unavailable, the Parties will agree on a replacement arbitrator. If the parties  
23 cannot reach agreement, Justice Stone, or the superior court if he is unavailable, shall designate a  
24 replacement arbitrator.  
25  
26  
27  
28

1           B.     The Parties intend that arbitration shall be used only to resolve actual disputes  
2 between the Parties and shall not be used to obtain advisory opinions, and accordingly, any  
3 dispute submitted to the arbitrator must be an actual dispute that could be litigated between the  
4 Parties. The Parties agree that to initiate an arbitration, the party wishing to arbitrate must first  
5 attempt in good-faith to resolve the dispute directly with the other party. The Parties agree that  
6 they will enter into stipulations, tolling agreements or other agreements needed to extend the time  
7 periods for filing suit set forth in Public Resources Code section 21167 where such a time  
8 extension is necessary to allow such arbitration required by this Judgment. No Party shall file  
9 suit with respect to any dispute that is subject to arbitration under this Agreement unless the  
10 dispute first has been arbitrated and the arbitrator has issued his or her non-binding written  
11 determination concerning the dispute. The Parties agree that China Shipping may participate in  
12 arbitration provided for under this Agreement with respect to Exhibit B.  
13  
14

15  
16           C.     Nothing in this section shall prevent Petitioners from requesting the superior court  
17 to issue a temporary restraining order or preliminary injunction to stay construction and/or  
18 operation of any container terminal project at Berths 97-109 on the basis of a material failure of  
19 Respondents to comply with CEQA or to implement the mitigation measures set forth in section  
20 VIII of this Stipulated Judgment, pending arbitration of such dispute, provided that Petitioners  
21 shall have first provided the Port with an opportunity to cure the alleged breach and also  
22 submitted the dispute to the Arbitrator.  
23

24           D.     If any legal action is brought by a third party not a Party to this Judgment  
25 challenging the China Shipping EIR or an EIR evaluating joint operation of China Shipping and  
26 Yang Ming if the claims relate primarily to China Shipping, or challenging the approval of the  
27  
28

1 China Shipping Project; then, if requested by the Port, Petitioners shall not object to inclusion of  
2 such third party lawsuit in any ongoing arbitration under this section challenging the same EIR.

3 E. (1) The Port shall pay costs incurred by the arbitrator for resolution of disputes  
4 between the Parties, but such costs shall be no more than \$40,000 annually. (2) Where and  
5 when the \$40,000 cap is exceeded, any party to the Arbitration shall have the option of bearing  
6 its own cost for additional arbitration or seeking relief directly from the Superior Court. (3)  
7 Subsection VII.E.2 shall not apply to disputes regarding AMP feasibility and alternative Air  
8 Emissions Mitigation, which are subject to binding arbitration. If the costs incurred by the  
9 arbitrator exceed \$40,000, the parties shall initially split the cost of the arbitrator in excess of  
10 \$40,000, and may later seek to reallocate those costs under section XII.

11 F. This section VII shall apply to any disputes among the Parties and China Shipping  
12 Holding Co., Ltd. regarding the feasibility of the use of alternative power, low profile cranes, or  
13 any alternative mitigation pursuant to section VIII.A.3 and Exhibit B attached hereto ("AMP  
14 feasibility").

15 G. When any dispute is decided by the Arbitrator, the Parties shall require the  
16 arbitrator to issue a statement of the rationale and reasoning for the arbitrator's determination,  
17 and such statement shall be part of the record presented to any court where the dispute is  
18 subsequently litigated.

## 23 VIII

### 24 MITIGATION OF CHINA SHIPPING TERMINAL AND OTHER PORT IMPACTS

#### 25 A. Mitigation Measures

26 1. Alternative Fuels for Container Handling Equipment. The Port shall  
27 require that yard tractors used at Berths 97-109 be powered only by alternative fuels ("alternative  
28

1 fuels"), as defined by the California Air Resources Board (CARB). The Port shall require all top  
2 picks and side picks used at Berths 97-109 to utilize emulsified diesel fuel and diesel oxidation  
3 catalysts unless the Port provides to Petitioners written documentation by the operator that  
4 emulsified diesel fuel and/or diesel oxidation catalysts cannot for technical or safety reasons be  
5 used for a particular application. The Port shall require the terminal operator to begin using the  
6 alternative fuel yard tractors in place of existing yard tractors on the following schedule: 15  
7 alternative fuel yard tractors by June 30, 2004; 30 alternative fuel yard tractors by July 31, 2004;  
8 and 45 alternative fuel yard tractors by August 31, 2004. The terminal operator shall use 100%  
9 alternative fuel yard tractors no later than September 30, 2004. Until said alternative-fuel yard  
10 tractors are delivered, the Port shall use only yard tractors at Berths 97-109 that are equipped  
11 with diesel oxidation catalysts and use lower emitting "emulsified diesel fuel" or are equipped  
12 with diesel particulate traps and use lower emitting low-sulfur diesel fuel. These requirements  
13 that yard tractors be powered by alternative fuels shall apply unless the Port provides to  
14 Petitioners written documentation by the operator that an alternative-fuel yard tractor cannot for  
15 technical reasons be used for a particular application. Whenever this subsection applies to allow  
16 the use or purchase of yard tractors that are not powered by alternative fuels, only equipment  
17 operated by emulsified diesel fuel and equipped with diesel oxidation catalysts or low sulfur  
18 diesel fuel with particulate traps shall be used.

23 2. Marine Terminal Cranes.

24 If Berth 102 is constructed, then prior to commencing operations at Berth 102 the  
25 Port shall cause the installation on Berth 102 of two "low profile" cranes that are designed to  
26 reduce visual impact. If the total price of the cranes exceeds \$25 million, including but not  
27 limited to the design costs of the supplier and its subcontractors, then the Port or China Shipping  
28

1 may submit to the Arbitrator the question of whether that cost makes those cranes infeasible. If  
2 the Arbitrator determines that it is not feasible to purchase two "low profile" cranes that comply  
3 with the Specification issued by the Port dated March 11, 2003, Addendum 1, and technical  
4 deviations submitted by ZPMC, as modified by the letter from ZPMC to the Port dated April 14,  
5 2004, at a cost of less than \$25 million for the two cranes, then the Port shall contribute to  
6 community aesthetic mitigation to benefit San Pedro pursuant to section VIII.B.3 of the  
7 Amended Stipulated Judgment in a sum equal to an additional \$800,000 per crane installed on  
8 Berth 102.  
9

10  
11 Low profile cranes include cranes that are designed to reduce visual impact by the  
12 use of a horizontal boom that does not need to be raised up when the crane is not in use such that  
13 the overall crane height is reduced to 185 feet or less when the crane is not in use and mobile  
14 harbor cranes. If additional cranes are purchased for use at Berth 102, they shall be low profile  
15 cranes unless low profile cranes are determined to be infeasible under Exhibit B.  
16

17 The Port shall, no later than 30 days from the Effective Date of this Amended  
18 Stipulated Judgment, deposit into the Community Aesthetic Mitigation fund (described in section  
19 VII.B.3 below) an additional \$3.5 million to be used for the creation of parks and/or open space  
20 off of Port lands benefiting San Pedro.  
21

22 3. Alternative Maritime Power During Hoteling of Ships. The Port shall  
23 install the necessary electrical infrastructure at Berths 100 and 102 to provide shoreside electrical  
24 power for ship hoteling (alternative maritime power or "AMP"). The infrastructure for Berth 100  
25 shall be completed no later than March 6, 2004 and shall be provided at Berth 102 prior to  
26 operation of the berth. The Port shall pay the costs of retrofitting China Shipping's ships so they  
27 may use the electrical power while docked at Berths 97-109 up to a total of \$5 million.  
28

1 a. Notwithstanding the \$5 million cap, the Port shall require subject  
2 to the feasibility standard in section VIII.A.3.c below, that a specified percentage of ships  
3 docking at Berths 97-109 in the Port of Los Angeles use AMP for hoteling pursuant to the  
4 following schedule:  
5

- 6 1. By August 31, 2004, the Port shall retrofit two China  
7 Shipping vessels, which shall be dedicated to service of the  
8 Port of Los Angeles and shall call on Berths 97-109 and use  
9 AMP while docked at berth;  
10
- 11 2. During the period from August 31, 2004 through January 1,  
12 2005, the Port shall require that a minimum of 30% of ship  
13 calls, on average, at Berths 97-109 shall utilize AMP while  
14 at berth;  
15
- 16 3. By January 1, 2005, the Port shall retrofit a total of three  
17 China Shipping vessels, which shall be dedicated to service  
18 of the Port of Los Angeles and shall call on Berths 97-109  
19 and use AMP while docked at berth;  
20
- 21 4. During the period from January 1, 2005 through July 1,  
22 2005, the Port shall require that a minimum of 60% of ship  
23 calls by China Shipping, on average, at Berths 97-109 shall  
24 utilize AMP while at berth;  
25
- 26 5. By March 31, 2005, the Port shall have retrofit a total of  
27 four China Shipping vessels which shall call on Berths 100-  
28 102 and use AMP while docked at berth;



