

**BEFORE THE
FEDERAL MARITIME COMMISSION**

In Re:

**AMENDED AND RESTATED
LOS ANGELES AND LONG BEACH
PORT INFRASTRUCTURE AND
ENVIRONMENTAL PROGRAMS
COOPERATIVE WORKING
AGREEMENT**

**FMC AGREEMENT
No. 201170-001**

**COMMENTS OF THE INTERMODAL MOTOR CARRIERS CONFERENCE,
AMERICAN TRUCKING ASSOCIATIONS**

August 18, 2008

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I. SUMMARY AND INTRODUCTION

The Intermodal Motor Carriers Conference (“IMCC”) of the American Trucking Associations (“ATA”) files these Comments in Response to the Federal Maritime Commission’s (“Commission”) August 8, 2008 *Federal Register* Notice in the above-captioned matter.¹ In sum, the Amended and Restated Los Angeles and Long Beach Port Infrastructure and Environmental Program Cooperative Working Agreement (“the Agreement”) represents an attempt by the Ports of Los Angeles and Long Beach (“the Ports”) to: (1) avoid the Commission’s requirement that Agreements between the Ports related to its Clean Trucks Program be filed with the Commission “to allow for the competitive review and analysis required by Congress;”² and thus (2) obtain Commission acquiescence, *sub silentio*, via new section V(E)(3), in the Ports’ adoption and

¹ 73 *Federal Register* 46271 (2008).

² “FMC Grants Early Clearance to Ports/Terminals Agreement; Calls for San Pedro Ports to File Clean Truck Program” (NR 08-07, June 13, 2008).

implementation of Concession Plans, finalized on July 18, 2008, and, indeed, any future Concession Plans as amended or adopted by the Ports.

Consequently, the Commission should undertake the required competitive review and analysis regarding the effects of the Ports' Concession Agreements—prior to allowing Amended and Restated Agreement 201170 to become effective. Such a review should place particular emphasis on the unreasonable burdens that would be imposed by the Port of Los Angeles by requiring drayage trucks operating under Port of Long Beach concessions also to sign the separate, and more burdensome, Los Angeles concession simply to cross the Long Beach city line to pick up or drop off cargo containers and chassis at the Port of Los Angeles. Further, the Ports should be required to: (a) respond to those questions raised by the Commission in its investigation of the related Port-MTO Administration and Implementation Agreement (Agreement 201178) earlier this year to which the Ports did not respond on the grounds that the Commission's inquiries were premature; and (b) describe their planning and procedures to ensure a supply of drayage trucks and drivers with port access sufficient to meet the needs of ocean commerce after October 1, 2008.

II. BACKGROUND

The IMCC is an affiliated conference of the ATA. The ATA is the non-profit national trade association for the trucking industry established as a federation of affiliated state trucking associations, conferences, and organizations that includes more than 37,000 motor carrier members representing every type and class of motor carrier in the country. The IMCC provides educational and training services to the intermodal motor carrier members of the ATA, as well as representing the interests of these members in a broad

range of federal, state, local and industry policy forums. Numerous IMCC members provide drayage services to and from the Ports of Los Angeles and Long Beach.

Since the adoption of the Ports' "Clean Air Action Plan" in November 2006, the IMCC and its members have worked cooperatively and constructively with the Ports' staff members to develop methods of upgrading or replacing the most "dirty" of the diesel trucks in port drayage service in a manner that actually could be accomplished by the motor carrier industry and not contravene federal law. Notwithstanding these efforts, the Ports have continued to link their efforts to reduce diesel emissions at the Ports to requirements that motor carriers sign Concession Agreements that are preempted by federal statute (e.g., 49 U.S.C. §§ 14501(c), 14504a(c), 14506(a)).

In October 2007, the IMCC wrote the Commission detailing its concerns with respect to the Ports' proposed concession mechanisms, particularly their cost and likely impact on smaller motor carriers providing drayage services to the Ports.³ On February 21, 2008, the Commission noticed⁴ the Los Angeles/Long Beach Port/Terminal Operator Administration and Implementation Agreement, in part, an effort by the Ports to enlist their tenant Marine Terminal Operators as the day-to-day enforcers of the Ports' unlawful concession mechanisms. On March 3, 2008, ATA and the IMCC filed comments challenging the "blockade" provisions of the Agreement (sections 5.1(e) and 5.3), and suggesting several areas of inquiry of that Agreement's parties to permit the Commission to fulfill its obligations under the Shipping Act regarding review of filed agreements. In so doing, the IMCC argued that the Concession mechanisms: (a) were an effort by the

³ Letter from Curtis E. Whalen, Executive Director, IMCC to Byant VanBrakle, Secretary, Federal Maritime Commission, October 2, 2007.

⁴ 73 *Federal Register* 9569 (2008).

Ports to evade preemption under the federal transportation statutes cited above; and (b) were “unreasonable” under various provisions of the Shipping Act.

In a joint response,⁵ the parties argued that, among other things:

- a. No provision of the Agreement establishes “drayage concessions” or compels “the ‘shutting out’ of motor carriers using independent owner operators...” ... While it is possible that the parties may discuss or even agree on the implementation of policies relating to motor carriers, the substance of any such policies will be decided outside of this Agreement. *The time for any challenge to such policies would be when and if the Ports adopt them. Only then could the Commission evaluate their lawfulness under the Shipping Act.* Page 4, ¶ 2 (emphasis added).
- b. The preemptive section of 14501(c) of the Federal Aviation Administration Authorization Act (“FAAAA”) is a statute outside the Commission’s jurisdiction. The Commission cannot reasonably be expected to take action with respect to this or any other agreement based on application of the FAAAA. If ATA encounters FAAAA issues in the operation of the Ports’ Clean Truck Program, it can raise those issues in an appropriate forum. Page 5, ¶ 4.
- c. To the limited extent ATA has suggested Shipping Act issues are at issue, these claims are, at most, premature and misdirected. ... If the Ports take actions that ATA believes are in violation of the Act, that would be the time for legal challenge. The agreement review process is not the time for any such challenges, especially because *the Agreement only deals with implementation, not the adoption of any underling policies.* Page 5, ¶ 5 (emphasis added, footnote omitted).

Subsequently, the Commission advised the Agreement’s applicants that it would not allow the Agreement automatically to become effective 45 days after filing, but would request that the applicants furnish additional information to permit the Commission to complete its assessment of the Agreement’s impact. The requested information was specified in an April 3, 2008 letter from the Commission.

⁵ FMC Agreement No. 201178, *Responsive Comments of the Ports of Los Angeles and Long Beach and the West Coast MTO Agreement*, March 11, 2008.

