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FEDERAL MARITIME COMMISSION

Original Title Page

FMC Agreement No. 201196

Marine Terminal Agreement

by and between

The City of Los Angeles and the City of Long Beach

Effective Date: September 30, 2008

Expiration Date: See Section 7.2



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MARINE TERMINAL AGREEMENT

This Marine Terminal Agreement (“Agreement”) is entered into as of September 30th, 2008, by and between the City of Los Angeles and the City of Long Beach, each a municipal corporation and a marine terminal operator, acting by and through their respective Boards of Harbor Commissioners (each a “Party” and collectively, the “Parties”).

Article 1

Name of this Agreement

This Agreement shall be referred to as the Los Angeles and Long Beach Marine Terminal Agreement.

Article 2

Purpose of this Agreement

The purpose of this Agreement is to completely set forth terms and conditions under which drayage trucks are permitted access to Port owned and controlled properties for the purpose of: (a) improving Port-related transportation infrastructure; (b) increasing cargo movement efficiencies and Port capacities; (c) improving the safety and security of Port terminals and properties; and (d) decreasing Port-related air pollution emissions in the San Pedro Bay area.

Article 3

Definitions

As used in this Agreement, the following terms shall have the following meanings (such meanings as necessary to be equally applicable to both the singular and plural forms of the terms defined unless the context otherwise requires):

“**2007 Drayage Truck**” means a Drayage Truck equipped with an engine that meets or exceeds 2007 model year California or federal heavy-duty Diesel-Fueled On-Road emissions standards.

“**Agreement**” shall have the meaning set forth in the Preamble hereto.

“**Alternative Drayage Truck**” means a 2007 Drayage Truck with a heavy duty engine operating on liquefied or compressed natural gas, electricity or hybrid technology.

“**Approved Infrastructure Projects**” shall mean all Infrastructure Projects which have been: (1) approved by the applicable lead agency as defined in Section 21067 of the California Public Resources Code; and (2) determined by the Boards of Harbor Commissioners of Los Angeles and Long Beach to be eligible for use of tidelands funds.

“**ARB**” means the California Air Resources Board.

“**Authorized Emergency Vehicle**” is as defined in California Vehicle Code Section 165.

“**CARB Diesel Fuel**” is Diesel Fuel certified by ARB as meeting the fuel specification standards set forth at Title 13, California Code of Regulations (CCR) Section 2280 *et seq.*

“**Commission**” shall mean the U.S. Federal Maritime Commission, or any succeeding agency.

“**Compliance Label**” is a tag issued by ARB under the Drayage Truck Registry for Drayage Trucks operated at the ports and intermodal rail yards that meet ARB requirements and compliance schedules.

“**Computation Methodology**” shall mean the methodology described in the document entitled Methodology for Determining Infrastructure Cargo Fee dated January 4, 2008.

“**Concession**” means a written agreement between the Port of Los Angeles or the Port of Long Beach and a Licensed Motor Carrier to allow Drayage Truck access to a Port Terminal, with terms and conditions as set forth in Attachment A hereto.

“**Day Pass**” means a right of access from the Port of Los Angeles or the Port of Long Beach to a Licensed Motor Carrier to allow Drayage Truck access to a Port Terminal on terms and conditions set forth by the Port.

“**Dedicated Use Vehicles**” are On-Road Vehicles that do not have separate tractors and trailers, including auto transports, fuel delivery vehicles, concrete mixers, mobile cranes and construction equipment.

“**Diesel Fuel**” means any fuel that is commonly or commercially known, sold, or represented by the supplier as diesel fuel, including any mixture of primarily liquid hydrocarbons (organic compounds consisting exclusively of the elements carbon and hydrogen) that is sold or represented by the supplier as suitable for use in an internal combustion, compression ignition engine.

“**Diesel-Fueled**” means a compression - ignition engine fueled by Diesel Fuel, CARB Diesel Fuel, or jet fuel, in whole or part, including liquid natural gas engines using diesel fuel for pilot ignition.

“**Diesel Particulate Matter**” or “**PM**” means the particles emitted in the exhaust of Diesel- Fueled compression-ignition engines.

“**Drayage Truck**” means any in-use On-Road Vehicle with a Gross Vehicle Weight Rating of 33,000 pounds or greater operating on property owned by the Port of Los Angeles or

the Port of Long Beach for the purpose of loading, unloading or transporting cargo, including containerized, bulk, break-bulk and neo-bulk goods. Drayage Truck does not include Dedicated Use Vehicles, Authorized Emergency Vehicles, Military Tactical Support Vehicles or Yard Trucks.

“**Drayage Truck Registry**” or “**DTR**” is a database that contains information on trucks that conduct business on Port Property at the Ports of Los Angeles and Long Beach, including: (1) owner’s name, address, phone numbers, email address, and fax number; (2) Drayage Truck and engine make, model, and model year and fuel source; (3) Dispatching Licensed Motor Carrier(s) and Concession Number(s); (4) Vehicle identification number (VIN), license number and state of issuance; and (5) VDECS equipment.

“**Gross Vehicle Weight Rating**” is defined in California Vehicle Code Section 350.

