FEDERAL MARITIME COMMISSION

AMENDED AND RESTATED

AGREEMENT NO. 201170-001

THE LOS ANGELES AND LONG BEACH PORT INFRASTRUCTURE AND ENVIRONMENTAL PROGRAMS COOPERATIVE WORKING AGREEMENT

~~COOPERATIVE WORKING AGREEMENT~~
~~[as defined in 46 C.F.R. § 535.104(i)]~~
Original Effective Date
August 10, 2006

The Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement
FMC Agreement No. 201170-001

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The Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement
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A COOPERATIVE WORKING AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND THE CITY OF LONG BEACH

ARTICLE I - FULL NAME OF THE AGREEMENT

This Agreement shall be known as the Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement, hereinafter referred to as the "Agreement".

ARTICLE II - PURPOSE OF THE AGREEMENT

The purpose of the Agreement is to promote cooperation, openness and joint action through means of discussion, consultation, development of consensus and agreement between the Cities of Los Angeles and Long Beach ("the Parties") for the establishment and implementation of programs and strategies to (i) improve port-related transportation infrastructure~~ in order to~~, (ii) increase cargo movement efficiencies and port capacities, (iii) improve the safety and security of port terminals and properties, and (iv) decrease port-related air pollution emissions in the San Pedro Bay area.

The Ports of Los Angeles and Long Beach are located in California's South Coast Air Basin, an area with one of the worst air quality problems in the nation. Collectively, tenant operations at the two ports are significant contributors to the air quality problem and, historically, each port has addressed the issue separately by implementing a wide range of environmental initiatives. ~~It is now becoming apparent that inconsistent~~Inconsistent or conflicting transportation projects and environmental measures implemented by each city may have unintended or counterproductive effects on air quality improvements. Therefore, through the authority of this Agreement, the ~~two cities~~Parties seek to accommodate projected trade growth volumes through implementation of jointly approved transportation infrastructure improvement plans and environmental projects. The goal for these joint actions is to increase the efficiency of cargo movement through the port area while concurrently addressing adverse environmental impacts such as air pollution emissions~~.~~ and improving port area security and safety. In addition, the Parties, the goods movement

industry and the communities will benefit from the Parties' cooperation in measures to ensure appropriate physical security, access control, cargo handling security and intermodal cargo transportation (rail and drayage trucks).

ARTICLE III - PARTIES TO THE AGREEMENT

The parties to the Agreement are the City of Los Angeles and the City of Long Beach, municipal corporations, acting by and through their respective Boards of Harbor Commissioners.

ARTICLE IV - GEOGRAPHIC SCOPE OF THE AGREEMENT

This Agreement covers the geographic scope of the ports of Los Angeles and Long Beach, California.

ARTICLE V - OVERVIEW OF AGREEMENT AUTHORITY

A. The Parties may from time to time meet to confer, discuss, exchange information and agree on a voluntary basis with respect to rates, charges, operating costs, practices, legislation, regulations, and terminal operations, including trucking, rail and vessel operations, regarding matters for the funding, establishment and construction of (i) port-related transportation infrastructure projects~~ and~~, (ii) environmental programs, and (iii) safety and security programs. Transportation infrastructure and environmental projects may include, but are not limited to, truck and engine replacement programs, engine and equipment fuel use and emissions standards~~,~~ and incentives, and bridge, rail and roadway improvements. The parties are also authorized to discuss potential impacts resulting from policies adopted under the Clean Air Action Plan that may apply to truck and rail sectors outside of the port properties. Safety and security programs may include, but are not limited to, the development and implementation of requirements and common security systems at access and egress points in port terminals.

B. The Parties may seek input and gather information on matters concerning the establishment and implementation of programs and strategies to improve port-related transportation infrastructure ~~and~~, environmental, safety and security projects and programs from users of the services and facilities provided by the Parties to this Agreement. Ocean common carriers and marine terminal operators may provide information to the Parties, as well as attend and participate in public meetings as set forth in the Ralph M. Brown Act, California Government Code, Section 54950 *et seq.*, but shall not participate in any decisions made by the Parties to the Agreement. Information sharing and attendance and commenting in public meetings by ocean common carriers and marine terminal operators shall not be deemed participation in the deliberation and decision making authority granted by this Agreement.