On June 13, 2008, the Commission announced it had concluded its review of the materials provided in response to its requests and allowed the Agreement to take effect on that day. In announcing this determination, the Commission stated:

The [Agreement] contemplates future discussions to determine the extent to which the terminal operators will administer certain aspects of the San Pedro Ports Clean Trucks Program, and the ... Parties *have not yet agreed on implementation of any program referenced thereunder*. Accordingly, the Commission concluded that there was no basis at this time to determine that the [Agreement] is likely to result in an unreasonable increase in transportation costs or decrease in transportation services. The Commission noted that its decision today does not foreclose future actions with respect to the [Agreement], or these Parties' activities under other related agreements, that may contravene the Shipping Act of 1984 ("Shipping Act").

In announcing the Commission's action, Florence A. Carr, Director of the Commission's Bureau of Trade Analysis stated: "The Shipping Act directs the Commission to evaluate the potential impacts of all agreements, both prior to their effectiveness and on an ongoing basis. Under these statutory requirements, further agreements reached pursuant to the [Agreement], and those *related agreements of the Ports of Los Angeles and Long Beach, must be timely filed with the Commission to allow for the competitive review and analysis required by Congress*. In addition, the Commission evaluates individual or joint activities to prevent or redress any concerns with respect to statutorily prohibited acts enumerated in section 10 of the Shipping Act. Today's decision letter has again emphasized to the Parties the need to immediately file with the Commission all substantive aspects of the Clean Truck Programs."

"FMC Grants Early Clearance to Ports/Terminals Agreement; Calls for San Pedro Ports to File Clean Truck Program," NR 08-07 (June 13, 2008, emphasis added).

On July 18, 2008, the Ports simultaneously released their final Concession Agreements and Applications, attached to these Comments for reference (Attachment 1, Los Angeles Application; Attachment 2, Los Angeles Agreement; Attachment 3, Long Beach Application; Attachment 4, Long Beach Agreement) and began to solicit motor carriers to file such Applications. If Concessions are not applied for, and granted, by

October 1, 2008, the Ports intend to “shut out” motor carriers and their subcontractors from each Port.

On July 28, 2008, ATA filed a Complaint in the U.S. District Court for the Central District of California (Case No. CV 08-04920) alleging that the Ports’ Concession Plans: (a) violated the Supremacy Clause of the Constitution because they were preempted, in whole and in part, by 49 U.S.C. §§ 14501(c), 14506(a); and (b) constituted a violation of 42 U.S.C. § 1983, which, *inter alia*, prohibits local governments from acting under color of state law to deprive persons of rights established by the Constitution and laws of the United States, specifically the right to engage in interstate commerce free of any undue burden or unreasonable discrimination, Article I, Section 8, Clause 3; 49 U.S.C. § 14504a(c). Subsequently, ATA filed a Motion for Preliminary Injunction against implementation of the Ports’ Concession Plans under the Supremacy Clause counts of the Complaint. A hearing on this motion is currently scheduled for September 8, 2008.

III. The Commission Should Undertake a Competitive Review and Analysis of the Ports’ Concession Programs and Assess the Impact of Enforcement of the Clean Truck Programs’ October 1 Deadlines Prior to Permitting the Agreement to Take Effect.

A. The Time Has Come for the Commission to Undertake Its Promised Competitive Review of the Ports Concession Requirements.

As set out in the responsive Comments on Agreement 201178, above, the Ports apparently contend that the Commission can *never* inquire into the substance of the Concession mechanisms in its review of Agreements *implementing* the Concession mechanisms. Rather, the Commission may make such an inquiry only if the agreement at hand incorporates an actual agreement between the Ports adopting Concession Program

elements, themselves. It is thus not surprising that the Ports artfully have put before the Commission an agreement that permits the Ports to engage in unlimited “discussion,” “cooperation,” “coordination,” and retention of “common” contractors regarding port concessions, but that leaves the formal adoption of the Concession mechanisms to the “independent” judgment of each Port.

More specifically, the Amended and Restated Agreement’s new sections V(E) and (H) authorize the Ports to discuss, cooperate, and coordinate the adoption of “concession programs” and the elements thereof that determine whether or not the trucks of licensed motor carriers will be allowed access to the Ports’ terminals, and to operate those programs using a common administrator. In so doing:

- 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: ...
 - 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....
- 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.*

Through this concept of “coordinated, but independent” actions, the Ports attempt to limit the Commission only to review of the framework for establishing the Ports’ Concession Programs, but to deny the Commission an opportunity to review the programs themselves. Implicitly, there will never be a time when the Commission may review the Concession mechanisms. Either such a review will be premature (as the Ports claimed April 3) or too late (as they now implicitly assert). According to the March 11, 2008 Comments of the parties to Agreement 201178, “[t]he time for any challenge to such [concession plan] policies would be when and if the Ports adopt them. Only then could the Commission evaluate their lawfulness under the Shipping Act.” But since there is never to be an “agreement” on the content of the Concession Plans, the Ports’ actions will be unreviewable under the Agreement process – contrary to the Commission’s expectations regarding ongoing review contained in its June 13, 2008 letter regarding the effectiveness of Agreement 201178.

In toto, the Ports’ approach is less logic than legerdemain. The Amended and Restated Agreement 201170 confronts the Commission with after-the-fact ratification of the Ports’ Concession mechanisms (including use of a common concession administrator, which has already been selected⁶). In this context, the Ports simply cannot: (a) demand (in the Agreement 201178 proceeding) that the Commission assess their Concession programs, only “when and if the Ports adopt them;” (b) adopt their Concession programs;

⁶ The administrator, Tetra Tech, Inc., was chosen by Long Beach and Los Angeles on July 14 and 17, 2008, respectively.

and then (c) request that an Agreement incorporating the adopted Concession programs be processed on an expedited basis without any Commission inquiry at all into the Concession mechanisms and the impact of their enforcement by the Ports effective October 1, 2008.

Instead, the Commission must now fulfill its statutory responsibilities and assess the competitive impact of the adopted Concession mechanisms. As part of this effort, the Commission should consider: (a) the impact of Los Angeles' refusal to let Long Beach concession holders to enter the Port of Los Angeles without signing an additional and more burdensome Concession Agreement; and (b) the impact of agreements between the Ports and with third parties that were not yet finalized when the Commission undertook its investigation of Agreement 201178 earlier this year.

B. The Commission Should Investigate the Impact on Services and Costs of the Ports' Joint Administration of Their Concession Programs While Refusing to Grant Concession Holders Reciprocal Rights of Entry.

As noted in Section II, the ATA is challenging the legality of each Ports' Concession Plan under relevant sections of 49 U.S.C. chapter 145 in the U.S. District Court in Los Angeles, a determination that is outside the Commission's jurisdiction.⁷ The pendency of that case should not lead the Commission to defer an inquiry into a key question that this Commission should investigate in reviewing the Amended and Restated

⁷ ATA notes that the requested injunction would have no material impact on the environment and truck safety. The Ports anticipate that most independent owner operators continuing to operate at the Ports, as older trucks are banned, will seek financial assistance in the form of subsidized leases for environmentally compliant trucks. In turn, those leases would be overseen by the Ports' same common Clean Truck Program Administrator, Tetra Tech, Inc., which has responsibility for oversight of financial assistance programs as well as concession programs, to assure the lessees' continuing compliance with environmental and maintenance obligations.