“**Highway Projects**” shall mean the Gerald Desmond Bridge Replacement, the SR-47 Expressway (including replacement of the Heim Bridge), the Navy Way/Seaside Avenue Interchange, the South Wilmington grade separation, and the I-110 Connectors Program (which includes: I-110/SR-47/Harbor Boulevard interchange improvements, I-110/”C” Street interchange improvements, John S. Gibson intersection and I-110 ramp access improvements, and SR-47 on-ramp and off-ramp improvements at Front Street).

“**Infrastructure Projects**” shall include the Ports Rail System and Highway Projects.

“**International Registration Plan**” is a registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions.

“**Legacy LNG Trucks**” means Kenworth Model T-800 trucks equipped with Cummins ISX-G engines with emissions certified to 0.96 grams per brake horsepower hour (g/bhp-hr) for oxides of nitrogen (NO_x) and 0.02 g/bhp-hr for particulate matter (PM), retrofitted with the Westport High-Pressure Direct Injection Liquified Natural Gas (LNG) conversion kit, funded by the Ports of Los Angeles and Long Beach under Cost Sharing Agreement No. 2588 and Los Angeles contracts numbered 2589, 2590, 2596, 2597, 2598, 2600, 2683, 2684, and 2685, when operated on LNG.

“**Lessee**” has the same meaning as in California Vehicle Code Section 371.

“**Licensed Motor Carrier**” means a motor carrier in good standing and in compliance with the requirements of a valid: (1) California Motor Carrier Permit issued by the California Department of Motor Vehicles under the California Vehicle Code; or (2) equivalent permit or license issued by any another state; or (3) a Federal Motor Carrier License (USDOT Number) and Operating Authority (MC or MX Number).

“**Military Tactical Support Vehicles**” is as defined in Title 13, CCR, Section 1905.

“On-Road” means a vehicle that is designed to be driven on public highways and roadways and that is registered or is capable of being registered by the California Department of Motor Vehicles (DMV) under Vehicle Code Sections 4000 *et seq.*, or DMV’s equivalent in another state, province, or country, or the International Registration Plan.

“Optical Character Recognition” or **“OCR”** is a system designed to read and digitize existing On-Road vehicle identifiers, such as state license plates, which will enable the Terminal Operator to access the Drayage Truck’s records in the DTR.

“Oxides of nitrogen” or **“NOx”** means compounds of nitrogen and oxygen, including nitric oxide and nitrogen dioxide.

“Party” or **“Parties”** shall have the meaning as set forth in the Preamble hereto.

“Port Infrastructure Fund” shall mean a restricted fund to be used exclusively for payment of the Ports’ allocable share, using the Computation Methodology, of costs of Approved Infrastructure Projects that are incurred following the approval of the Approved Infrastructure Projects by the applicable lead agencies. The Port Infrastructure Fund shall be comprised of the monies collected from the Infrastructure Fee on Containers.

“Port Property” means all property owned by the Ports of Los Angeles and Long Beach within the Harbor Districts of Los Angeles and Long Beach.

“Ports” means all waterfront property owned by Ports of Los Angeles and Long Beach and the Terminal Island Container Transfer Facility.

“Ports Rail System” shall mean: a Pier B Street Intermodal rail yard expansion, Terminal Island Wye Track Realignment, Pier B Street Realignment, Track Realignment at Ocean Boulevard/Harbor Scenic Drive, Pier F Support Yard, West Basin Rail Access Improvements, Grade Separation for Reeves Crossing, Closure of Reeves at-grade Crossing, Navy Mole Road Storage Rail Yard, Pier 400 Second Lead Track, Reconfiguration at CP Mole, Triple Track Badger Bridge, and Triple Track South of Thenard Jct.

“Program Funds” means monies disbursed by the Ports of Long Beach and Los Angeles through the Clean Truck Fund or the Harbor Revenue Fund, including funds received for that purpose from South Coast Air Quality Management District and State Proposition 1B Bond funds.

“Terminal” is any facility on Port Property used for the transfer of cargo from one mode to another, including container terminals, break bulk terminals, dry bulk terminals and rail yards.

“Terminal Operator” is the entity with contractual authority from the Port of Los Angeles or the Port of Long Beach to operate a Terminal.

“Radio Frequency Identification Device” or **“RFID”** is an electronic device with a unique identification number, installed on a Drayage Truck which will enable the Terminal Operator to access the Drayage Truck’s records in the DTR.

“Vehicle” is as defined in Vehicle Code Section 670.

“Verified Diesel Emission Control Strategy” or **“VDECS”** is an emission control strategy that has been verified pursuant to the “Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines” in Title 13, California Code of Regulations, commencing with Section 2700, and incorporated by this reference.

“Yard Truck” means an off-road mobile utility vehicle used to carry cargo containers with or without chassis; also known as utility tractor rig (UTR), yard tractor, yard goat, yard hostler, or prime mover.