C. 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 the authority regarding this agreement.

D. The Parties acknowledge that joint projects and programs under this Agreement may require approval from one or both of the Parties' respective boards of commissioners and city councils. The Parties contemplate entering into joint agreements before undertaking any joint projects or programs, which shall, to the extent required by the Shipping Act of 1984, as amended, be filed with the Federal Maritime Commission.

E. The Parties agree to discuss, exchange information, cooperate and, to the extent each Port in its sole discretion deems appropriate, coordinate the adoption and implementation of programs to reduce truck emissions and to improve Port safety and security (Clean Truck Programs). The Clean Truck Programs implemented by the Ports may include the following:

1. Adoption of drayage truck deadlines, whereby Port terminal operators grant access to Port

terminals to drayage trucks that meet U.S. EPA emissions standards for particular model year trucks. Specific deadlines, model year and emissions thresholds, exemptions and administrative procedures shall be prescribed in each Port's tariff or otherwise noticed to the public, to the extent consistent with applicable law.

2. Adoption of a clean truck fee, assessed on containerized merchandise entering or leaving the Ports by drayage truck, to be paid by the cargo owner, for a fund to be used by the Boards of Harbor Commissioners exclusively for the replacement and retrofit of drayage trucks that service the Ports. The level of the fee, exemptions, and rules and requirements for its collection shall be prescribed in each Port's tariff or otherwise noticed to the public, to the extent consistent with applicable law.

3. Adoption of concession programs with Licensed Motor Carriers, whereby Port terminal operators shall grant access to Port terminals to those drayage trucks that are authorized under a concession agreement with the Ports. The Ports may discuss and, to the extent each Port in its sole discretion deems appropriate, coordinate concession requirements for Licensed Motor Carriers, including: environmental compliance; vehicle and driver safety and security; parking and routes in the community near the Ports; vehicle maintenance; driver credentialing and other security measures; driver licensing, qualifications and requirements; truck identification systems; assessment of concession-related fees; insurance; and compliance with other applicable laws, rules and regulations. The specific requirements for each Port's concessionaires, including the concession agreements themselves, shall be maintained on each Port's websites, at www.portoflosangeles.org and www.polb.com.

F. The parties may agree to discuss, exchange information, cooperate and, to the extent each Port in its sole discretion deems appropriate, coordinate the adoption of the adoption of infrastructure fees

assessed on containers to support an infrastructure fund, which funds shall be used to fund approved infrastructure projects approved by each Port's Board of Harbor Commissioners. The level of any fee that may be agreed upon, any exemptions, and any rule or requirement for its computation and collection shall be prescribed in each Port's tariff or otherwise noticed to the public to the extent consistent with applicable law.

G. The parties may agree to discuss, exchange information, cooperate and, to the extent each Port in its sole discretion deems appropriate, coordinate the adoption of the adoption of environmental programs to promote the reduction of air pollution from ocean vessels. The rules for any fuel or vessel speed that may be agreed upon, any incentives, and any rule or requirement for its computation and collection shall be prescribed in each Port's tariff or otherwise noticed to the public, to the extent consistent with applicable law.

H. The parties may discuss, agree, cooperate and share information regarding the implementation and evaluation of their Clean Truck Programs, infrastructure fees, and ocean vessel programs, including the adoption of standards for recordkeeping, databases (including development of a registry of drayage trucks), hardware and software, and other systems for identifying and granting access to drayage trucks, and may retain common vendors (either individually or jointly) to assist with implementation of the Programs, including administration and information technology-related functions. The parties may retain a third party vendor to administer the Ports' respective concession programs.

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

ARTICLE VI - OFFICIALS OF THE AGREEMENT AND DELEGATION OF AUTHORITY

A. Co-Chairs

Two Co-Chairs shall call and preside over all meetings held pursuant to this agreement. The two Co-Chairs will consist of one individual representing the City of Los Angeles and one individual representing the City of Long Beach. Each Party shall have the authority to appoint its respective Co-Chair and each Party may appoint a replacement Co-Chair upon written notice to the other Party. Any future appointments of Co-Chair representatives will be effective upon filing notice with the Federal Maritime Commission. The initial Co-Chairs are:

1) City of Los Angeles Harbor Department Executive Director Geraldine Knatz, Ph.D., whose address is 425 S. Palos Verdes Street, San Pedro, California 90731.

2) City of Long Beach Harbor Department Executive Director Richard Steinke, whose address is 925 Harbor Plaza, Long Beach, California 90802.