1 evaluate: (1) the availability of marine fuels with 2,000 ppm or less sulfur content at the Ports of  
2 Los Angeles and Long Beach, at all origination and ports of call used by China Shipping vessels  
3 that call on Berths 97-109, and at the 20 fueling locations, other than those already included for  
4 evaluation above, used most frequently by shipping companies that call on the Port of Los  
5 Angeles; (2) the status of use by fleets at the Ports of Los Angeles and Long Beach and  
6 throughout the world of lower-sulfur marine fuel; (3) safety considerations, including flashpoint;  
7 (4) equipment needs, including modified lubricants, for each combination of engines and fuel  
8 grade; and (5) any other operational issues. The feasibility evaluation shall also include an  
9 assessment of the costs of the grades of lower-sulfur marine fuel and the cost per ton of pollution  
10 reductions for SO<sub>x</sub>, NO<sub>x</sub>, PM and CO<sub>2</sub>. The evaluation shall be completed and a report generated  
11 and sent to Petitioners by May 31, 2005. In addition, the Port shall generate and send to  
12 Petitioners for their review an outline of the scope of the proposed evaluation before  
13 commencing the evaluation.  
14  
15  
16

17           5.     Creation and Implementation of a Traffic Mitigation Plan. (a) The Port  
18 shall conduct a traffic study as part of the China Shipping EIR, which study shall be completed  
19 by May 1, 2003. The Port shall begin implementation of mitigation for traffic impacts of  
20 operation of Phase I within 30 days of the completion of this study. The Parties acknowledge  
21 that this traffic study may be issued prior to the issuance of the China Shipping EIR, and that the  
22 traffic study may be revised as part of the completion of the EIR process. (b) The Port shall  
23 create and implement a traffic mitigation plan for San Pedro and Wilmington in response to the  
24 baseline study of traffic impacts of Port operations currently underway, and shall begin  
25 implementation of the plan within three months of completion of the traffic study, which shall  
26  
27  
28

1 be completed by September 1, 2003. The traffic study is one of the seven studies ordered by the  
2 Board of Harbor Commissioners on October 10, 2001.

3  
4 6. Modification of China Shipping Permit. The Parties agree that this  
5 Amended Stipulated Judgment has, as a condition precedent, the requirement that Permit 999  
6 shall be amended to incorporate the requirements of sections VIII.A.1, 2 and 3 of this Amended  
7 Stipulated Judgment so that they are binding upon China Shipping. If this does not occur, then  
8 the original Stipulated Judgment shall govern.

9  
10 B. Mitigation Payment. The Port shall act to mitigate the environmental and other  
11 effects of Port operations on and off Port lands by depositing into a separate designated  
12 mitigation account \$10 million per year in five installments, for a total of \$50 million. The first  
13 \$10 million payment shall be made by April 5, 2003, and subsequent payments shall be made one  
14 year from the date of the first payment for the following four years.

15  
16 Of the mitigation payments, \$10 million shall be used for the Gateway Cities Program, as  
17 set forth in section VIII.B.1. Out of the remaining payments, \$20 million shall be used for air  
18 quality mitigation (as set forth in section VIII.B.2 below), and \$20 million shall be used for  
19 community aesthetic mitigation (as set forth in section VIII.B.3 below), so that overall, sixty  
20 percent of these funds shall be used for air quality mitigation and forty percent of these funds  
21 shall be used for community aesthetic mitigation. Payments into the account shall be made on  
22 the following schedule:

23  
24 April 5, 2003 ("First Payment Date") -- \$5 million for the Gateway Cities Program, \$1  
25 million for air quality mitigation, and \$4 million for community aesthetic mitigation;

26  
27 1 year from First Payment Date -- \$2.5 million for the Gateway Cities Program; \$3.5  
28 million for air quality mitigation, and \$4 million for community aesthetic mitigation;

1           2 years from First Payment Date -- \$2.5 million for the Gateway Cities Program; \$3.5  
2 million for air quality mitigation, and \$4 million for community aesthetic mitigation;

3           3 years from First Payment Date -- \$6 million for air quality mitigation, and \$4 million  
4 for community aesthetic mitigation; and

5           4 years from First Payment Date -- \$6 million for air quality mitigation, and \$4 million  
6 for community aesthetic mitigation.

7           All funds shall be committed for use pursuant to this section within five years. If at the  
8 conclusion of the five years any funds remain that have not yet been committed, within 30 days  
9 these funds shall be applied to an independent air quality mitigation program available to  
10 administer the funds and mutually agreeable to the Parties, with restrictions sufficient to ensure  
11 that such funds are used to reduce Port-related emissions. If the Parties cannot agree on the  
12 program to receive the remaining funds, the Parties shall submit the issue to the Arbitrator.  
13  
14  
15

16           1.       Gateway Cities Program. The \$10 million allocated to the Gateway Cities  
17 Program shall be used for incentives to replace, repower or retrofit existing diesel-powered on-  
18 road trucks consistent with the existing written guidelines for distribution of funds by that  
19 Program. However, funding under this section may only be allocated to registered truck owners  
20 who verify to the Gateway Cities Program that they have made 100 deliveries to or from the Port  
21 of Los Angeles over the last year, and upon request by the Gateway Cities Program provide  
22 documentation through bills of lading or similar documentation. The Gateway Cities Program  
23 shall be required as a condition of receipt of the funds to provide a verifiable report and  
24 accounting on a quarterly basis confirming that the funds were used for trucks calling at the Port  
25 in compliance with the requirements of this Judgment. The Port shall have the right to have a  
26 City auditor examine all relevant records and verify that these funds were properly disbursed.

27           2.       Air quality mitigation. The portion of the mitigation funds to be used for  
28 the reduction of air quality impacts from Port operations shall be deposited into a separate

1 designated account to be maintained by the Port for expenditures to be made pursuant to this  
2 section. These funds shall be expended only for programs and improvements that reduce  
3 emissions from Port operations that affect the communities of San Pedro and Wilmington. These  
4 funds shall also be expended only pursuant to the following requirements:

5           a.       funding may be allocated to improvements, facilities, engines and  
6 equipment, and incentives to make alternative fuels available for Port operations (provided that  
7 funding for engines and equipment may not be allocated to the costs of complying with  
8 SCAQMD rules governing yard tractors, although funding may be allocated to mitigation that  
9 exceeds SCAQMD requirements, or that achieves compliance at an earlier time than otherwise  
10 required);

11           b.       funding may be allocated to emission reductions from locomotives  
12 that regularly serve the Port;

13           c.       funding may be allocated to emission reductions from ships only if  
14 the ship owner certifies and the Port confirms that the ship regularly calls at the Port;

15           d.       funding may be allocated to emission reductions from tugs and  
16 other harbor craft only if the craft is located at and directly serves the Port; and

17           e.       funding may be allocated to improvements on trucks only if the  
18 registered truck owner certifies to the Port that they have made 100 or more annual deliveries to  
19 or from the Port over the past year. Funding of projects pursuant to subsections (a) through (d)  
20 above shall have priority over funding of projects pursuant to this subsection (e).

21           The Port shall provide a report and accounting on a quarterly basis verifying that the  
22 funds have been allocated in compliance with these terms.

23           3.       Community aesthetic mitigation. The Port shall expend a total of \$20  
24 million dollars over a four-year period for the reduction of aesthetic impacts from Port facilities  
25 and operations. This community aesthetic mitigation fund is being created, in part, to allow for  
26 mitigation of aesthetic impacts of the China Shipping Terminal off of Port lands. All projects  
27 funded under this subsection shall be port-related projects on Port land, or shall be projects not  
28 on Port land that have a demonstrable nexus or connection to the environmental, aesthetic, and/or

1 public health impacts of the Port's operations and facilities. Where adverse aesthetic impacts are  
2 found in the China Shipping EIR or future EIRs for port expansion projects, the Port will analyze  
3 whether the proposals that are complete as of the time the Notice of Preparation for the EIR is  
4 issued by the Port and submitted for the aesthetic mitigation fund would mitigate those impacts  
5 and discuss how the proposal would mitigate those impacts. This requirement is terminated once  
6 the community aesthetic mitigation funds are fully allocated. Projects to receive funding under  
7 this subsection shall fall within the following categories and be prioritized as follows: (i) open  
8 space and parks; (ii) landscaping and beautification; and (iii) funding for educational, arts, and  
9 athletic facilities consistent with the Tidelands Trust. Proceeds for projects funded under this  
10 section shall be divided approximately evenly between projects benefiting San Pedro and  
11 Wilmington. Nothing in the foregoing shall alter the Port's obligations under the California  
12 Environmental Quality Act.

13 4. Funding Procedures. The following procedures shall be followed until the  
14 air quality and community aesthetic mitigation funds are allocated by the Port pursuant to section  
15 VIII.B.2 and VIII.B.3, above.

16 a. Any party proposing such funding shall submit a proposal  
17 simultaneously to the PCAC and to the Port's Environmental Mitigation Coordinator  
18 ("Mitigation Coordinator"). The Mitigation Coordinator shall attempt to work with the applicant  
19 to insure that the proposal meets the parameters of this Section of the Stipulated Judgment.