Article 4 Agreement Applicability

4.1 The Parties agree to undertake the following activities:

a. to require all Terminal Operators to install RFID or OCR readers at all truck processing gates or have obtained written consent from the Port of Los Angeles or the Port of Long Beach to use an alternative means of accessing the DTR before allowing Drayage Truck access to the Terminal;

b. beginning October 1, 2008, at 8:00 a.m., to require all Terminal Operators to deny access into any Terminal to: (1) any Drayage Truck of model year 1988 or older, except for pre-1989 model year Drayage Trucks that are equipped with 1989 or newer model year engines; or (2) any Drayage Truck that cannot be verified as compliant with this deadline by reference to the Drayage Truck’s records in the DTR;

c. beginning January 1, 2010, at 8:00 a.m., to require all Terminal Operators to deny access into any Terminal to: (1) any Drayage Truck that is not equipped with: (i) a 1994 – 2003 model year engine certified to California or federal emission standards, and a level 3 VDECS which achieves a minimum 85% reduction in PM emissions and a minimum 25% reduction in NOx emissions; or (ii) a 2004 or newer model year engine certified to California or federal emission standards; or (2) any Drayage Truck that cannot be verified as compliant with this deadline by reference to the Drayage Truck’s records in the DTR;

d. beginning January 1, 2012, at 8:00 a.m., to require all Terminal Operator to deny access into any Terminal to: (1) any Drayage Truck that is not a 2007 Drayage Truck or a

Legacy LNG Truck; or (2) any Drayage Truck that cannot be verified as compliant with this deadline by reference to the Drayage Truck's records in the DTR;

e. to require all Drayage Trucks seeking entry upon Port Property on or after October 1, 2008, to be registered in the DTR prior to the time of entry. Registration in the DTR shall be in electronic format or on forms and with supporting documentation as may be required by the Ports to provide required information in verifiable form;

f. in the event of a change in the information provided for registration in the DTR with respect to a Drayage Truck, to require such amendment in the registration within ten (10) calendar days of the change, in electronic format or on forms and with supporting documentation as may be required by the Ports;

g. beginning October 1, 2008, at 8:00 a.m., to assess a Clean Truck Fee of \$35 per twenty foot equivalent unit on containerized merchandise entering or leaving the Ports by Drayage Truck, which shall be paid by the cargo owner. The Clean Truck Fee shall not be assessed on containerized merchandise that: (1) enters or leaves the Ports by rail; (2) moves between two terminals within the Ports; (3) enters or leaves the Ports by Alternative Drayage Truck or Legacy LNG Truck, under certain circumstances determined by each Port; or (4) enters or leaves the Ports by 2007 Drayage Truck purchased without Program Funds, under certain circumstances determined by each Port;

h. to require the first Terminal Operator to handle any containerized merchandise subject to the Clean Truck Fee to collect and remit the Clean Truck Fee to the Port of Los Angeles or the Port of Long Beach, as applicable, and the monies shall be used by the Board of Harbor Commissioners exclusively for replacement and retrofit of Drayage Trucks serving the Ports of Los Angeles and Long Beach;

i. beginning January 1, 2009 at 8:00 a.m., to assess an Infrastructure Fee on Containers of \$15.00 per twenty foot equivalent on containerized merchandise entering or leaving any Terminal, which shall be paid by the cargo owner. As Infrastructure Projects are approved by the applicable lead agencies, and from time to time thereafter, the Executive Directors of the Ports of Long Beach and Los Angeles ("Executive Directors") shall have the Infrastructure Fee on Containers recomputed using the Computation Methodology and this Agreement shall be amended to reflect the amount so computed. The Infrastructure Fee on Containers shall not be assessed on any containerized merchandise moved between two terminals within the Ports. The Infrastructure Fee on Containers shall no longer be collected: (1) after the share of Approved Infrastructure Project costs allocable to be recovered by the Port Infrastructure Fund have been paid in full; (2) after the Executive Directors determine that the Infrastructure Fund balance is sufficient to pay all such costs; or (3) if the Clean Truck Fee cannot be collected, whichever occurs first;

j. to require the first Terminal Operator to handle containerized merchandise subject to the Infrastructure Fee on Containers to collect and remit the Infrastructure Fee on Containers

to the Port of Los Angeles or the Port of Long Beach, as applicable, to be held in the Port Infrastructure Fund and used exclusively for Approved Infrastructure Projects. If the share of Approved Infrastructure Projects costs allocable to be recovered from the Port Infrastructure Fund have been fully paid and funds remain in the Port Infrastructure Fund, these funds may be used for additional infrastructure projects of similar utility to the Approved Infrastructure Projects which are approved by the Board of Harbor Commissioners to be funded by the Port Infrastructure Fund;

k. to impose certain safety and security programs, including the development and implementation of requirements and common security systems at access and egress points in Port terminals, in order to ensure safe vehicle operations and to ensure compliance with local, state and federal safety and security requirements; and

l. beginning October 1, 2008, at 8:00 a.m., to require all Terminal Operator to deny access into any Terminal to any Drayage Truck unless such Drayage Truck is registered in the DTR under a Concession or a Day Pass. The Ports shall assess a Concession fee in amounts determined by each Port. The fee for a Day Pass shall be \$100 per Day Pass. The fees for Concession and Day Pass shall be paid by the Licensed Motor Carrier applying for or holding the Concession or Day Pass.