Agreement: whether the Agreement is likely “to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation costs” due to the Ports’ *refusal* to grant concession holders of the other Port reciprocal rights of entry while jointly administering their Concession programs under Agreement section V(H)). *See* 46 U.S.C. § 41307(b). In particular, Los Angeles’ exclusion of drayage trucks operating under a Long Beach concession on the eastern side of San Pedro Bay’s port complex from crossing the city line into the jurisdictional area of the Port of Los Angeles on the western side is likely to produce this unlawful outcome.

Under the Los Angeles Concession requirement, in order to enter the Port of Los Angeles, a Long Beach Concession holder must apply for, and be granted, a separate Los Angeles Concession, the awarding of which is *not* automatic, pay an application fee of \$2,500 and an annual fee of \$100 per truck, and meet additional requirements beyond those that are common to both Agreements. For example:

- a. A drayage truck entering the portion of the San Pedro Bay port complex under Los Angeles’ jurisdiction (subject to transition provisions) must be driven by an employee of the concession holder using a company-owned truck, rather than a subcontractor of the concession holder, even though the *same* third party Concession Administrator supervising the Los Angeles concession requirements is ensuring (on behalf of Long Beach) that the truck meets environmental and maintenance standards even if it is owned and operated by a subcontractor. *Compare* Attachment 2, Section III (d) *with* Attachment 4, Section III(d).

b. A parking plan must be on file with the Los Angeles Concession Administrator (again, the *same* third-party Concession Administrator under contract to Long Beach), demonstrating that a Long Beach-registered truck that crosses the city line (*e.g.*, merely to return an empty container) has an *off-street* parking place, rather than simply a *legal* parking place (on *or* off-street) as required in the Long Beach plan on file with the same administrator. *Compare* Attachment 2, Section III (f) *with* Attachment 4, Section III(f). Consequently, a drayage truck legally parked on a *Long Beach* street while off duty under an approved *Long Beach* plan cannot cross the city line into the Port of Los Angeles, unless the Long Beach Concession holder obtains a Los Angeles concession and demonstrates that it has obtained off-street parking for that truck.

c. The Long Beach Concession holder must meet both the contract conditions required by the City of Long Beach and the more comprehensive “standard terms and conditions” required by the City of Los Angeles for services contractors to the City, *e.g.*, participation in Los Angeles small business development programs, simply so that a Long Beach Concession holder can have its trucks pick up and return containers on the Los Angeles side of the city line. *Compare* Attachment 2, Schedule 5 and Exhibits *with* Attachment 4, Schedule 5.

d. The Long Beach concession holder must demonstrate to the satisfaction of the Executive Director of the Port of Los Angeles (under standards not yet available) that it is financially viable over a multi-year period, even though Long Beach has grandfathered drayage companies in business as of June 1, 2008,

as meeting the financial viability requirement. *Compare* Attachment 1 and Attachment 2, Section III(n) *with* Attachment 3 and Attachment 4, Section III(o).

The impact of imposing these additional conditions on Long Beach Concession-holders wishing also to pick-up or return containers across the Los Angeles City line are far from trivial. Indeed, the consulting firm used by the Port of Los Angeles to develop the elements of its Concession mechanism estimated that Los Angeles' approach will increase *drayage carriers' annual operating costs by \$500 million*, compared to a "basic" plan largely identical to that adopted by Long Beach.⁸

The imposition of such direct costs (as well as the cost of resulting operational inefficiencies) will not only adversely affect motor carriers and their customers through higher costs and poorer service (the § 41307(b) test), but also adversely affect other Shipping Act policies. For example, the cost and efficiency barriers created by the inability of Long Beach concession holders to have their trucks enter Los Angeles' jurisdictional areas may interfere directly with the ability of ocean carriers efficiently to execute commission-filed Vessel Sharing Agreements, as allowed under 46 U.S.C. § 40303(d).

It is thus "unreasonable" for Los Angeles to impose an additional \$500 million in drayage industry operating costs to meet the additional burdens set out above, just to permit trucks operating under Long Beach Concessions also to access the Port of Los

⁸ Boston Consulting Group, *San Pedro Bay Clean Truck Program- CTP Options Analysis*, at 79 (March 2008).

Angeles. The Commission has summarized and affirmed its precedents regarding predecessor Shipping Act provisions currently codified in § 41102(c):⁹

Section 17 requires that the practices of terminals be just and reasonable. "Reasonable" may mean or imply "just, proper," "ordinary or usual," "not immoderate or excessive," "equitable," or "fit and appropriate to the ends in view." Black's Law Dictionary, Fourth Edition. It is by application to the particular situation or subject matter that words such as "reasonable" take on concrete and specific meaning. As used in section 17 and as applied to terminal practices, we think that "just and reasonable practice" most appropriately means a practice otherwise lawful but not excessive and which is fit and appropriate to the end in view.

Under the very premise of the Ports' signing of Agreement 201178 and Amended and Restated Agreement 201170—that the San Pedro Bay Ports must operate as an integrated ecosystem for the movement of international ocean commerce in an environmentally conscious manner—erection of high financial and operational barriers to the movement of Clean Truck Program-compliant drayage trucks across the San Pedro Bay port complex's internal city boundary inherently is "excessive" and "not fit and appropriate" to the achievement of the Ports' objectives.

According to the Commission's FY 2007 *Annual Report*, "Vessel-sharing agreements ("VSAs") make up the largest type of agreements on file with the Commission. ... Most VSAs authorize some level of service cooperation *with the goal of reducing individual operating costs.*" (Page 91, emphasis added). Given the Ports' failure to permit reciprocity among drayage concession holders, ocean carriers that call at Long Beach may find that use of VSAs with carriers that call at Los Angeles will subject them to a financial penalty. If they contract for drayage services exclusively at Long

⁹ As quoted in *Ceres Marine Terminal v. Maryland Port Administration*, 27 SRR 1251, 1274-75 (1997) (citations omitted).

Beach, their cost of drayage services would presumably reflect the lower cost of operating under a Long Beach concession. If the carrier takes advantage of a VSA to move a container on a ship calling at Los Angeles, it would have to pay a penalty associated with using a holder of a Los Angeles concession to dray the container, whose rates presumably would reflect a prorate proportion of the \$500 million higher annual cost of complying with Los Angeles concession requirements.