20 b. PCAC Evaluation Process for Aesthetic Mitigation Proposals.

21 (i) Each aesthetic mitigation proposals shall describe its nexus  
22 to specific adverse impacts from past or future Port projects, and characterize whether the impact  
23 is off or on Port land. As to any aesthetic mitigation proposal submitted to the PCAC before the  
24 Effective Date, the party proposing such funding shall prepare and submit an addendum with this  
25 information. PCAC shall evaluate the submitted aesthetic mitigation proposals first by the  
26 prioritization of categories i, ii, and iii of section VIII.B.3 and then in the order received. The  
27 PCAC shall perform in a public process an evaluation to determine whether there is a  
28

1 demonstrable nexus between the aesthetic mitigation proposal and a Port project's adverse  
2 impacts. The PCAC shall act as quickly as possible on all aesthetic proposals submitted to it.

3 (ii) The Mitigation Coordinator shall categorize all aesthetic  
4 mitigation proposals as to whether they (i) are located on or off Port lands per section VIII.B.3;  
5 (ii) fall within category i, ii, or iii of section VIII.B.3; and (iii) benefit San Pedro or Wilmington  
6 (or both).

7 (iii) Proposals linked to past projects.

8 (a) All proposals that are submitted after the Effective  
9 Date of this Amended Stipulated Judgment and that are intended to mitigate the impacts of a past  
10 project or projects, as well as all proposals that have already been received by PCAC as of the  
11 Effective Date of this Amended Stipulated Judgment and that are intended to mitigate the  
12 impacts of a past project, whether through the original proposal or the addendum described in  
13 section VIII.B.4.b(i), shall be directed to the PCAC Past EIR Working Group ("Working  
14 Group"). The Working Group shall evaluate using CEQA Principles ("CEQA Principles")  
15 (defined as assessing the mitigation measure using CEQA standards at 14 Cal. Code Regs. §  
16 15370), and determine whether a demonstrable nexus exists between the Proposal and the  
17 impacts of the past project. If a demonstrable nexus is not found, the proposal shall be rejected.  
18 If a demonstrable nexus is found, the Working Group shall further evaluate the proposal using  
19 CEQA Principles to determine whether the proposal is the best measure to mitigate the impact  
20 identified. This evaluation shall be documented by the Working Group and forwarded, along  
21 with the proposal, to the California State Lands Commission staff ("State Lands").

22 (b) The PCAC shall submit to State Lands for its  
23 review all proposals for which the Working Group found a demonstrable nexus to a past Port  
24 project and projects along with the Working Group evaluation. PCAC shall request that State  
25 Lands provide a written response to the Working Group within 30 days of receipt by State Lands  
26 of the submitted proposal. Upon receipt, the Working Group shall evaluate State Lands'  
27 response and subsequently shall forward to State Lands (for information) and to PCAC: (1) the  
28 proposal; (2) the Working Group evaluation; (3) correspondence with State Lands and (4) any

1 reply or reactions of the Working Group to State Lands' response. PCAC shall then vote to  
2 approve the proposal, deny the proposal, or approve the proposal with modifications. The PCAC  
3 determination and the Working Group evaluation do not constitute a CEQA determination or  
4 otherwise constrain the Port's discretion under CEQA.

5 (c) If the PCAC votes to approve the proposal, it will  
6 notify State Lands, ask for the State Lands' comments within 15 days, and request that such  
7 comments be submitted to the Board before the Board votes on the proposal in accordance with  
8 section VIII.B.4.d below.

9 c. PCAC Evaluation Process for Air Quality Mitigation Proposals.

10 PCAC and the Port's Environmental Mitigation Coordinator shall consult with the Technical  
11 Advisory Committee as to air quality mitigation proposals submitted pursuant to section VIII.B.2  
12 above. The proposal shall be considered by PCAC, which will recommend approval, denial, or  
13 approval with modifications. The Technical Advisory Committee shall consist of one  
14 representative with technical expertise regarding air pollution reductions applicable to ports  
15 appointed by each of the following entities: (1) the California Air Resources Board; (2) the U.S.  
16 Environmental Protection Agency; (3) the South Coast Air Quality Management District  
17 (SCAQMD); (4) the Mobile Source Reduction Committee for the South Coast Air Basin; and (5)  
18 South Coast Carl Moyer Memorial Air Quality Fund. The members of the Technical Advisory  
19 Committee shall serve without compensation and shall meet on a regular basis to advise the  
20 PCAC and the Port's Environmental Mitigation Coordinator on how best to utilize the air quality  
21 mitigation funds to maximize air quality emission reductions at the Port, including but not  
22 limited to the development of requests for proposals and evaluation of proposals submitted for  
23 funding. If an agency does not designate a representative to the Committee, the Committee may  
24 proceed with participation from the remaining agencies.

25 d. Evaluation of Proposals by the Board of Harbor Commissioners. If  
26 the PCAC recommends approval of a funding proposal as referenced above (including any  
27 modifications to the proposal which PCAC may recommend), then the proposal shall be  
28 forwarded to the Board for consideration. If the proposal is intended to mitigate the impacts of a

1 past project or projects in accordance with section VIII.B.4.b(iii) above, then the Board shall  
2 direct staff to evaluate the proposal for implementation including but not limited to any CEQA  
3 requirements. Such evaluation shall include a cost estimate of implementation. At a public  
4 meeting, after considering the PCAC recommendation, any recommendation of the Technical  
5 Advisory Committee on the proposal, and any staff reports on the proposal and the record at the  
6 meeting, the Board shall approve, or deny the PCAC recommendation or return the proposal to  
7 the PCAC for consideration of modifications. If the Board denies the PCAC recommendation, it  
8 shall adopt specific findings explaining such actions. If the Board approves the PCAC  
9 recommendation, the project shall be funded; however, if State Lands objected to the approval of  
10 the proposal in accordance with section VIII.B.4.b(iii)(c) above, then the Board shall wait 45  
11 days after such approval to transfer any funds.

12 e. The Mitigation Coordinator shall prepare a quarterly report to the Board and the  
13 PCAC regarding the status of all approved projects and available mitigation funds in the  
14 designated account for specific types of mitigation. These funding procedures shall not affect the  
15 procedure for approval and funding of mitigation measures with funds other than those provided  
16 by the community aesthetic mitigation funds under this Amended Stipulated Judgment, or the  
17 Port's ability to use mitigation funds provided by the community aesthetic mitigation funds under  
18 this Amended Stipulated Judgment for mitigation related to the China Shipping Project.

19 5. Restrictions on Use of Mitigation Funds. The mitigation funds disbursed  
20 by the Port shall not be used for (a) mitigation measures committed to in Section VIII.A of this  
21 Judgment; (b) funds already committed to in any prior settlement or other document by the Port  
22 or City; (c) funds already budgeted for the current or future fiscal year by the Port or City or in an  
23 amount and type allocated for mitigation of Port impacts in prior years; (d) measures identified in  
24 future CEQA documents to mitigate impacts from projects not yet approved by the Port, except  
25 for aesthetic mitigation measures (although future CEQA documents may consider programs and  
26 activities funded pursuant to this provision in the baseline discussion); or (e) used as a substitute  
27 for existing budgeted municipal functions or programs. The aesthetic mitigation funds  
28 committed to in section VIII.B.3 may be used to mitigate any impacts identified in the China



1 description of such proposed projects and CEQA decisions as reasonably possible. The Port  
2 shall use its best efforts to provide such monthly notice as to minor exemptions from CEQA, and  
3 to ensure that all anticipated projects and CEQA decisions are included in the notice. The Parties  
4 understand that some matters may arise after such a monthly notice has been provided, and the  
5 fact that a project was not included on such a monthly notice shall not prevent Port staff or the  
6 Port Board from taking action on the matter.

7 **XI**

8 **LIMIT ON INTERIM OPERATION OF BERTH 100 AND ADDITIONAL MITIGATION**  
9 **PAYMENT IF LIMIT IS EXCEEDED**

10 During the interim period when operation of Phase I of the China Shipping Terminal is  
11 allowed pursuant to section V, above, the annual capacity of additional container cargo to be  
12 offloaded and handled at Berth 100 shall not exceed 328,000 TEUs per calendar year. If the  
13 China Shipping EIR is prepared in less than a calendar year, this capacity limit shall be  
14 determined based on the period of time between the effective date of this Judgment and the date  
15 that the China Shipping EIR is completed, prorated accordingly. If the container throughput  
16 exceeds the agreed-upon capacity, the Port shall make an additional payment to the mitigation  
17 fund described in section VIII.B, above, of \$30 per TEU in excess of the cap.

18 The Port shall provide to counsel for Petitioners a quarterly report with supporting  
19 documentation of the TEU throughput at Berth 97-109. This quarterly report may be provided on  
20 a confidential basis if such confidentiality is requested by the terminal operator, in which case  
21 Petitioners shall maintain the confidentiality of the report, and agree if any such document is  
22 submitted to the Arbitrator or a court, it shall be submitted under an agreement of confidentiality  
23 or under seal.