4.2 It is understood that the Parties may in the future by amendment to this Agreement, subject to the requirements of the Shipping Act of 1984, as amended, broaden or narrow the activities set forth herein.

4.3 The Parties acknowledge and agree that this Agreement shall apply only to: (i) future, prospective activities of the Ports; and (ii) marine terminal facilities owned or controlled by the Ports.

4.4 The Parties also acknowledge and agree that this Agreement completely sets forth all applicable charges, terms and conditions agreed to by the Ports that are applicable to their marine terminal facilities. Nothing in this Agreement shall be construed to provide for or authorize the Ports to fix and adhere to uniform maritime terminal rates, charges, practices and conditions of service relating to the receipt, handling, or delivery of cargo. The Parties further acknowledge and agree that this Agreement does not provide for or authorize the Parties to engage in discussion of subjects including marine terminal rates, charges, practices, and conditions of service relating to the receipt, handling or delivery of cargo.

4.5 Nothing in this Agreement shall be interpreted to require a Party to obtain approval or consent from the other Party before making any changes to its own tariff, Clean Truck Program, infrastructure fee requirements, ocean vessel programs, or any tariff requirements established thereunder.

Article 5
Geographic Scope

This Agreement covers the geographic scope of the Ports of Los Angeles and Long Beach, California, and the Infrastructure Projects.

Article 6
Filing with the Commission

The Parties appoint C. Jonathan Benner, Partner at Troutman Sanders LLP, a Washington D.C. law firm, as the person with authority to file this Agreement and any amendments hereof with the Commission, and to submit any supporting materials, if applicable, in accordance with 46 C.F.R. Part 535. Mr. Benner is also authorized to receive all notices, consents, approvals, requests, instructions and communications related to this Agreement.

Article 7
Effective Date; Term; Termination

7.1 Effective Date. This Agreement shall become effective upon filing with the Commission, in accordance with 46 C.F.R. § 535.308(e).

7.2. Term; Termination. This Agreement shall be valid and effective until December 31, 2012. If a Party elects to terminate this Agreement before its expiration date, it shall provide the other Party with a ninety (90) days prior written notice of such early termination. The Parties shall notify the Commission of any such early termination, and this Agreement shall become ineffective upon said filing with the Commission. Notwithstanding the foregoing, the Parties shall continue performing their obligations under this Agreement up to and until the early termination or expiration date and shall, upon expiration or termination hereof, return all documents to the applicable disclosing Party.

Article 8
Miscellaneous

8.1 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, representatives, successors and permitted assigns.

8.2 Relationship of the Parties. The Parties agree that this Agreement by itself does not create a corporation, partnership, association, joint stock company, business trust or joint venture involving the Parties. Each Party agrees that it shall have no the authority to assume or create any obligation on behalf of the other Parties. This Agreement shall not be governed by the laws construing corporation, partnership, association, joint stock company, business trust or joint venture of any country or state.

8.3 Assignment. No Party may assign its interests, rights or obligations under this Agreement without the prior written consent of the other Party.

8.4 Amendment. This Agreement may be amended or supplemented only by a written instrument executed by both Parties. Any such amendment shall be filed with the Commission and made effective upon filing.

8.5 Severability. If any provision of this Agreement is void or unenforceable, the remainder of this Agreement shall not be affected thereby. The void or unenforceable provision shall be deemed to be replaced by a valid and enforceable provision which achieves the purposes intended by the Parties to the greatest extent possible.

8.6 Notices. Notices hereunder shall be given by mail, postage prepaid, or via facsimile transmission, to the Parties at the following addresses:

If to the City of Los Angeles:

City of Los Angeles Harbor
Department
P.O. Box 151
San Pedro, California 90733-0151
Attention: Executive Director
Fax: (310) 831-6936

If to the City of Long Beach:

City of Long Beach
Long Beach Harbor Department
P.O. Box 570
Long Beach, California 90801
Attention: Executive Director
Fax: (562) 901-1733

8.7 Governing Law. As it relates to disputes and disagreements between the Parties concerning the meaning, requirements, provisions or obligations of this Agreement, such disputes and disagreements shall be resolved in accordance with the laws of the State of California. As it relates to the operation, filing and other regulatory requirements that affect this Agreement under the Shipping Act of 1984, as amended, this Agreement shall be governed by and construed in accordance with the laws of the United States of America.

8.8 Waiver. The failure of either Party to insist that any one or more instances upon strict performance of any of the provisions of this Agreement, or take advantage of all of its rights hereunder shall not operate as a waiver of any of those rights.

8.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute one and the same document, notwithstanding that both Parties may not be signatories to the same counterpart.

IN WITNESS WHEREOF, the Parties have caused this Marine Terminal Agreement to be executed by their duly authorized representatives.