Additionally, the Commission has upheld a “reasonable transportation-related factors” test in assessing a port’s refusal to allow a complainant to use various port facilities under 46 U.S.C. § 41106(3):

The ALJ found that the Shipping Act does not guarantee “the right to enter into a contract, much less a contract with any specific terms. . . [A]ll that is required is that ... *MTOs refrain from 'shutting out' any person for reasons having no relation to legitimate transportation-related factors.*” ... After a review of the record, we believe that although NOS was “shut out,” it was done for legitimate, transportation-related reasons.¹⁰

Unlike the outcome in that case, however, here, Los Angeles’ “shutting out” of Long Beach concession holders using independent owner-operators (or using trucks that park in legal, but on-street, spaces)¹¹ cannot be for “legitimate transportation-related factors.”

Finally, it is self-evident that the Commission’s fulfillment of its Shipping Act responsibilities must be informed by the Commerce Clause, for no conduct by a municipal agency that would impose an unconstitutional undue burden on interstate and foreign commerce could possibly be “reasonable” conduct under the Shipping Act. In

¹⁰ *New Orleans Stevedoring Co. v. Board of Commissioners of the Port of New Orleans*, 29 SRR 1066, 1070 (2002, emphasis added).

¹¹ The issue of the “financial viability” of Long Beach Concession holders is relevant only to the Port of Long Beach, since, by definition, those Concession holders have obligations only to Long Beach, not Los Angeles, as overseen by the Ports’ common Concession Administrator.

Automobile Club of New York, Inc., v. Dyskstra, 423 F. Supp. 2d 279 (S.D.N.Y., 2006), *aff'd*, 520 F. 3d 210 (2d Cir., 2008), the court found New York City's failure to grant reciprocity to tow trucks registered in other jurisdictions to be an unreasonable burden on commerce. In that case, New York City had adopted a comprehensive system for registering tow trucks (the legality of which was neither challenged nor ruled upon in the litigation), including inspections, background checks for drivers, and payment of annual fees. Until 2004, New York nonetheless had granted reciprocity to trucks registered in other jurisdictions, so long as the tow involved had one end that was not in New York City. Beginning in 2004, however, New York began to impound any tow truck operating without a permit.

The court found that tow truck services had become multistate in scope (such as through the plaintiff automobile association), and that that imposing New York's rules on tow trucks licensed elsewhere would have no material benefit for public safety (the justification given by New York). Thus, "New York City's licensing scheme, if allowed full flow, would create a major burden to the flow of interstate commerce by essentially imposing either a high toll on towers if they were to pay to be licensed to use its roads and highways or a duplication of towers, and expensive 'handing-off' procedure between said two towers at New York City's county lines, ... which the City itself considered to be 'inefficient.'" 423 F. Supp. 2d at 282-83. And if other jurisdictions imposed New York's rules and non-reciprocity policies, the result would be to make towing in the area "a shamle." *Id.* at n. 6. This is precisely the same situation as would be faced by Long Beach concessionaires seeking to pick up or drop off containers at Los Angeles: either pay the "high toll" of higher operating costs and duplicative concession fees (paid to the

same Concession Administrator as for their Long Beach Concession), or incur the inefficiency and expense of “handing off” containers at an intermediate terminal for final movement into the Port of Los Angeles by a Los Angeles concession holder.

Thus, the court concluded:

[S]eizure by a City agency of any outsider tow truck in New York City is prohibited where the only ground the agency reasonably has and can assert for the seizure is that the tow truck is not licensed by the City of New York. All tow trucks lawfully operating, with or without a tow, from anywhere outside New York City, whether based within the State or elsewhere, are to be permitted the same access to and use of New York City's roads as those tow trucks licensed by New York City. *Id.* at 287.

In light of the above precedents, as part of its review of Amended and Restated Agreement 201170, the Commission should request that the Ports provide:

1. All reasons and justifications for the Ports’ refusal to grant reciprocal rights of access to concession holders of the other Port;
2. An assessment of the potential impact on the flow of ocean commerce at the ports from the lack of reciprocity, including the impact on use of Vessel Sharing Agreements; and
3. An assessment of the impact on ocean commerce and on the Ports, if the Ports were to permit reciprocity of entry to the other Port’s concession holders.

C. The Commission Should Investigate the Current Status and Impact of Agreements Implementing Clean Truck Program Elements that Become Effective October 1, 2008 and the Ports’ Plans to Assure an Adequate Supply of Drayage Trucks with Access to the Ports.

On October 1, 2008—fewer than 45 days from today—the applicants have committed to (a) excluding from each Port motor carriers and drayage trucks operating on their behalf, if the motor carriers have not signed concession agreements; and (b)

excluding, for clean air reasons, all pre-1989 drayage trucks. These exclusions are to be enforced through a Drayage Truck Registry in which all trucks eligible to enter the Ports are to be listed, along with required information about each truck. In turn, drayage trucks are to have radio-frequency identification devices (“RFIDs”) that will interface with receivers at marine terminal entry gates. These receivers are to be linked to the Drayage Truck Registry. Presumably, “unauthorized” trucks will be turned away. The above elements apparently are to be coordinated between the Ports pursuant to Amended and Restated Agreement 201170 and implemented through agreements between the Ports and their tenant MTOs (and their affiliates, such as PierPass) pursuant to Agreement 201178.

In its June 13, 2008 announcement regarding the effectiveness of Agreement 201178, the Commission stated that, the parties to the agreement “have not yet agreed on implementation of any program referenced thereunder.” Presumably at this late date, such agreements have been entered or will be entered shortly—or there is a significant risk that the underlying systems and procedures necessary to implement the Clean Truck Program elements that come into effect on October 1 will not be tested and ready on that date. Consequently, the Commission should:

1. Require the Ports to answer those questions first asked of them in the Commission’s investigation of Agreement 201178, for which the Ports did not then provide a definitive response (claiming that the underlying agreements, contracts, systems, processes, and procedures were not yet in existence);

2. Request that the Ports identify all the agreements, contracts, systems, processes, and procedures necessary to the effective implementation of Clean Truck

Program elements coming into effect or being enforced as of October 1, 2008 and their current state of readiness for implementation on that date; and

3. Request that the Ports state their plans to deal with any deficiencies in readiness identified in responding to paragraph 2 immediately above. This response should address with particularity their planning and procedures to assure a supply of sufficient drayage trucks and drivers with permissible port access to meet the needs of ocean commerce after October 1 (the date for exclusion of pre-1989 trucks and trucks not operating under the auspices of a separate Concession agreement with each port), given that the Ports' programs of financial assistance to replace or upgrade trucks not complying with port environmental requirements are not yet fully in operation.

V. CONCLUSION

The Ports of Los Angeles and Long Beach have now made the policy decisions establishing the Concession program element of their Clean Truck Programs and other elements that are to come into effect on October 1, 2008. They also have, or should have, entered into all necessary contracts and agreements with MTOs and third parties. Consequently, the Ports can no longer appropriately request that the Commission defer undertaking the full competitive analysis necessary to understand the effects of the Ports' Concession requirements. Further, the Ports can no longer claim they cannot respond to inquiries regarding the nature and effect of agreements with third parties under related Agreement 201178.