24 After the Board and City have each certified the China Shipping EIR and issued their  
25 respective decisions regarding the use of Berths 97-109, the capacity limit shall terminate.  
26 However, if a Petitioner brings a legal action (including required arbitration) challenging the  
27 adequacy of the China Shipping EIR or otherwise challenging the legality of the City's or the  
28 Port's decisions regarding the use of Berths 97-109, then the capacity limit shall immediately and

1 provisionally be placed back in effect while the action is resolved, and the penalty payment of  
2 \$30 per TEU shall be placed into a separate designated account pending the outcome of the  
3 litigation. If the action is resolved with a finding that the Port abused its discretion and the abuse  
4 was prejudicial, the funds will be paid as additional mitigation as described in section VIII.B  
5 above, in approximately equal shares to air quality mitigation and community aesthetic  
6 mitigation. Otherwise, the Port will recover and retain these funds.

7 **XII**

8 **ATTORNEYS' FEES IN THIS ACTION**

9 A. Petitioners' Fees. The Port has paid Petitioners reasonable attorneys' fees and  
10 costs for this Action, based upon reasonable hourly rates, in the amount of \$1,426,000.

11 B. Enforcement. Petitioners shall be entitled to reasonable attorneys' fees and costs  
12 incurred in the enforcement of this Judgment, including but not limited to the fees and costs  
13 incurred by Petitioners for arbitration pursuant to section VII, when Petitioners are the prevailing  
14 party as defined under Code of Civil Procedure section 1021.5. The amount of attorneys' fees  
15 and costs to be awarded for enforcement of this Judgment shall be determined either through  
16 negotiation or by binding arbitration before the arbitrator.

17 **XIII**

18 **FUTURE COOPERATION BETWEEN THE PORT AND PETITIONERS**

19 The Parties agree that this settlement and this Judgment have been reached in the mutual  
20 best interests of the Parties. In that spirit, the Parties shall cooperate to implement this Judgment,  
21 including the execution and filing of any court papers in this action necessary to implement the  
22 terms of this Judgment.

23 In addition, the Parties agree to cooperatively address and respond to any future  
24 environmental issue at the Port and in San Pedro and Wilmington. This cooperation may consist  
25 of meetings and discussions among the Parties, the purpose of which will be to attempt to  
26 coordinate the Parties' efforts at considering or resolving such future environmental issues.  
27 Nothing in this section shall limit the Parties' ability to bring future litigation against any other  
28

1 party or in any way create a condition precedent to the commencement of future lawsuits or other  
2 legal action by the Parties.

3 **XIV**

4 **STATEMENTS TO THE PRESS**

5 The Parties agree to provide advance copies of their draft press releases to announce this  
6 settlement and Stipulated Judgment for review and comment by all other parties, and to make no  
7 other statements regarding this Stipulated Judgment until the agreed upon date and time for  
8 release of the written statements. The Parties will attempt in good faith to address concerns  
9 raised by any other party as to the draft press release. The Parties will also provide a copy of  
10 their final press releases to all other Parties before the effective date of this Stipulated Judgment.

11 **XV**

12 **SETTLEMENT CONTINGENT ON COUNCIL APPROVAL AND SETTLEMENT OF**  
13 **FEDERAL LAWSUIT**

14 This Stipulated Judgment requires approval of the Los Angeles City Council, and is  
15 subject to and contingent upon such Council approval. This Stipulated Judgment is also  
16 contingent upon a settlement of the federal lawsuit *Natural Resources Defense Council, Inc., et*  
17 *al. v. United States Army Corps of Engineers, et al.*, Case No. 02-04793 MMM (Ex).

18 **XVI**

19 **FORCE MAJEURE**

20 If an event of force majeure occurs, such as civil commotion, war, acts of public enemies,  
21 fire, explosion, earthquake or other natural disaster or action of the elements, or acts of God, or  
22 unforeseen circumstances which result in a prolonged interruption of operations of the Port, and  
23 if such event of force majeure is so severe that it prevents the Port from fulfilling its obligations  
24 under this Agreement, then those obligations to that extent shall be suspended during the period  
25 of force majeure, but not thereafter. This provision shall not apply to the obligations under  
26 section VIII.B, except that the obligations under section VIII.B shall be suspended if the event of  
27 force majeure results in the cessation of operations at the China Shipping Terminal prior to  
28 certification of the China Shipping EIR and shall resume as soon as such cessation ends. The

1 Port shall provide to Petitioners notice of an event of force majeure within five days of its  
2 occurrence. Any disputes concerning the application of this force majeure provision shall be  
3 submitted to the Arbitrator.

#### 4 XVII

#### 5 INTEGRATION AND SEVERABILITY

6 The Parties agree that this Stipulated Judgment sets forth the final entire agreement  
7 between them relating to their settlement and that this document merges and supersedes all prior  
8 discussions, agreements, understandings, representations, and all other communications between  
9 them relating to the subject matter of this Stipulated Judgment.

10 Each provision of this Stipulated Judgment shall be interpreted in such a manner as to be  
11 valid and enforceable under applicable law, but if any provision of this Stipulated Judgment is  
12 hereinafter modified or invalidated by further order of a court of competent jurisdiction, that  
13 provision shall be invalidated only to that extent, without thereby invalidating the remainder of  
14 that provision or of any other provision. If any provision of this Stipulated Judgment is modified  
15 or invalidated as set forth above, or any funding decision made pursuant to the Stipulated  
16 Judgment, becomes prohibited or invalid under any applicable law, then the Parties shall  
17 negotiate in good faith and seek to agree upon a substitute provision or funding decision  
18 consistent with the intent of this Agreement which avoids the legal defect that resulted in the  
19 prohibition or invalidity. If the Parties cannot agree on such a substitute provision or funding  
20 decision, the Parties shall submit the issue to the Arbitrator.

#### 21 XVIII

#### 22 RELEASE OF CLAIMS

23 The parties hereby release all claims relating to the issuance of the China Shipping Lease  
24 and Coastal Development Permit for the China Shipping Project alleged in this action entitled  
25 *Natural Resources Defense Council, Inc., et al. v. City of Los Angeles, et al.* This limited release  
26 shall not extend to any other matter, does not release any of the rights and obligations under this  
27 Stipulated Judgment, and shall not extend to any action to enforce or interpret the provisions of  
28 this Agreement. This release shall not extend to any dispute regarding the adequacy or

1 compliance with CEQA of the China Shipping EIR to be prepared pursuant to this Agreement,  
2 including but not limited to its discussion of traffic impacts. The Parties agree that all disputes,  
3 including claims for attorneys' fees and costs, regarding the Stipulated Judgment entered on  
4 March 6, 2003 and existing as of the Effective Date of this Amended Stipulated Judgment shall  
5 be deemed resolved without further modification of the Stipulated Judgment, with each side  
6 having agreed to bear their own attorneys' fees and the costs are resolved.

7 **XIX**

8 **ADDITIONAL PROVISIONS**

9 A. No Admission. Nothing in this Stipulated Judgment shall be construed as or  
10 deemed for any purpose to be an admission or denial as to the validity of any claims or defenses.  
11 The Parties agree that if this Stipulated Judgment is not entered as a stipulated judgment by the  
12 Los Angeles Superior Court and therefore does not become effective, no Party can use any part  
13 of this Stipulated Judgment in any way in any legal proceeding.

14 B. Warranty of Authority. Each of the Parties represents and warrants that it has the  
15 right, power and authority to execute this Stipulated Judgment.

16 C. Written Waiver. A waiver of any provision of this Stipulated Judgment shall not  
17 be effective unless such a waiver is made expressly in writing. A written waiver of any one  
18 breach shall not be deemed a waiver of any other breach of the same or any other provision of  
19 this Stipulated Judgment.

20 D. Legal Counsel and Joint Preparation. The Parties affirm that they have been  
21 represented by counsel of their own choosing regarding the preparation and negotiation of this  
22 Stipulated Judgment and the matters set forth herein, and that each of them has read this  
23 Stipulated Judgment Agreement and is fully aware of its contents and its legal effect. The  
24 language of all parts of this Stipulated Judgment shall in all cases be construed as a whole,  
25 according to its fair meaning, and not strictly for or against any Party. No presumptions or rules  
26 of interpretation based upon the identity of the Party preparing or drafting the Stipulated  
27 Judgment, or any part thereof, shall be applicable or invoked.

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

E. Binding on Successors. This Stipulated Judgment shall be binding on and inure to the benefit of the successors and assigns of the Parties.

F. Counterparts. This Stipulated Judgment may be executed in counterparts, and when all Parties have executed this Stipulated Judgment, each counterpart will be deemed an original.

G. Captions. Captions are included herein for ease of reference only. The captions are not intended to affect the meaning of the contents or scope of this Settlement Agreement.