[Signature page follows]

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

By: Geraldine Knatz
Geraldine Knatz, Ph.D.
Executive Director

Attest: Rose M. Dwarshak
Board Secretary

Dated: Sept. 30, 2008

Approved as to Form:

September 29, 2008
Rockard J. Delgadillo, City Attorney

By TRM
Thomas A. Russell, General Counsel

THE CITY OF LONG BEACH,
acting by and through its Board of Harbor
Commissioners

By: _____
Richard D. Steinke
Executive Director

Attest: _____
Board Secretary

Dated: _____

Approved as to Form:

_____, 2008
Robert E. Shannon, City Attorney

By _____
Dominic Holzhaus, Principal Deputy

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2008 OCT -2 PM 1:34

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

THE CITY OF LONG BEACH,
acting by and through its Board of Harbor
Commissioners

By: _____
Geraldine Knatz, Ph.D.
Executive Director

By: 
Richard D. Steinke
Executive Director

Attest: _____
Board Secretary

Attest: 
Board Secretary

Dated: _____

Dated: 9/30/08

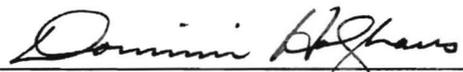
Approved as to Form:

Approved as to Form:

_____, 2008
Rockard J. Delgadillo, City Attorney

9/30, 2008
Robert E. Shannon, City Attorney

By _____
Thomas A. Russell, General Counsel

By 
Dominic Holzhaus, Principal Deputy

Attachment A
Concession Terms and Conditions

Each Concession Agreement between the Port of Los Angeles or the Port of Long Beach and a Licensed Motor Carrier to allow Drayage Truck access to a Port Terminal shall include, but is not limited to, the following terms and conditions (defined terms not defined herein shall have the meanings ascribed to them in the Marine Terminal Agreement, the "Agreement"):

- a. The Ports shall grant to Concessionaires a non-exclusive license to access Port property for the purpose of transporting containers and/or other cargo to and from marine terminals ("Drayage Service"). Concessionaire's right of access to and use of the Port's facilities under the Concession shall be solely for the purpose of conducting Drayage Service unless the Concessionaire obtains the Port Executive Director's prior written permission to access Port's Property for other purposes. Concessionaire's rights under the Concession shall be non-exclusive.
- b. The Concession is not transferable without prior written permission from the Port, which shall be conditioned upon: (1) satisfaction in full of the transferor Concessionaire's obligations to the Port; and (2) the proposed transferee's compliance with Concession qualifications and requirements. Concessionaire requests to transfer shall be delivered to the Port in writing at least 30 days' advance of any proposed substantial change in the ownership and control of Concessionaire. The Port shall not unreasonably deny transfer of the Concession but may, in its sole discretion, choose to issue a new Concession in lieu of transfer.
- c. Drayage Trucks providing Drayage Service to the Ports and operating under the authority of and in compliance with the terms and conditions of the Concession shall be referred to herein as "Permitted Trucks." Permitted Trucks may include Drayage Trucks owned and operated by Concessionaire ("Concessionaire's Trucks") or owned by contractor drivers and performing Drayage Service on behalf of Concessionaire under the authority of the Concession ("Contractors' Trucks"). Regardless of ownership status, Concessionaire shall cause all Permitted Trucks to comply fully with all of the terms and conditions of the Concession.
- d. In granting Concessions, the Ports do not secure Drayage Service contracts between Concessionaires and any customers, which contracts and obligations therein shall remain the sole responsibility of Concessionaire.
- e. As a condition to the right to provide Drayage Services under the Concession, the Ports shall require Concessionaires to adhere to certain terms, as set forth below. In addition, either Port may adopt additional requirements for Concessionaires unilaterally.

- f. Concessionaires shall cause all Concessionaires' Trucks to be modernized by either retrofit or replacement to comply with the Clean Truck Program requirements in accordance with Sections 4.1 (b)-(d) of the Agreement. Concessionaire shall confirm that all Contractors' Trucks that operate under its Concession also comply with the Clean Truck Program requirements in accordance with Sections 4.1 (b)-(d) of the Agreement.
- g. Concessionaires must be Licensed Motor Carriers in good standing and in compliance with the requirements of a valid license/permit under either: (1) a California Motor Carrier Permit issued by the California Department of Motor Vehicles under the California Vehicle Code; or (2) a state Motor Carrier Permit issued by another U.S. state, or (3) a Federal Motor Carrier License (USDOT Number) and Operating Authority (MC Number).
- h. Concessionaire shall utilize Permitted Trucks to provide Drayage Service to the Ports pursuant to the Concession. To qualify as a Permitted Truck, all Drayage Trucks providing Drayage Service operating under the Concession shall have required information entered into and kept updated in the DTR and shall comply at all times with the Concession's terms and conditions.
- i. Concessionaire shall be responsible for the compliance and performance of drivers and other personnel utilized pursuant to the Concession, and the Ports shall have no responsibility or liability therefor.
- j. Concessionaire shall submit for approval by the Concession Administrator a parking plan for all Permitted Trucks. Concessionaire shall ensure that all Permitted Trucks comply with the plan, and with all laws, rules and regulations regarding routes and permit requirements for hazardous materials, extra-wide, over-height and overweight loads.
- k. Concessionaire shall prepare an appropriate maintenance plan for all Permitted Trucks. Concessionaire shall be responsible for vehicle condition and safety and shall ensure that the maintenance of all Permitted Trucks, including retrofit equipment, is conducted in accordance with the manufacturer's specifications. Maintenance records for all Permitted Trucks shall be available for inspection by the Concession Administrator during business hours.
- l. Concessionaire shall ensure that all Permitted Trucks are in compliance with all applicable existing regulatory safety standards. Concessionaire shall maintain and make available for inspection by the Concession Administrator, all records required for compliance with the Ports' Clean Trucks Program and all existing regulatory programs including U.S. Department of Transportation motor carrier safety regulations, and State of California Biennial Inspection of Terminals