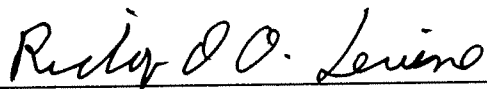
Consequently, the Commission should: (a) deny expedited effectiveness for Amended and Restated Agreement 201170; (b) undertake the promised—but deferred—assessment of the impact of the Ports Concession requirements, including the barriers to

efficient movement of cargo within the San Pedro Bay port complex resulting from the Ports' failure to grant reciprocity to each other's concession holders; (c) require the Ports to respond to questions asked of them in the Commission's inquiry into Agreement 201178 that the Ports then claimed they could not answer because anticipated arrangements were not yet in place; (d) require the Ports to identify agreements, contracts, systems, methods, and procedures necessary for effective implementation of Clean Truck Program elements coming into effect on October 1, 2008 and the state of their readiness; and (e) require the Ports to describe their planning and procedures to ensure a supply of drayage trucks and drivers with port access sufficient to meet the needs of ocean commerce after October 1, 2008.

Respectfully submitted,

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By its Counsel:

A handwritten signature in black ink, reading "Richard O. Levine", is written over a horizontal line.

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August 18, 2008

LIST OF ATTACHMENTS

1. Port of Los Angeles Drayage Concession Application
2. Port of Los Angeles Drayage Concession Agreement
3. Port of Long Beach Drayage Concession Application
4. Port of Long Beach Drayage Concession Agreement

ATTACHMENT 1

PORT OF LOS ANGELES DRAYAGE CONCESSION APPLICATION



INSTRUCTIONS FOR PORT OF LOS ANGELES DRAYAGE SERVICES CONCESSION APPLICATION

Under the Port of Los Angeles' Clean Trucks Program, Licensed Motor Carriers (LMCs) need to obtain a Port Drayage Services Concession to provide drayage services at the Port of Los Angeles. Beginning October 1, 2008, only trucks operating for LMCs with a Port concession will be allowed to enter Port terminals. The concession approval process is expected to take at least 30 days. LMCs desiring to provide drayage services at the Port of Los Angeles on October 1, 2008 are encouraged to submit their Concession Application no later than September 1, 2008 to allow time for processing.

To apply for a concession:

- Complete and sign the Concession Application. **The online PDF document is designed to accept online completion of application fields. Please proofread, print and sign the Application.**
- Submit the signed Application, along with a \$2,500 concession fee (if paying by check, make it payable to "POLA Concession Fee"), to:
Clean Truck Program – Concession Application
Port of Los Angeles
425 Palos Verdes Street
San Pedro, CA 90731
- Register drayage trucks in the Port's Internet-based Drayage Truck Registry (DTR), which will be available shortly. The Port will notify applicants and post notices on its website when the Drayage Truck Registry is available.
- After the Port approves your concession, complete the DTR registration by submitting an annual registration fee of \$100 per truck through the on-line system. Only trucks registered in the DTR will be allowed entry into Port terminals beginning October 1, 2008. Beginning October 1, 2008, the Port will not allow model year 1988 and older trucks onto its property, so concessionaires should not register these older vehicles.
- Register all drivers, whether employee drivers or independent owner operators, in the Port's Internet-based Driver Registry, which will be available shortly. The Port will notify applicants and post notices on its website when the Driver Registry is available. There is no cost to register drivers.
- After the Port notifies you that it has verified the application information and confirmed that you meet the concession requirements, print two copies of the Concession Agreement and have the copies signed by an owner or authorized officer of your LMC. Send the two signed copies of the Concession Agreement to:
Clean Truck Program - Concession Agreement
Port of Los Angeles
425 South Palos Verdes Street
San Pedro, CA 90731
- The concession will be formally approved and fully effective on the date the Concession Agreement is signed by the Port. A fully executed copy of the Concession Agreement will be returned to the concessionaire at the address on the application.



Port of Los Angeles Concession Application Part A – Concession Obligations

The Port of Los Angeles (“Port”) offers this opportunity to apply for a concession to licensed motor carriers desiring to serve the Port that agree to the terms and conditions set forth in the Port’s Concession Agreement. **Completion of this form does not guarantee award of a concession.** All applicants should review the Concession Agreement (available on the Port’s website at www.portoflosangeles.org, click on the clean truck logo along the left column) before completing this application to understand your obligations if you receive a concession. To receive final approval for a concession, applicants will be required to pay the truck registration fees and agree to the concession terms by signing the Concession Agreement.

PORT DRAYAGE TRUCK REGISTRY

Concessionaires are required to register all drayage trucks that will be permitted to access the Port under this concession. Applicants are strongly encouraged to register their trucks at the earliest opportunity, even prior to application for or approval of a concession. Truck registration fees for concessionaires can be paid later, once the concession is awarded. The Port will notify applicants and post notices on its website when the Drayage Truck Registry is available.



Port of Los Angeles
Concession Application Part B - Applicant Information

Please complete the following information about the company applying for a concession. Information on this form must be reported for and relate to the legal entity that will execute the Concession Agreement. All fields must be completed before the application can be processed.

Company

Legal Company Name: _____

DBA (if any): _____

Company Type (check one): ☐ Corporation ☐ LLC ☐ Partnership ☐ Sole Proprietorship
☐ Other _____

Standard Carrier Alpha Code (SCAC):

Mailing Address

Street: _____

City: _____ State: Zip Code:

Contacts

Primary Contact

Name: _____

Title: _____

Phone Number: () -

FAX Number: () -

Email (if available): _____

Secondary Contact

Name: _____

Title: _____

Phone Number: () -

FAX Number: () -

Email (if available): _____



Port of Los Angeles

Concession Application Part B - General Information

Please complete the following information for the entire company covered by the concession. This may include multiple yards and/or company locations. Do not include information from subsidiaries or other related business entities that will not be a party to or performing under the Concession Agreement. All fields must be completed before the application can be processed.

Years in Business:

Current Number of Owned Drayage Trucks:

Current Number of Contracted Drayage Trucks:

Average Annual Calls to the Port (all contracted and owned trucks): ,

Number of Employees:

Annual Gross Income (\$): , ,

Tax ID number:

CA Number: USDOT Number:

FMCSA Operating Authority Number: ☐ MC ☐ FF ☐ MX

The Concession Agreement requires each applicant to prepare and have available for inspection (1) a parking plan that demonstrates that all trucks registered in the Concession can be parked off the street, and (2) a maintenance plan that documents how manufacturer's recommended maintenance will be conducted. At this time, the Port does not have a prescribed format for either of these plans. If you submit an application, you will be contacted shortly with instructions for how to demonstrate compliance with these requirements. Otherwise, information will also be available on the Port's website at www.portoflosangeles.org, click on the clean truck program logo along the left column.