H. Notices. Notices or other communications given or required to be given under this Stipulated Judgment, shall be effective only if rendered or given in writing by overnight mail, hand delivery, or email or facsimile transmission if such email or facsimile transmission is confirmed by live telephone conversation, to the Party's representative identified below:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**For Respondents:**

**Larry Keller, Executive Director**  
Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro CA 90731  
Facsimile No.: (310) 831-6936  
Email: lkeller@portla.org  
Telephone: (310) 732-3456

**Dr. Ralph Appy,**  
Director of Environmental Management  
Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro CA 90731  
Facsimile No.: (310) 547-4643  
Email: rappy@portla.org  
Telephone: (310) 732-3497

**Thomas A. Russell, Senior Assistant City Attorney**  
Harbor Department, City Attorney's Office  
415 South Palos Verdes Street  
Facsimile No.: (310) 831-9778  
Email: trussell@portla.org  
Telephone: (310) 732-3750

**For Petitioners:**

**Julie Masters, Esq.**  
Natural Resources Defense Council  
1314 Second Street  
Santa Monica, CA 90401  
Facsimile No.: (310) 434-2399  
Email: jmasters@nrdc.org  
Telephone: (310) 434-2300

**Andrew Mardesich, President**  
San Pedro Peninsula Homeowners United, Inc.  
1931 Bardale Ave.  
San Pedro, CA 90731  
Facsimile No.: (310) 832-4919  
Email: amardesich@earthlink.net  
Telephone: (310) 832-4919

///  
///  
///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Noel Park, President  
San Pedro and Peninsula Homeowners' Coalition  
3233 South Walker Avenue  
San Pedro, CA 90731  
Facsimile No.: (562) 804-5210  
Email: jdcorvette@telis.org  
Telephone: (562) 804-5205

Todd Campbell, Policy Director  
Coalition for Clean Air  
523 West Sixth Street, 10th Floor  
Los Angeles, CA 90014  
Facsimile No.: (213) 630-1158  
Email: todd@coalitionforcleanair.org  
Telephone: (213) 630-1192

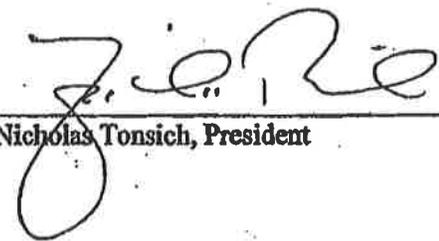
I. Effective Date. This Amended Stipulated Judgment shall be effective on the date that it is entered as an amended stipulated judgment by the Los Angeles Superior Court.

///  
///  
///

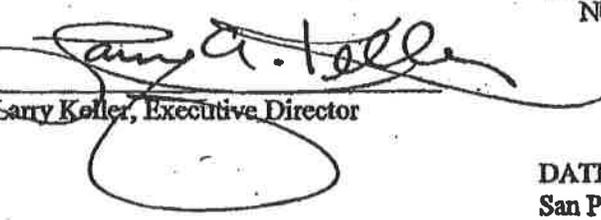


1 **SIGNATURES OF PARTIES:**

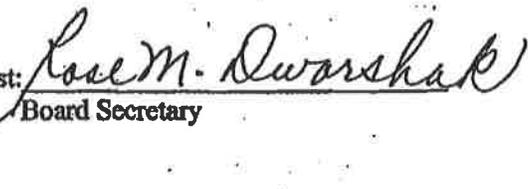
2 DATED: MAY 19, 2004  
3 The Los Angeles Board of Harbor  
4 Commissioners

5  
6 By:   
7 Nicholas Tonsich, President

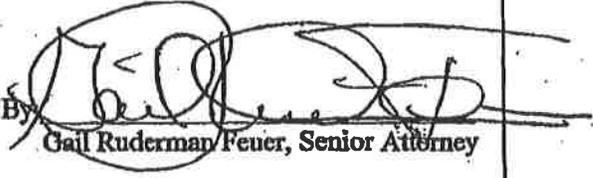
8  
9  
10 DATED: 5/19/04  
11 The City of Los Angeles Harbor Department  
12 and the City of Los Angeles by its Board of  
13 Harbor Commissioners

14 By:   
15 Larry Keller, Executive Director

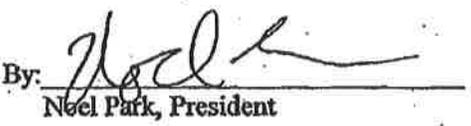
16  
17  
18  
19 DATED: 5/19/04

20  
21 Attest:   
22 for Board Secretary

DATED: May 11, 2004  
Natural Resources Defense Council, Inc.

By:   
Gail Ruderman Feuer, Senior Attorney

DATED: 5/11/04  
San Pedro and Peninsula Homeowners  
Coalition

By:   
Neel Park, President

DATED: \_\_\_\_\_  
San Pedro Peninsula Homeowners United,  
Inc.

By: \_\_\_\_\_  
Andrew Mardesich, President

DATED: \_\_\_\_\_  
Coalition for Clean Air, Inc.

By: \_\_\_\_\_  
Tim Carmichael, President/Chief  
Executive Officer

1 **SIGNATURES OF PARTIES:**

2 **DATED:** \_\_\_\_\_  
3 The Los Angeles Board of Harbor  
4 Commissioners

5  
6 **By:** \_\_\_\_\_  
7 Nicholas Tonsich, President

8  
9  
10 **DATED:** \_\_\_\_\_  
11 The City of Los Angeles Harbor Department  
12 and the City of Los Angeles by its Board of  
13 Harbor Commissioners

14  
15 **By:** \_\_\_\_\_  
16 Larry Keller, Executive Director

17  
18  
19 **DATED:** \_\_\_\_\_  
20  
21 **Attest:** \_\_\_\_\_  
22 Board Secretary

**DATED:** \_\_\_\_\_  
Natural Resources Defense Council, Inc.

**By:** \_\_\_\_\_  
Gail Ruderman Feuer, Senior Attorney

**DATED:** \_\_\_\_\_  
San Pedro and Peninsula Homeowners  
Coalition

**By:** \_\_\_\_\_  
Noel Park, President

**DATED:** 5/11/04  
San Pedro Peninsula Homeowners United,  
Inc.

**By:**  \_\_\_\_\_  
Andrew Mardesich, President

**DATED:** \_\_\_\_\_  
Coalition for Clean Air, Inc.

**By:** \_\_\_\_\_  
Tim Carmichael, President/Chief  
Executive Officer

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SIGNATURES OF PARTIES:**

DATED: \_\_\_\_\_  
The Los Angeles Board of Harbor  
Commissioners

By: \_\_\_\_\_  
Nicholas Tonsich, President

DATED: \_\_\_\_\_  
The City of Los Angeles Harbor Department  
and the City of Los Angeles by its Board of  
Harbor Commissioners

By: \_\_\_\_\_  
Larry Keller, Executive Director

DATED: \_\_\_\_\_

Attest: \_\_\_\_\_  
Board Secretary

DATED: \_\_\_\_\_  
Natural Resources Defense Council, Inc.

By: \_\_\_\_\_  
Gail Ruderman Feuer, Senior Attorney

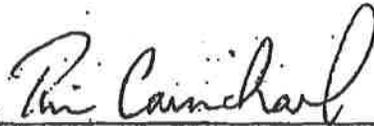
DATED: \_\_\_\_\_  
San Pedro and Peninsula Homeowners  
Coalition

By: \_\_\_\_\_  
Noel Park, President

DATED: \_\_\_\_\_  
San Pedro Peninsula Homeowners United,  
Inc.

By: \_\_\_\_\_  
Andrew Mardesich, President

DATED: 5/10/04  
Coalition for Clean Air, Inc.

By:   
Tim Carmichael, President/Chief  
Executive Officer

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**APPROVED AS TO FORM:**

DATED: May 18, 2004  
ROCKARD J. DELGADILLO, City  
Attorney

By:   
Thomas A. Russell  
Senior Assistant City Attorney  
City of Los Angeles

DATED: May 11, 2004  
NATURAL RESOURCES DEFENSE  
COUNCIL, INC.; SAN PEDRO AND  
PENINSULA HOMEOWNERS  
COALITION; SAN PEDRO PENINSULA  
HOMEOWNERS UNITED, INC.;  
COALITION FOR CLEAN AIR, INC.

By:   
Gail Ruderman Feuer  
Senior Attorney  
Natural Resources Defense Council, Inc.

**EXHIBIT A**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COURT OF APPEAL - SECOND DIST.

**FILED**

DIVISION FOUR

OCT 23 2002

JOSEPH A. LANE Clerk

S. VEVERKA Deputy Clerk

NATURAL RESOURCES DEFENSE  
COUNCIL, INC., et al.,

B159157

Plaintiffs and Appellants,

(Super. Ct. No. BS070017)  
(Dzintra Janavs, Judge)

v.

TEMPORARY STAY  
ORDER

CITY OF LOS ANGELES,  
PORT OF LOS ANGELES, and  
LOS ANGELES BOARD OF  
HARBOR COMMISSIONERS,

Defendants and Respondents.

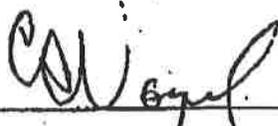
THE COURT:\*

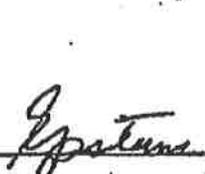
Pursuant to Code of Civil Procedure section 923, and pending further order by a court of competent jurisdiction, the court hereby issues a stay effective immediately of portions of the China Shipping Project which is the subject of appeal No. B159157, as follows:

1. Completion of the wharf at Berth 100 beyond 1,000 feet, currently estimated to be completed by December 20, 2002;
2. Erection and operation of the cranes currently scheduled to be delivered within the next few weeks;

- 3. Operation of Phase I of the China Shipping Project;
- 4. Construction and operation of Phases II and III of the China Shipping Project.