- program. This includes driver qualifications, driver training, vehicle maintenance, safety inspection, controlled substances and alcohol testing, and hours-of-service for all employee drivers and contractor drivers.
- m. Concessionaire shall ensure and keep records of enrollment in the Transportation Worker Identification Credential (“TWIC”) program, possession of a valid, current TWIC card, and ongoing compliance with the requirements of the TWIC program by all Concession drivers, including employees and contractor drivers.
 - n. When entering and leaving Port Property and while on Port Property, Concessionaire shall ensure that each Permitted Truck is equipped with such means of Clean Trucks Program compliance verification as may be specified by the Marine Terminal Operators of the Ports’ Terminals.
 - o. To support the Ports’ safety and security measures, Concessionaire shall ensure that all Permitted Trucks comply with applicable federal, state, municipal and Ports security laws and regulations, including without limitation, the USA Patriot Act of 2001, Maritime Transportation Security Act of 2002, and Department of Homeland Security regulations, including terminal and facility security plans. When entering and leaving Port Property and while on Port Property, Permitted Trucks shall be subject to safety and security searches in accordance with applicable law.
 - p. When entering and leaving Port Property and while on Port Property, Concessionaire shall post placards on all Permitted Trucks referring members of the public to a phone number to report concerns regarding truck emissions, safety and security compliance to the Concession Administrator and/or authorities.
 - q. When entering and leaving Port Property and while on Port Property, Concessionaire shall implement technology required for the Concession and /or the Clean Trucks Program.
 - r. Concessionaires shall demonstrate to the satisfaction of the Executive Director that the financial capability to perform their obligations under the Concession over the term thereof.
 - s. Concessionaires shall, when entering and leaving Port Property and while on Port Property, comply with Ports’ tariffs and all applicable federal, state and municipal laws, statutes, ordinances, rules and regulations that govern Concessionaire’s operations, including without limitation, any laws, rules and regulations regulating motor carriers, transportation, hazardous materials, safety, security, employment, traffic, zoning, and land use.

- t. The Concessionaire shall be responsible to enter, update and maintain accurate data in the DTR, Concession Registry and Driver Registry, and notify the Ports or their designated agents within ten (10) business days of a change to any of the following information:
 - i. DTR information, including for each Drayage Truck in service under the Concession, the year, make and model, status of compliance with EPA standards and retrofit, and annual miles driven, and any other information required by the Concession Administrator;
 - ii. Concessionaire information, provided under the Concession;
 - iii. Driver list and, status of commercial driver's license, and TWIC compliance; and
 - iv. such other information as may reasonably be required by the Executive Directors and Concession Administrator.

- u. Concessionaire agrees that while the Concession is in effect and for one year thereafter the Ports, the Concession Administrator (or any other agent designated by the Ports) may inspect any property, offices or equipment utilized by the Concessionaire to perform Drayage Service, and any files or records which the Ports believe may demonstrate the extent to which the Concessionaire has complied or has failed to comply with requirements set forth in the Concession.

- v. Except for the sole negligence or willful misconduct of Ports, Concessionaire shall at all times indemnify, protect, defend, and hold harmless the Ports and any and all of their boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the Ports, their boards, officers, agents, or employees by reason of any damage to property, injury to persons, or any action that may arise out of the performance of the Concession that is caused by any act, omission, or negligence of Concessionaire, its boards, officers, agents, employees, contractors, subcontractors or Permitted Trucks regardless of whether any act, omission, or negligence of the Ports, their boards, officers, agents, or employees contributed thereto; provided that: (i) if the Ports contribute to a loss, Concessionaire's indemnification of the Ports for the Ports' share of the loss shall be limited to One Million Dollars (\$1,000,000); (ii) notwithstanding the foregoing limitation, Concessionaire shall remain responsible for one hundred percent (100%) of any loss attributable to it, and (iii) the provisions in (i) and (ii) apply on a per-occurrence basis.