Port of Los Angeles

Concession Application Part D - Insurance Coverage

All concessionaires must carry General, Automobile, and Workers' Compensation insurance and meet the minimum coverage requirements of the Port. In addition, upon being granted a concession, the concessionaire must add the Port as an Additional Insured to each policy.

General Liability Insurance (minimum \$1 million required)

Do you carry Commercial General Liability Insurance? ☐ Yes ☐ No

Insurance Carrier: _____

Policy Number: _____

Limits (Single Incident/Aggregate): \$ _____ / \$ _____

Policy Start/Expiration Dates (mm-yy): Start - Expires -

Automobile Liability Insurance (minimum \$1 million required)

Do you carry Automobile Liability Insurance? ☐ Yes ☐ No

Insurance Carrier: _____

Policy Number: _____

Limits (Single Incident/Aggregate): \$ _____ / \$ _____

Policy Start/Expiration Dates (mm-yy): Start - Expires -

Workers' Compensation Insurance (statutory limit required based on company size)

Do you carry Workers' Compensation Insurance? ☐ Yes ☐ No

Are you self-insured under a Self Insurance Plan? ☐ Yes ☐ No

Insurance Carrier: _____

Policy Number: _____

Limits (Single Incident/Aggregate): \$ _____ / \$ _____

Policy Start/Expiration Dates (mm-yy): Start - Expires -

Please indicate the ability of the applicant to meet the Port of Los Angeles' insurance requirements:

- ☐ The insurance currently in place fully meets the requirements
☐ Insurance is in place but amounts will need to be increased to fully meet the requirements
☐ Some or all of the insurance must be obtained



Port of Los Angeles Concession Application Part E – Financial Capability

All Applicants must demonstrate financial capability to meet their obligations under the Concession Agreement. Applicants must also agree to comply with applicable state and municipal ethics and conflict of interest laws.

Section One: Business Statement

Any Applicant seeking a concession is required to submit a short summary of relevant business experience for the last three years that clearly describes the Applicant's ability to provide Drayage Services to the Port of Los Angeles. This includes information pertaining to the company, its principals, and the management and administrative staff.

Key elements to include, but not limited to:

- a) Experience where similar service (Drayage) was provided, including the nature and extent of service
- b) Experience with the Port of Los Angeles and vicinity
- c) Experience with IOOs / employee drivers
- d) If the Applicant holds or has held concessions / permits in the City of Los Angeles or in other jurisdictions, please describe any regulatory and/or administrative penalties that have been assessed against the Applicant within the last three years and indicate the measures taken to ensure resolution of those issues.

Please attach a list of references so that the Office of the Clean Truck Program may contact and verify company, management, and administrative experience.

Section Two: Financial Statement

Publicly listed companies must submit their most current annual report, most recent quarterly filings with SEC, and any pending or current legal actions against the company. The Port has the right to request Dunn & Bradstreet or other credit bureau reports deemed necessary. Private enterprises must submit a proxy balance sheet and income statement. Federal and state income tax returns are valid substitutes to meet the documentation requirement. Private enterprises must also certify that there are no pending or current legal actions against the entity, and/or such pending legal action will not have an adverse impact on the financial of the enterprise. If you are a sole proprietorship and do not produce financial statements, please fill out the form set forth on Attachment I to this Application.



**Port of Los Angeles
Clean Truck Program
Concession Application - Signature**

APPLICANT'S CERTIFICATION:

I do hereby certify that I have authority on behalf of the Licensed Motor Carrier to submit this application. I have prepared and reviewed the application, and that all of the information I have provided is true and correct. If any of the information I have submitted changes, I will immediately submit corrected information to the Port. I have reviewed the Concession Agreement and understand and agree that if approved for a concession I will sign and agree to comply with the terms and conditions of the Concession Agreement.

NOTICE TO APPLICANTS:

A material false statement, omission or fraudulent inducement made in connection with this application is sufficient cause for denial of the application or revocation of a prior approval, thereby precluding the Applicant from doing business with or performing work for the Port as concessionaire, or receiving truck grant/lease benefits from the Port, for a period of five years. In addition, such false submission may subject the person and/or entity making the false statement to criminal charges. (Title 18 USC 1001, false statements; California Penal Code Section 132, offering altered or antedated or forged documents or records; and Section 134, preparing false documentary evidence)

Authorized Signature _____ Date _____

Print Name _____ Title _____

Company _____

Witness Signature _____ Date _____

Print Name _____ Title _____



Attachment I Financial Summary

To be completed by Applicants that are Sole Proprietorships and do not produce Company generated financial statements (balance sheet, statement of earnings and retained income.) Complete for the most recent year of operation.

Year of Operation: _____

ASSETS

Cash on Hand and in Banks:
Account and Notes Receivable:
Fixed Assets (net of depreciation):
Other Assets:

Total Assets:

LIABILITIES

Accounts Payable:
Notes Payable to Banks in next twelve months:
Notes Payable to Others:
Taxes Payable:

Long Term Liabilities (more than twelve months):

Other Liabilities:

Total Liabilities:

NET WORTH:

INCOME FROM OPERATIONS

Revenue:
Interest from Bank Accounts:

COST OF GOODS SOLD (if applicable):

GROSS PROFIT:

General and Administrative Expenses:

Depreciation:

Interest Paid:

NET GAIN OR LOSS:

ATTACHMENT 2

PORT OF LOS ANGELES DRAYAGE CONCESSION AGREEMENT

**DRAYAGE SERVICES
CONCESSION AGREEMENT
FOR ACCESS TO THE
PORT OF LOS ANGELES**

AGREEMENT NO. _____

THIS DRAYAGE SERVICES CONCESSION AGREEMENT ("Concession") is made and entered into the _____ day of _____, 20____, by and between the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners ("Port") and _____ ("Concessionaire"). Defined terms used and not otherwise defined herein shall have the meanings set forth in the Clean Air Action Plan Chapter of Port of Los Angeles Tariff No. 4 (Section 20).

For and in consideration of the promises, and of the terms, covenants and conditions hereinafter contained to be kept and performed by said parties, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

I. DRAYAGE TRUCK CONCESSION RIGHTS GRANTED

- (a) Subject to the terms of this Concession, including without limitation the terms set forth on the Schedules attached hereto and incorporated herein by reference, the Port hereby grants to the Concessionaire 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 this Concession shall be solely for the purpose of conducting Drayage Service unless the Concessionaire obtains the Executive Director's prior written permission to access Port's property for other purposes. Concessionaire's rights under this Concession shall be non-exclusive and the Port intends to grant similar concession rights to other concessionaires who meet and remain in compliance with Concession requirements. This 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.
- (b) Drayage Trucks providing Drayage Service to the Port and operating under the authority of and in compliance with the terms and conditions of this Concession shall be referred to herein as "Permitted Trucks." Permitted Trucks may include Drayage Trucks owned and operated by Concessionaire ("Concessionaire's Trucks") or, during the Transition Period (to the extent permitted in Section III (d) below), owned by contractor drivers and performing Drayage Service on behalf of Concessionaire under the authority of this Concession ("Contractors' Trucks"). Regardless of ownership status, Concessionaire shall cause all Permitted Trucks to comply fully with all of the terms and conditions of this Concession.