This stay does not prevent: completion of the storm drain system; completion of the backlands including security fences, permanent lights and power; use of the backlands for container storage; offloading and storage of the cranes at Berth 100.

  
\*VOGEL (C.S.), P.J.

  
EPSTEIN, J.

  
HASTINGS, J.

**EXHIBIT B**

**EXHIBIT B**

**AGREEMENT TO SUPPLY AND TO USE ALTERNATIVE  
MARITIME POWER AND LOW PROFILE CRANES**

The Parties to this Agreement are the Port of Los Angeles ("the Port"), the City of Los Angeles, China Shipping Holding Co., (North America), Ltd., ("China Shipping"), and the Natural Resources Defense Council, Inc. ("NRDC"), on its own behalf and on behalf of petitioners in the action entitled Natural Resources Defense Council, Inc., et al. v. City of Los Angeles, et al., Los Angeles Superior Court Case No. BS 070017. The Parties agree as follows:

1. The Port shall pay the cost of equipping China Shipping vessels to use Alternative Maritime Power ("AMP") up to the aggregate cost of \$5 million. Subject to the opening of Phase I of the Terminal assigned to China Shipping pursuant to Permit No. 999, including Berths 97-100, China Shipping shall retrofit four vessels equipped to operate on AMP at the Port and use AMP for hoteling pursuant to the following schedule:

- a. By August 31, 2004, China Shipping shall retrofit two vessels, which vessels shall be dedicated to service of the Port of Los Angeles and shall call at Berths 97-109 ("the Terminal") and use AMP while docked at berth;
- b. During the period from August 31, 2004 through January 1, 2005, a minimum of 30% of ship calls, on average, at the Terminal shall utilize AMP while at berth;
- c. By January 1, 2005, China Shipping shall retrofit a total of three vessels, which vessels shall be dedicated to service of the Port of Los Angeles and shall call at the Terminal and use AMP while docked at berth;

- d. During the period from January 1, 2005 through July 1, 2005, a minimum of 60% of ship calls, on average, at the Terminal shall utilize AMP while at berth;
- e. By March 31, 2005, China Shipping shall retrofit a total of four vessels, which vessels shall call at the Terminal and use AMP while docked at berth;
- f. For every twelve-month-period commencing July 1, 2005, a minimum of 70% of ship calls, on average, at the Terminal shall utilize AMP while at berth.
- g. If for reasons of a vessel emergency or vessel casualty, a China Shipping AMP-equipped vessel is out of service and unavailable for use at the Terminal, the percentage of AMP calls required at the Terminal shall be reduced at an annual rate of 10% for the period of unavailability. In this case, China Shipping shall provide notice to the parties of the emergency or casualty and the reasons therefore.

2. China Shipping may equip additional vessels for AMP use, such to be paid for by the Port up to the \$5 million aggregate cost. China Shipping may commence use of Phase I of the Terminal, as defined in the Amended Stipulated Judgment, subject to the terms and conditions of this Agreement. Subject to the feasibility provisions in Paragraph 5 herein, the Port shall compensate China Shipping and any other user of the Terminal affiliated with China Shipping, for any additional cost of AMP power above the cost of power supplied by vessel generators based on the prevailing cost of fuel on the date of the vessel's arrival. These costs shall include the additional costs of connecting and disconnecting the vessel to the power source. The Port shall compensate China Shipping for the additional cost of electricity for AMP use above the cost of power supplied by the vessel generators based upon the prevailing industrial charge for electricity and the prevailing cost of fuel on the date of that vessel's arrival ("Excess AMP

Cost") up to but not to exceed \$3 million per calendar year for the terminal. This calculation of Excess AMP Cost shall exclude the cost of equipping China Shipping vessels to use AMP subject to the aggregate cost cap of \$5 million referenced in numbered paragraph 1 above and the costs of connecting and disconnecting the vessels and power source. If the Excess AMP Cost exceeds \$3 million, the percentage requirements of AMP usage pursuant to paragraph 1 shall be reduced in an amount so that the Excess AMP Cost is \$3 million per calendar year; in this event, the Port shall not be responsible for Alternative Air Emissions Mitigation.

3. The Port shall make good faith efforts to ensure that the infrastructure to provide AMP, including the barge delivering AMP ("AMP Infrastructure"), is available for use upon arrival by any China Shipping AMP-equipped vessel that calls at the Terminal. China Shipping shall give the Port 48 hours advanced notice that an AMP-equipped vessel will be arriving at the Terminal. If an AMP-equipped China Shipping vessel calls at the Terminal and China Shipping has provided the Port with the required advance notice of that vessel call, but the AMP Infrastructure is not available to provide electric power to the ship, then the vessel may use its on-board generators for power until such time as AMP becomes available. If an AMP-equipped vessel runs its on-board generators at the Terminal as a result of the lack of availability of AMP under this paragraph, the ship call will still count as an AMP call for purposes of calculating the percentage AMP under paragraph 1.

4. China Shipping shall be entitled to use its AMP-equipped vessels at other terminals within the port, including those terminals that are not equipped for AMP use. China Shipping may count a vessel call by a China Shipping vessel at a berth other than the Terminal as an AMP

call at the Terminal for purposes of calculating the percentage AMP usage under paragraph 1 if the China Shipping vessel calling at a berth other than the Terminal is equipped with the necessary AMP connection and uses AMP while at berth. Notwithstanding paragraph 3 of this Agreement, if the AMP Infrastructure is unavailable for a ship calling at another berth or if such ship does not use AMP while at berth for any reason, that ship call shall not count for purposes of calculating the percentage AMP usage under paragraph 1.

5. If AMP use at the Terminal is determined by mutual agreement of the Parties or by the Arbitrator to be infeasible within the meaning of this Agreement, China Shipping shall not be required to use AMP at the Port under this Agreement. The use of AMP may be deemed infeasible only in the event that the use of AMP, and not the negligence of China Shipping, the Port, or any of their agents or contractors, causes one or more of the following problems, which problem(s) cannot be remedied through reasonable modifications to AMP or other reasonable measures: (a) a significant and unreasonable risk of injury or death to vessel, stevedore, terminal or other personnel; (b) a significant and unreasonable risk of damage to the vessel, cargo, or terminal property; (c) a violation of a Federal, State or local law or regulation that is not de minimis; (d) significant and recurring loss of power to the vessel that unreasonably affects China Shipping's operations; (e) significant and recurring interference with vessel loading and unloading operations that unreasonably affects China Shipping's operations; or (f) significant and recurring delays in vessel arrivals, commencement of cargo operations, or vessel departures as a result of the act of connecting or disconnecting the vessel to or from the AMP that unreasonably affects China Shipping's operations. The Parties agree that costs related to the

categories above may be considered in the determination of infeasibility. The Parties further agree that this feasibility test shall have no effect on the Port's determinations under CEQA.

6. If a determination of AMP infeasibility is made by mutual agreement of the Parties or by the Arbitrator pursuant to this Agreement, the Parties shall meet and confer concerning appropriate alternative air emissions mitigation and, if the Parties cannot reach agreement, any Party may submit the matter for binding arbitration pursuant to the arbitration procedures of the Amended Stipulated Judgment. The plan for Alternative Air Emissions Mitigation shall be adopted within 180 days of the Arbitrator's determination of infeasibility, if any, with implementation of the plan as soon as practicable thereafter. The Parties agree that the Port's obligation for Alternative Air Emissions Mitigation shall be up to but not exceed \$3.0 million annually. The Port and China Shipping shall cooperate in an effort to achieve on a yearly basis equivalent amounts of emissions reductions as would have been achieved by China Shipping's use of AMP at the Terminal at full capacity assuming 70% of the ships docked at the Terminal use AMP, but that the costs of this Alternative Air Emissions Mitigation shall be up to but not exceed \$3.0 million annually. The Alternative Air Emissions Mitigation shall be in addition to (1) the mitigation measures committed to in Section VIII.A of the Amended Stipulated Judgment; and (2) the mitigation measures adopted to mitigate an air quality impact of the China Shipping Project other than from ship hoteling.