- w. Concessionaire shall ensure that the following insurance is in force at all times during the term of the Concession for all Permitted Trucks: automobile insurance within Concessionaire's normal limits of liability but not less than \$1,000,000 combined single limit per occurrence for transportation of all non-hazardous commodities, including oil and hazardous material in bulk and not less than \$5,000,000 combined single limit for transporting hazardous substances in cargo tanks, portable tanks or hopper-type vehicles with capabilities in excess of 3,500 water gallons, or hazardous materials meeting specified hazard classes or divisions within the Hazardous Material Table (49 C.F.R. 172.101). Each policy shall contain an additional insured endorsement naming the City of Long Beach Harbor Department or the City of Los Angeles Harbor Department, as applicable, and their boards, officers, agents, and employees.
- x. Concessionaire shall certify that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that the Concessionaire shall comply with such provisions before commencing the performance of the tasks under the Concession. Concessionaire shall submit Workers' Compensation policies that meet current California statutory requirements, and \$1,000,000 in employer's liability coverage, whether underwritten or by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the Ports in any circumstance in which it is alleged that actions or omissions of the Ports contributed to the accident.
- y. Carriers shall obtain and maintain all insurance coverage required by the Concession with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in the Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to the Ports.
- z. Concessionaire shall ensure that each insurance policy required to be obtained and maintained pursuant to the Concession shall provide that it will not be canceled or reduced in coverage until after the Risk Manager of the Ports has been given 30 days' prior written notice by registered mail.
- aa. Concessionaire shall ensure that special endorsement forms are submitted to the Program Administrator as evidence of all required insurance. Alternatively, a certified copy of each policy containing the additional insured and 30-day cancellation notice language shall be furnished to Concession Administrator. The form of such policy or endorsement shall be subject to the approval of the City Attorney.

- bb. At least 30 days prior to the expiration of each policy, Concessionaire shall furnish to Program Administrator a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above.
- cc. Concessionaire shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon Port property, or elsewhere within the Harbor District of the City of Long Beach or the City of Los Angeles, as applicable, if Concessionaire's officers, agents, employees, contractors, subcontractors or Permitted Trucks are involved in such an accident or occurrence. Such report shall contain to the extent available: (i) the name and address of the persons involved; (ii) a general statement as to the nature and extent of injury or damage; (iii) the date and hour of occurrence; (iv) the names and addresses of known witnesses; and (v) such other information as may be known to Concessionaire, its officers or managing agents.
- dd. In the event Concessionaire fails to comply with the terms and conditions of the Concession or commits an event of Default (as such term is defined immediately below), such event shall be deemed a Default by the Concessionaire and the Port shall give Concessionaire written notice of such Default and, if specified in the notice, opportunity for the Concessionaire to cure the Default. If Concessionaire fails to cure the Default or fails to take substantial and diligent steps towards such corrections, within ten (10) calendar days after Concessionaire's receipt of such notification, the Port may treat the Concession as terminated not earlier than at 11:59 p.m., Pacific Time on the thirtieth (30th) day following the date of Concessionaire's receipt of notice. Upon such termination, the Port may deny any and all access to Port property by the Concessionaire. In the event that the nature of the Default is such that it cannot be cured within ten (10) calendar days, Concessionaire must take substantial steps toward corrections within said ten (10) calendar days, and diligently continue substantial efforts to complete the cure of the Default as soon as is reasonably practicable.
- ee. Circumstances that constitute a default under the Concession by Concessionaire ("Default") shall include, without limitation, the following:
 - i. Any act or failure to act which operates to deprive Concessionaire any of the rights, powers, licenses, permits or authorities necessary for the proper conduct and operation of Drayage Service in accordance with applicable laws;
 - ii. Any failure to comply with the terms and conditions of the Concession;

- iii. Abandonment or discontinuance of Drayage Service;
 - iv. Repeated violations of traffic rules and regulations in and around the Harbor District or disregard of public safety;
 - v. Any violation of the Patriot Act of 2001 or Department of Homeland Security regulations, including any facility security plan;
 - vi. Any fraud or misrepresentation in the Concession application, information or data submitted to the Ports required under the Concession;
 - vii. Any effort to misrepresent that a Drayage Truck complies with Sections 4.1 (b)-(d) of the Agreement, to disable or fail to maintain in proper operation emission-control equipment that has been installed in Drayage Trucks in Drayage Service, or any use of a Drayage Truck in Drayage Service that does not comply with Sections 4.1 (b)-(d) of the Agreement;
 - viii. Any assignment or transfer of the Concession or substantial change in the ownership and control of Concessionaire without prior notice to and consent of the Ports;
 - ix. The bankruptcy of Concessionaire; or the appointment of a receiver for Concessionaire; or assignment of the Concession for the benefit of creditors;
 - x. The failure to pay or repeated late payment of fees due under the Concession; or
 - xi. Violation of a Ports' tariff, a city ordinance, a state law, or a federal law. Any action by a Concessionaire's boards, officers, agents, employees, contractors, subcontractors or Permitted Trucks shall be deemed to be an action by Concessionaire for purposes of the Concession. If Concessionaire has undertaken obligations contained in truck-grant or other agreements, with the Port or with others, the Concession shall not affect such obligations contained in such other agreements.
- ff. The following procedures shall apply in the event the Port issues a Notice of Default to Concessionaire:

- i. The Executive Director, or any employee of the Port designated by the Executive Director, may issue a Notice of Default to a Concessionaire whenever there is reason to believe that the Concessionaire has breached the Concession or committed an event of Default.
- ii. A Notice of Default shall be in writing, signed by the Executive Director or his/her designee, briefly state the nature of the Default, state the Remedy imposed, and shall be delivered by first class mail, overnight courier delivery or personal delivery to the business address provided by the Concessionaire in its application, or to any officer of the Concessionaire.
- iii. A Notice of Default is an exercise of the Port's proprietorship of the Harbor District and of Port land and facilities and is not an action of the City of Los Angeles or the City of Long Beach, as applicable, in its sovereign capacity. A Notice of Default and any Remedy imposed by a Notice of Default is independent of, and without prejudice to, any civil or criminal proceeding, claim, penalty, fine, sanction, or remedy that may be instituted or imposed by any governmental entity, including the Cities, by reason of the same Default giving rise to the Notice of Default.
- iv. A Notice of Default shall also state whether the Default is being designated by the Port as a Minor Default or a Major Default.
- v. The Remedy stated in a Notice of Default which is designated as a Minor Default shall be effective and final fourteen (14) calendar days after the Notice of Default is mailed or personally delivered, unless the Concessionaire has delivered a completed Notice of Contest to the Port, on a form for such a purpose, that it contests the Notice of Default within the fourteen (14) calendar days.
- vi. If the Concessionaire has delivered such a completed Notice of Contest, the Executive Director will designate a person (the "Hearing Officer"), who did not sign the Notice of Default, to hold an Informal Hearing on the Notice of Default. At the Informal Hearing, the Port and the Concessionaire will present any relevant information and legal contentions with respect to the Notice of Default. The Informal Hearing shall be conducted informally under such procedures as may be designated by the Hearing Officer and any rules of evidence may be dispensed with. The Decision of the Hearing Officer on the Notice of Default shall be final when rendered and shall include either upholding the Notice of Default and the Remedy stated therein or disallowing the

Notice of Default. The Decision shall be in writing and signed by the Hearing Officer, but need not be accompanied by reasons or findings.

- vii. The Remedy stated in a Notice of Default which is designated as a Major Default shall be effective and final thirty (30) calendar days after the Notice of Default is mailed or personally delivered, unless (i) the Concessionaire has delivered a completed Notice of Contest to the Port, on a form for such a purpose, that it contests the Notice of Default within the thirty (30) calendar days, or (ii) the Notice of Default contains the finding such as: substantial risk of danger or injury to the Port, its customers or facilities, or persons or property at or near the Port, in which event the Remedy shall take immediate effect. If the Concessionaire completes a Notice of Contest, the Port will endeavor to hold an Informal Hearing as expeditiously as possible.
 - viii. If the Concessionaire has delivered a completed Notice of Contest, the Executive Director will designate a person (the "Hearing Officer"), who did not sign the Notice of Default, to hold an Informal Hearing on the Notice of Default. At the Informal Hearing, the Port and the Concessionaire will present any relevant information and legal contentions with respect to the Notice of Default. The Informal Hearing shall be conducted informally under such procedures as may be designated by the Hearing Officer and any rules of evidence may be dispensed with. A transcription or recording of the Informal Hearing shall be made. The decision of the Hearing Officer on the Notice of Default shall be final, unless either the Concessionaire or the Port staff, within ten (10) calendar days requests that the Decision be reviewed by the Executive Director. The Decision shall include any of the following results: (a) upholding the Notice of Default and the Remedy stated therein; (b) upholding the Notice of Default but ordering a greater or lesser Remedy than stated in the Notice; or (c) disallowing the Notice of Default. The Decision shall be in writing, signed by the Hearing Officer, and shall briefly state the Hearing Officer's reasons for the Decision.
- gg. The following Remedy may be contained in a Notice of Default and may imposed by the Port for a breach of the Concession or other event of Default:
- i. For a Minor Default, any one or more of the following may be contained in a Notice of Default as a Remedy and imposed by the Port: (a) a warning letter; (b) an order that corrective action be undertaken within a specified period of time; (c) an order that the cost of

- investigation and administration of the Default be paid to the Port; (d) an order that a course of education or training be completed within a specified period of time.
- ii. For a Major Default any one or more of the following may be contained in a Notice of Default as a Remedy and imposed by the Port: (a) any Remedy provided for a Minor Default; (b) an order suspending for a period not to exceed thirty (30) days the right of the Concessionaire to provide Drayage Services at the Port; (c) an order of revocation of the Concession and of the right of the Concessionaire to provide Drayage Services at the Port.
 - hh. For any Major Default in which there is a finding of willful or intentional fraud or misrepresentation of material information in the Concession application, information or data submitted to the Port required under the Concession, the Port may order the revocation of the Concession and of the right of the Concessionaire to provide Drayage Services at the Port, without the opportunity to cure the Default.
 - ii. The failure to comply with a Remedy imposed by the Port shall itself be grounds for a Notice of a Major Default.
 - jj. During the performance of the Concession, Concessionaire 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.
 - kk. Concessionaire and the Ports 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. All parties to the Concession agree that they are unaware of any financial or economic interest of any public officer or employee of Cities of Los Angeles or Long Beach relating to the Concession. It is further understood and agreed that if such financial interest does exist at the inception of the Concession, Ports may immediately terminate the Concession by giving written notice thereof.