B. Secretary

The parties to this Agreement shall select a Secretary from among the party members to be responsible for all administrative tasks as directed by the parties hereto. The initial Secretary of this Agreement is the Los Angeles City Attorney's Office, whose address is 425 S. Palos Verdes Street, San Pedro, California 90731. The Secretary shall keep a minute record of the proceedings of ~~all~~the meetings ~~and a record of all discussions and actions taken~~of (i) the Boards of Harbor Commissioners of the Cities in which actions are taken related to the subject matter of this Agreement, (ii) Clean Trucks Program Executive Committee, (iii) the Clean Trucks Program Coordination Committee. Copies of the minute records, to the extent they reflect activities subject to the jurisdiction of the Federal Maritime Commission

and any other exchanged materials shall be furnished by the Secretary to the Federal Maritime Commission and to each Party. These minute records, to the extent they reflect activities subject to the jurisdiction of the Federal Maritime Commission, shall be filed in accordance with the requirements of the Federal Maritime Commission's regulations and shall be certified by the Secretary as to their accuracy.

C. Committees

The Co-Chairs may appoint such committees as may, from time to time, be necessary, and such committees may meet from time to time as may be necessary to accomplish their assignments. At meetings held by these committees, the Co-Chairs and the Secretary shall be entitled to participate *ex officio*.

1. Each such committee shall keep accurate minutes of each meeting, whether in person or by telephone conference, recording subjects discussed and ~~views expressed~~recommended actions, and such minutes shall be promptly filed with the Co-Chairs. Each such committee shall also make an oral report of subjects discussed and views expressed within the committee to the full membership at each meeting, same to include all activities since the last report to the membership.
2. Any committee formed under this article shall be entitled to have and exercise all the applicable rights, privileges and processes as set out in this Agreement, and which are available to the parties of the Agreement as a whole.

D. Meetings

1. Meetings of the parties to this Agreement may be called by either member commencing on the effective date of this Agreement.
2. Meetings may be held in person or by telephone or video conference call, or other

means agreed to by the members.

ARTICLE VII - MEMBERSHIP AND WITHDRAWAL

The City of Los Angeles and the City of Long Beach, acting by and through their respective Boards of Harbor Commissioners, are the Parties to this Agreement, and either party may withdraw from membership upon ninety (90) days written notice to the other party. If either party withdraws from the Agreement, the Federal Maritime Commission shall be promptly informed of such termination, and the Agreement shall become ineffective upon said filing with the Federal Maritime Commission.

ARTICLE VIII - DURATION AND TERMINATION OF THIS AGREEMENT

The term of this Agreement shall be ~~for three years, commencing when it has been fully executed by the parties and become effective under the Shipping Act of 1984, as amended.~~until December 31, 2012.

In the event that either party elects to terminate this Agreement, the Parties shall conclude their current activities relating to the Agreement and return all documents evidencing shared information to the originating party.

Any termination of this Agreement or suspension of future performance under this Agreement shall not relieve the Parties of liability for any obligation previously incurred.

ARTICLE IX - AMENDMENTS

This Agreement may be amended at any meeting provided that such amendment is filed with the Federal Maritime Commission and effective under the Shipping Act of 1984, as amended.

ARTICLE X - FILING AGENT

Each of the Parties appoints ~~the Los Angeles City Attorney's Office~~ C. Jonathan Benner of Troutman Sanders LLP, 401 Ninth St. NW, Washington, DC 20004,

(*jonathan.benner@troutmansanders.com*), as its representative authorized on their behalf to file this Agreement, and any modifications or amendments to this Agreement with the Federal Maritime Commission, and to make all other filings on their behalf with the Commission relating to this Agreement, including the filing of minutes required by 46 C.F.R. § 535.704.

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

This Agreement and each amendment to or republication of this Agreement may be executed in one or more counterparts, and all of such counterparts shall constitute one Agreement, notwithstanding that all Parties are not signatory to the same counterpart.

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

Dated: _____

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

Attest: _____
Board Secretary

APPROVED AS TO FORM

~~_____, 2006~~
_____, 2008
ROCKARD J. DELGADILLO, City Attorney

By _____
~~Heather M. Burns, Deputy~~
Joy M. Crose, Assistant General Counsel

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

Dated: _____

By: _____
Richard D. Steinke
Executive Director

Attest: _____
Board Secretary

APPROVED AS TO FORM

~~_____, 2006~~
_____, 2008
ROBERT E. SHANNON, City Attorney

The Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement
FMC Agreement No. 201170-001

By _____
Dominic Holzhaus, Principal Deputy