- (c) Concessionaire understands that, by granting this Concession to the Concessionaire, the Port has not secured drayage service contracts between Concessionaire and any customers, which contracts and obligations therein shall remain the sole responsibility of Concessionaire.

II. TERM OF AGREEMENT

This Concession shall be effective for a term of five (5) years commencing at 12:01 a.m. on _____, 20__ and terminating at 12:00 midnight on _____, 20__.

III. CONCESSION REQUIREMENTS

As a condition to the right to provide Drayage Services under this Concession, Concessionaire shall comply with all of the requirements set forth below and on the Schedules attached hereto and incorporated herein by reference (collectively, the "Concession Requirements") :

- (a) **Licensed Motor Carrier.** Concessionaire must be a licensed motor carrier 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).
- (b) **Permitted Trucks.** Concessionaire shall utilize Permitted Trucks (as defined in Section 1(b) above) to provide Drayage Service to the Port pursuant to this Concession. To qualify as a Permitted Truck, all Drayage Trucks providing Drayage Service operating under this Concession shall have required information entered into and kept updated in the Drayage Trucks Registry and shall comply at all times with Concession Requirements.
- (c) **Driver Compliance.** Concessionaire shall be responsible for the compliance and performance of its drivers or other personnel utilized pursuant to this Concession, and the Port shall have no responsibility or liability therefor.
- (d) **Driver Hiring.** Concessionaire shall initially be permitted to utilize employees, independent contractor drivers, or a combination thereof to achieve its full complement of drivers driving its Permitted Trucks. Concessionaire shall be granted a transition period, as set forth in the schedule below, by which to transition its Concession drivers to 100% Employee Concession drivers by no later than December 31, 2013 ("Transition Period"). During the Transition Period, Concessionaire shall meet the interim annual fourth quarter milestones set forth below for the percentage of its Employee drivers. "Employee" for the purpose of this Concession shall have the same meaning as under Section 3121(d) of Title 26 of the United States Code, and may include full-time, part-time, temporary or seasonal Employees to permit Concessionaire flexibility in driver staffing. The percentage of Concession drivers that are Employees during Employee Transition Period shall be calculated as a percentage of Employee drivers driving Permitted Trucks in Drayage Truck transactions at the Port's marine terminal gates. Employee status data shall be collected electronically daily with each Permitted Truck transaction at the marine terminal gates. Reporting to both the

Port and the Concessionaire will be made quarterly, to enable Concessionaire to monitor level of compliance and make adjustments to maintain the annual fourth quarter average. Compliance measurement and reporting to both the Port and the Concessionaire will be done annually, using the simple arithmetic average of all records for the fourth quarter (October 1 through December 31). After December 31, 2012, all Concession drivers shall be Employees. Concessionaire shall give a hiring preference to drivers with a history of providing drayage services to the Port. When Concessionaire has openings for Drayage Truck drivers or administrative staff, Concessionaire shall post such job openings at the First Source Workforce Development Office, a workforce development program that provides prospective employee applicants through a non-exclusive job referral system. Concessionaire shall also consult the First Source list of prospective employee applicants prior to hiring.

EMPLOYEE DRIVER SCHEDULE – TRANSITION PERIOD

IMPLEMENTATION DATE Fourth Quarter (Oct. 1 – Dec. 31) Average Measured on Below Dates	% OF CONCESSION DRIVERS THAT ARE EMPLOYEES Fourth Quarter (Oct. 1 – Dec. 31) Average Percentage
December 31, 2008	0 %
December 31, 2009	20 %
December 31, 2010	66 %
December 31, 2011	85 %
December 31, 2012	95 %
December 31, 2013	100%

- (e) **Clean Truck Tariff.** Concessionaire shall cause all Concessionaire's Trucks to be modernized by either retrofit or replacement to comply with the Clean Truck Program requirements in accordance with Section 20 of Port of Los Angeles Tariff No. 4. During the Transition Period (as defined in Section III(d)), Concessionaire shall confirm that all Contractors' Trucks that operate under its Concession also comply with the Clean Truck Program requirements in accordance with Section 20 of Port of Los Angeles Tariff No. 4.
- (f) **Compliance with Truck Routes and Parking Restrictions.** Concessionaire shall submit for approval by the Concession Administrator, an off-street parking plan that includes off-street parking location(s) for all Permitted Trucks. Concessionaire shall ensure that all Permitted Trucks are in compliance with on-street parking restrictions by local municipalities. Permitted Trucks not in service shall be staged off public streets and away from residential districts.

Concessionaire shall ensure that Permitted Trucks adhere to any truck routes specified by local and state authorities or the Port, including routes and permit requirements for hazardous materials, extra-wide, over-height and overweight loads.

- (g) **Truck Maintenance.** 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 manufacturer's instructions. Maintenance records for all Permitted Trucks shall be available for inspection by the Concession Administrator during business hours.
- (h) **Compliance with Truck Safety and Operations Regulations.** 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 Port's 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 to the extent permitted during the Transition Period under Section III (d).
- (i) **Driver Credential.** 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 to the extent permitted during the Transition Period under Section III (d).
- (j) **Compliance Tags.** 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 Port's Terminals.
- (k) **Security.** To support the Port's safety and security measures, Concessionaire shall ensure that all Permitted Trucks comply with applicable Federal, State, Municipal and Port 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.
- (l) **Placards.** 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 compliance to the Concession Administrator and/or authorities.

- (m) Technology. 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.

Concessionaire shall demonstrate to the satisfaction of the Port that it possesses the financial capability to perform its obligations under this Concession over the term of the Agreement.

IV. CONCESSION REQUIREMENTS – SCHEDULES AND CONCESSION

The parties agree that this Concession is granted subject to all of the terms and conditions set forth in the Schedules which are attached to this Concession and incorporated herein by reference. In addition, the Port and/or the Concession Administrator(s) shall publish from time to time, Concession Bulletin(s) providing further detailed Concession procedures and information to Concessionaires.

Schedule 1 - Concessionaire Information

Schedule 2 - Concession Fees, Reporting and Audit Requirements

Schedule 3 - Identification and Insurance Requirements

Schedule 4 - Environmental Requirements

Schedule 5

V. PROGRAM ADMINISTRATORS

The Port may designate one or more administrative agent(s) to administer the Clean Trucks Program and this Concession ("Program Administrators"). The Port shall provide written notice to Concessionaire of the designation of Program Administrator(s) and appropriate instructions regarding administrative policies and procedures to be handled by Program Administrator(s).