7. The four existing conventional gantry cranes presently at the Terminal may remain and be operated at the Terminal. If Berth 102 is constructed, then prior to commencing operations at Berth 102 China Shipping shall cause the installation on Berth 102 of two "low

profile" cranes that are designed to reduce visual impact. If the total price of these two cranes exceeds \$25 million, including but not limited to design costs of the supplier and its subcontractor, then the Port or China Shipping may submit to the Arbitrator the question of whether that cost makes those cranes infeasible. Low profile cranes include cranes that are designed to reduce visual impact by the use of a horizontal boom that does not need to be raised up when the crane is not in use such that the overall crane height is reduced to 185 feet or less when the crane is not in use and mobile harbor cranes. The Port agrees to pay all costs of the purchase, preparation, delivery, maintenance and repair (including planning, inspection, consulting and design) of the two low profile cranes for Berth 102 in excess of what conventional gantry cranes would cost, subject to the condition that the low profile cranes comply with the Specification issued by the Port dated March 11, 2003, Addendum 1, and technical deviations submitted by ZPMC, as modified by the letter from ZPMC to the Port dated April 14, 2004, including but not limited to the cost estimate of \$9.9 million per crane. The Port shall take, and agrees to pay for, all measures necessary to ensure that the load bearing capability of the Phase II terminal will be sufficient to allow the installation, and normal and safe operation of the low-profile cranes. If Berth 102 is not utilized as a berth for container operations, then the Port shall bear all costs of transport and storage and, if applicable, disposal of the low profile cranes. At its option and sole discretion, the Port may purchase the cranes at their fair market value. If the cranes are not utilized at Berth 102 pursuant to this paragraph, and use of the cranes is feasible, the Port shall cause the low-profile cranes to be utilized at another terminal. If additional cranes are purchased for use at Berth 102, they shall be low profile cranes unless low profile cranes are determined to be infeasible as provided in paragraphs 8 and 9 below.

8. If the use of the low profile cranes at Berth 102 is determined by mutual agreement of the parties or by the Arbitrator to be infeasible within the meaning of this Agreement, China Shipping shall not be required to use the low profile cranes on Berth 102. The use of low profile cranes may be deemed infeasible only if: (1) the use of the low profile cranes does not meet standard industry requirements for the movement of containers between the vessels and the Terminal; (2) the infeasibility is not the result of the negligence or failure of China Shipping, the Port, or any of their agents, limited partners or contractors; and (3) the infeasibility cannot be remedied through reasonable modifications to the low-profile cranes or related infrastructure. The Parties agree that costs related to these categories may be considered in the determination of infeasibility. In no event shall the low profile cranes' technical or operational requirements exceed those of the existing four cranes used at Berths 97-100. The Parties agree that this feasibility test shall have no effect on the Port's determinations under CEQA.

9. Any dispute among the parties arising out of or related to the feasibility of AMP use or use of low-profile cranes, a breach of the schedule and/or percentages of AMP use pursuant to paragraph 1 above, or Alternative Air Emissions Mitigation that cannot be resolved by mutual agreement of the parties shall be referred to the Arbitrator, selected by the process described in Section VII of the Amended Stipulated Judgment in the above-mentioned action, for determination according to the following procedures and standards; arbitration regarding the feasibility of AMP and Alternative Air Emissions Mitigation shall be binding:

a. Any party may, at any time, demand arbitration pursuant to this Agreement regarding (1) the feasibility of AMP based solely on the conditions described in paragraphs 5(a) through (c) hereof, (2) application of the cap for payment of excess AMP costs pursuant to

paragraph 2 above, (3) a breach of the schedule and/or percentage of AMP use pursuant to paragraph 1 above, or (4) if AMP is determined to be infeasible in accordance with the terms of this Agreement, Alternative Air Emissions Mitigation pursuant to paragraph 6 above.

b. No party may demand arbitration regarding the feasibility of AMP based on the conditions described in paragraphs 5(d) through 5(f), until the requirements under paragraph 9(c) have been fulfilled, unless (1) the continued use of AMP is rendered wholly and immediately ineffective over a sufficient period of time to demonstrate that the vessel cannot perform its required functions without the use of its on-board power generators, (2) where the failure is not the result of the negligence of China Shipping, the Port, or any of their agents, limited partners, or contractors, and (3) the failure cannot be remedied through reasonable modifications to AMP or other reasonable measures.

c. After a six-month period during which 60% or more of the vessels calling at the Terminal use AMP, any party may demand arbitration of any dispute regarding the feasibility of AMP based on any of the conditions described in paragraphs 5(d) through 5(f). After a three-month period of use of the low-profile cranes for the loading and unloading of containers, any party may demand arbitration of any dispute regarding the feasibility of the use of low-profile cranes based on the conditions described in paragraph 8. If the continued use of the low profile cranes is rendered wholly and immediately ineffective over a sufficient period of time (including testing) to demonstrate that the cranes cannot perform their required functions, then any party may demand arbitration at that time.

d. Any demand for arbitration of any issue under this Agreement shall be made in writing to all parties, with a copy to the Arbitrator. The demand shall include a detailed statement of the issue or issues to be presented to the Arbitrator, the grounds on which relief is

sought, and the evidence supporting such request for relief. Any other party shall have the right to respond to a demand for arbitration. Following a written demand for arbitration, the parties shall meet in an attempt to resolve any disputes regarding feasibility. All parties agree to provide within 15 days of a written request all information relevant to a determination of feasibility and, if a determination of infeasibility is made, information relevant to equivalent emissions reductions, unless the parties mutually agree to a different time limit, or the Arbitrator extends the time limit.

e. Arbitration proceedings shall commence immediately following a demand for arbitration made by any party under this agreement. An arbitration hearing shall commence on a schedule to be agreed upon by the parties or determined by the Arbitrator, but shall be held no later than sixty days following the demand for arbitration. The Arbitrator shall at all times retain the authority to issue such orders as he or she deems appropriate with respect to the time, place and manner in which the arbitration shall proceed. The parties shall be entitled to present evidence at the arbitration according to rules and procedures established by the Arbitrator. Section VII.F of the Amended Stipulated Judgment in the above-mentioned action shall apply to these arbitration proceedings.

f. The use of AMP will not be required for sixty days from the time a written demand for arbitration is made regarding the feasibility of conditions described in paragraph 5, unless the Arbitrator orders otherwise. If the use of AMP ceases during the sixty day period allowed by this subsection or by order of the Arbitrator, then the period of time during which AMP is not required shall not be considered in calculating the AMP percentage requirements set forth in paragraph 1 of this Agreement.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE BY MAIL**  
(Code Civ. Proc. secs. 1013(a), 2015.5)

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 555 West Fifth Street, Suite 3500, Los Angeles, California 90013-1024; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

**NOTICE OF ENTRY OF AMENDED STIPULATED JUDGMENT, MODIFICATION OF STAY, AND ORDER THEREON**

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 555 West Fifth Street, Suite 3500, Los Angeles, California 90013-1024, in accordance with Morrison & Foerster's ordinary business practices:

**Gail Ruderman Feuer, Esq.**  
**Natural Resources Defense Council, Inc.**  
**1314 Second Street**  
**Santa Monica, CA 90401**

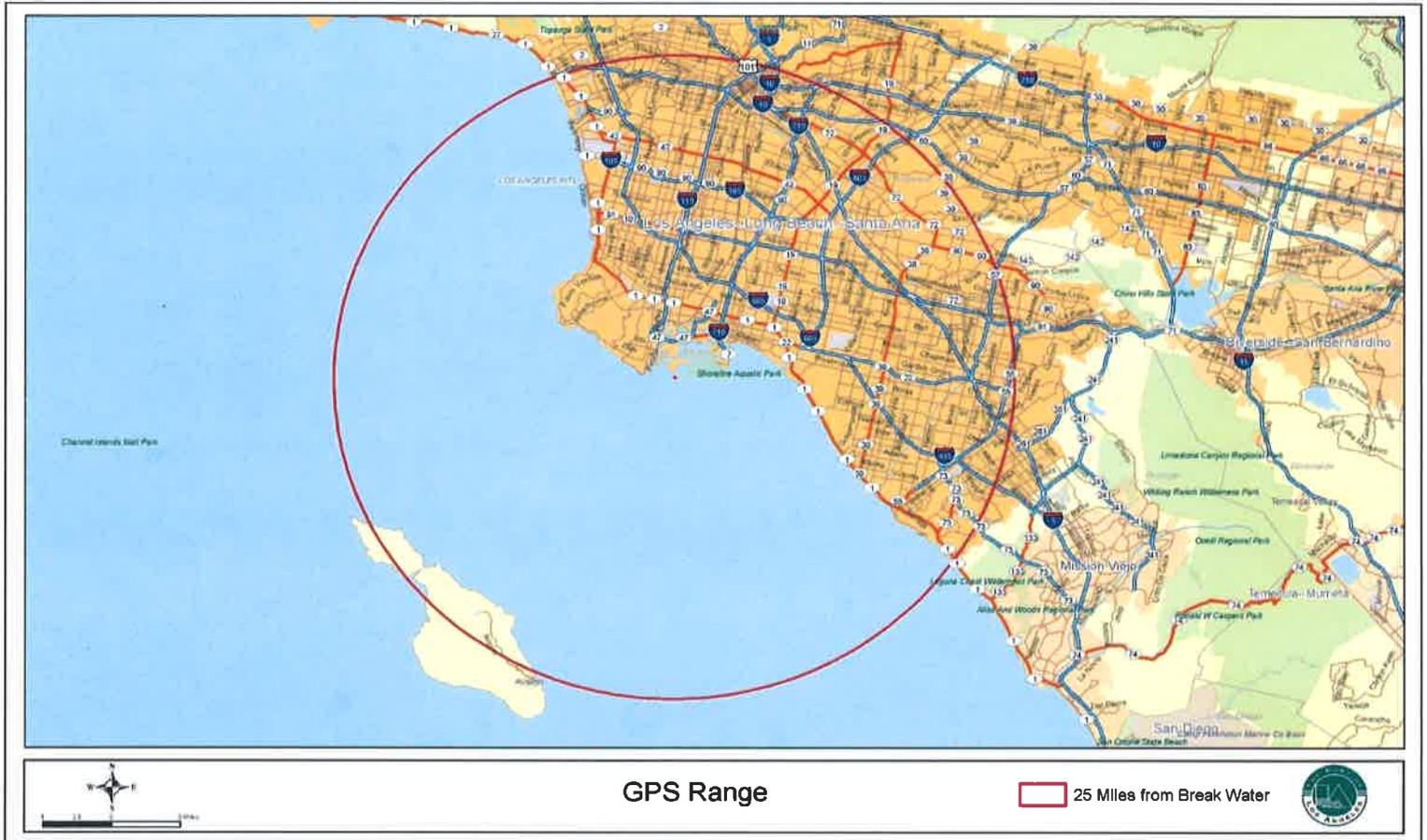
I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at Los Angeles, California, this 18th day of June, 2004.

Cheryl Lawson  
(typed)

  
(signature)

# Port of Los Angeles 25 Mile Radius



## **EXHIBIT D - AFFIRMATIVE ACTION PROGRAM PROVISIONS**

### **Sec. 10.8.4 Affirmative Action Program Provisions.**

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

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

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

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

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

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

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

## EXHIBIT E

### SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM AND LOCAL BUSINESS PREFERENCE PROGRAM

#### (1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM

The City of Los Angeles Harbor Department is committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at the Harbor Department in a manner that reflects the diversity of the City of Los Angeles. The Harbor Department's Small Business Enterprise (SBE) Program was created to provide additional opportunities for small businesses to participate in professional service and construction contracts. An overall Department goal of 25% SBE participation, including 5% Very Small Business Enterprise (VSBE) participation, has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work.

It is the policy of the Harbor Department to solicit participation in the performance of all service contracts by all individuals and businesses, including, but not limited to, SBEs, VSBEs, women-owned business enterprises (WBEs), minority-owned business enterprises (MBEs), and disabled veteran business enterprises (DVBEs). The SBE Program allows the Harbor Department to target small business participation, including MBEs, WBEs, and DVBEs, more effectively. It is the intent of the Harbor Department to make it easier for small businesses to participate in contracts by providing education and assistance on how to do business with the City, and ensuring that payments to small businesses are processed in a timely manner. **In order to ensure the highest participation of SBE/VSBE/MBE/WBE/DVBEs, all proposers shall utilize the City's contracts management and opportunities database, the Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>, to outreach to potential subcontractors.**

The Harbor Department defines a SBE as an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121. Go to [www.sba.gov](http://www.sba.gov) for more information. The Harbor Department defines a VSBE based on the State of California's Micro-business definition which is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.

The SBE Program is a results-oriented program, requiring consultants who receive contracts from the Harbor Department to perform outreach and utilize certified small businesses. **Based on the work to be performed, it has been determined that the percentage of small business participation will be 0%, including 0% VSBE participation.** The North American Industry Classification System (NAICS) Code for the scope of services is N/A. This NAICS Code is the industry code that corresponds to at least 51% of the scope of services and will be used to determine the size standard for SBE participation of the Prime Consultant. The maximum SBE size standard for this NAICS Code is N/A.

Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement. Subconsultants must qualify as an SBE based on the type of services that they will be performing under the Agreement. All business participation will be determined by the percentage of the total amount of compensation under the agreement paid to SBEs. The Consultant shall not substitute an SBE firm without obtaining prior approval of the City. A request for substitution must be based upon demonstrated good cause. If substitution is permitted, Consultant shall endeavor to make an in-kind substitution for the substituted SBE.

#### (2) LOCAL BUSINESS PREFERENCE PROGRAM:

The Harbor Department is committed to maximizing opportunities for local and regional businesses, as well as encouraging local and regional businesses to locate and operate within the Southern California region. It is the policy of the Harbor Department to support an increase in local and regional jobs. The Harbor Department's Local Business Preference Program (LBPP) aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector.

The Harbor Department defines a LBE as:

- (a) A business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties; or
- (b) A business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties.

In order for Harbor Department staff to determine the appropriate LBE preference, Consultant shall complete, sign, notarize (where applicable) and submit the attached Affidavit and Contractor Description Form. The Affidavit and Contractor Description Form will signify the LBE status of the Consultant and subconsultants. Prior to contract award, the Harbor Department will verify the status of all LBEs.

Consultant shall complete, sign, notarize (where applicable) and submit as part of the executed agreement the attached Affidavit and Contractor Description Form. The Contractor Description Form, when signed, will signify the Consultant's intent to comply with the SBE and LBPP requirements. Prior to contract award, the Harbor Department will verify the status of all SBEs. In addition, prior to being awarded a contract with the Harbor Department, all contractors and subcontractors must be registered on LABAVN.

In the event of Consultant's noncompliance during the performance of the Agreement, Consultant shall be considered in material breach of contract. In addition to any other remedy available to City under this Agreement or by operation of law, the City may withhold invoice payments to Consultant until noncompliance is corrected, and assess the costs of City's audit of books and records of Consultant and its subconsultants. In the event the Consultant falsifies or misrepresents information contained in any form or other willful noncompliance as determined by City, City may disqualify the Consultant from participation in City contracts for a period of up to five (5) years.

## AFFIDAVIT OF COMPANY STATUS

"The undersigned declares under penalty of perjury pursuant to the laws of the State of California that the following information and information contained on **the attached Contractor Description Form** is true and correct and include all material information necessary to identify and explain the operations of

---

Name of Firm

as well as the ownership thereof. Further, the undersigned agrees to provide either through the prime consultant or, directly to the Harbor Department, complete and accurate information regarding ownership in the named firm, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents in association with this agreement."

(1) **Small/Very Small Business Enterprise Program:** Please indicate the ownership of your company. Please check all that apply. At least one box must be checked:

SBE   VSBE   MBE   WBE   DVBE   OBE

- A Small Business Enterprise (SBE) is an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121.
- A Very Small Business Enterprise (VSBE) is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.
- A Minority Business Enterprise (MBE) is defined as a business in which a minority owns and controls at least 51% of the business. A Woman Business (WBE) is defined as a business in which a woman owns and controls at least 51% of the business. For the purpose of this project, a minority includes:
  - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands); and
  - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- A Disabled Veteran Business Enterprise (DVBE) is defined as a business in which a disabled veteran owns at least 51% of the business, and the daily business operations are managed and controlled by one or more disabled veterans.
- An OBE (Other Business Enterprise) is any enterprise that is neither an SBE, VSBE, MBE, WBE, or DVBE.

(2) **Local Business Preference Program:** Please indicate the Local Business Enterprise status of your company.

Only one box must be checked:

LBE       Non-LBE

- A Local Business Enterprise (LBE) is: (a) a business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties; or (b) a business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties.
- A Non-LBE is any business that does not meet the definition of a LBE

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_

Title \_\_\_\_\_  
Date Signed \_\_\_\_\_

**NOTARY**

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, before me appeared  
\_\_\_\_\_ to me personally known, who being duly sworn, did execute the  
Name  
foregoing affidavit, and did state that he/she was properly authorized by \_\_\_\_\_  
Name of Firm  
to execute the affidavit and did so as his or he free act and deed.

**SEAL**

**Notary Public** \_\_\_\_\_  
**Commission Expires** \_\_\_\_\_

## Contractor Description Form

### PRIME CONTRACTOR

Contract #: \_\_\_\_\_ Award Date: \_\_\_\_\_ Contract Term: \_\_\_\_\_  
Contract Title: \_\_\_\_\_  
Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
Local Business Enterprise: YES \_\_\_\_\_ No \_\_\_\_\_ (Check only one)  
Primary NAICS Code: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email Address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
Local Business Enterprise: YES \_\_\_\_\_ No \_\_\_\_\_ (Check only one)  
Primary NAICS Code: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email Address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
Local Business Enterprise: YES \_\_\_\_\_ No \_\_\_\_\_ (Check only one)  
Primary NAICS Code: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email address: \_\_\_\_\_

## Contractor Description Form

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
Local Business Enterprise: YES \_\_\_\_\_ No \_\_\_\_\_ (Check only one)  
Primary NAICS Code: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email Address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
Local Business Enterprise: YES \_\_\_\_\_ No \_\_\_\_\_ (Check only one)  
Primary NAICS Code: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
Local Business Enterprise: YES \_\_\_\_\_ No \_\_\_\_\_ (Check only one)  
Primary NAICS Code: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email address: \_\_\_\_\_

## EXHIBIT F

### Sec. 10.8.2.1. Equal Benefits Ordinance.

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

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

#### (c) Equal Benefits Requirements.

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

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

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

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

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

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

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

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

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

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

(e) Applicability.

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

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

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

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

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

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

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

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

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

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

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

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