VI. COMPLIANCE WITH APPLICABLE LAWS

Concessionaire shall when entering and leaving Port Property and while on Port Property, comply with Port of Los Angeles Tariff No. 4 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.

VII. INTEGRATION

This document constitutes the entire agreement between the parties to this Concession with respect to the subject matter set forth and supersedes any and all prior agreements or contracts on this subject matter between the parties, either oral or written. This Concession may not be amended, waived, or extended, in whole or in part, except in writing signed by all of the parties.

VIII. SEVERABILITY

Should any part of this Concession be determined by court or agency of competent jurisdiction to be unenforceable, unlawful, invalid, or subject to an order of temporary or permanent injunction from enforcement, such determination shall only apply to the specific provision and the remainder of this Concession shall continue in full force and effect.

IX. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

X. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the Port shall be addressed to: Concession Administrator, P.O. Box 151, San Pedro, California 90733-0151, and notice to Concessionaire shall be addressed to it at the Business Address set forth in Schedule 1. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

XI. EFFECTIVE DATE

The Effective Date of this Concession shall be the last date of the execution dates of the signatories to this Concession, as indicated opposite their signatures below.

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

Dated: _____

By _____

(CONCESSIONAIRE'S NAME),
a (form of entity, e.g. corporation, partnership)

Dated: _____

By _____

(Print/Type Name and Title of Authorized Signatory)

Attest _____

(Print/Type Name and Title of Attesting Corp.
Secretary or Officer)

APPROVED AS TO FORM

_____, 20____
ROCKARD DELGADILLO, Los Angeles City Attorney

By _____
(Assistant/Deputy)

SCHEDULE 1 - CONCESSIONAIRE'S INFORMATION

Concessionaire confirms to the Port that the following information is true and correct and shall immediately advise the Port in writing if any of such information changes or ceases to be true and correct. Concessionaire may also be required to update such information by data entry in the Drayage Truck Registry, Concession Registry and/or Driver Registry.

1.1 Legal Company Name and DBA: _____

1.2 Form of Entity and State of Incorporation/Partnership/Domicile:

1.3 Business Address: _____

1.4 Telephone: _____ Facsimile: _____

E-mail: _____

1.5 Licensed Motor Carrier Information:

Motor Carrier No.: _____

Department of Transportation No.: _____

Standard Carrier Alpha Code: _____

1.6 Tax ID No.: _____

SCHEDULE 2 – CONCESSION FEES, REPORTING AND AUDITS

2.1 Concession Fees

- 2.1.1 An application fee of \$2500 and an annual fee of \$100 per Permitted Truck (Annual Truck Fees) will be assessed to the Concessionaire. These fees will be used to cover administrative costs of the Concession.
- 2.1.2 The application fee shall be collected at the time of submission of the Concession Application. The Annual Truck Fees will be collected (i) within 30 days of the Effective Date of this Concession for Permitted Trucks registered as of the Effective Date; and (ii) within 30 days of registration of additional Permitted Trucks into the Drayage Truck Registry, and (iii) on the annual anniversary dates of the Effective Date of this Concession. Payments shall be made by Concessionaire in the form of a check or such other form of payment as directed in writing by the Port or Concession Administrator.
- 2.1.3 The failure of Concessionaire to pay the fees specified herein on time is a breach of contract for which the Port may terminate (according to the procedures set forth Schedule 4 of this Concession, DEFAULT, TERMINATION AND WAIVER, or take such legal action hereunder as it deems necessary. The Port expects all fees to be paid on time and Concessionaire has agreed to pay on time.
- 2.1.4 No new or renewed Concession will be approved for a Concessionaire that has remaining unpaid balances under present or past Concessions, or has failed to submit required reports under the present Concessions, or is in Default which is continuing and has not been cured to the satisfaction of the Port.

2.2 Reporting Requirements

The Concessionaire shall be responsible to enter, update and maintain accurate data in the Drayage Truck Registry, Concession Registry and Driver Registry, and notify the Port or its designated agents within ten (10) business days of a change to any of the following information:

- (a) Drayage Truck Registry 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
- (b) Concessionaire Information (Schedule 1)
- (c) Driver list and status of commercial driver's license, TWIC compliance and employee status
- (d) Such other information as may reasonably be required by the Executive Directors and Concession Administrator

2.3 Periodic Reviews/Audits

Concessionaire agrees that while this Concession is in effect and for one year thereafter the Port, the Concession Administrator (or any other agent designated by the Port) may inspect any property, offices or equipment utilized by the Concessionaire to perform Drayage Service, and any files or records which the Port believes may demonstrate the extent to which the

Concessionaire has complied or has failed to comply with requirements set forth in this Concession.

SCHEDULE 3 - INDEMNIFICATION AND INSURANCE

3.1 Indemnity

Except for the sole negligence or willful misconduct of Port, Concessionaire shall at all times indemnify, protect, defend, and hold harmless the Port and any and all of its 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 Port, its 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 this 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 Port, its boards, officers, agents, or employees contributed thereto; provided that (1) if the Port contributes to a loss, Concessionaire's indemnification of the Port for the Port's share of the loss shall be limited to One Million Dollars (\$1,000,000), (2) notwithstanding the limitation in (1), Concessionaire shall remain responsible for one hundred percent (100%) of any loss attributable to it, and (3) the provisions in (1) and (2) apply on a per-occurrence basis.

3.2 General Liability Insurance

Concessionaire shall procure and maintain in effect throughout the term of this Concession, without requiring additional compensation from the Port, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverages within Concessionaire's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Concessionaire. The insurance provided shall contain a severability of interest clause and shall provide that any other insurance maintained by Port shall be excess of Concessionaire's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision. Each policy shall contain an additional insured endorsement naming the City of Los Angeles Harbor Department, its boards, officers, agents, and employees and a 30-day notice of cancellation by receipted mail as shown in Exhibit "3-A".

3.3 Automobile Liability Insurance

Concessionaire shall ensure that the following insurance is in force at all times during the term of this 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 CFR 172.101). Each policy shall contain an additional insured endorsement naming the City of Los Angeles Harbor Department, and its boards, officers, agents, and employees and an endorsement requiring 30 days' notice of cancellation by receipted mail as shown in Exhibit "3-B".

3.4 Workers' Compensation

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 this 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 Port in any circumstance in which it is alleged that actions or omissions of the Port contributed to the accident. See Exhibit "3-C".

3.5 Carrier Requirements

All insurance required by this Concession shall be placed 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 Port.

3.6 Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Risk Manager of the Port has been given 30 days' prior written notice by registered mail.

3.7 Evidence of Insurance

Concessionaire shall ensure that Special Endorsement forms, attached hereto as Exhibits 3-A, 3-B and 3-C, 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.

3.8 Renewal of Policies

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.

3.9 Accident Reports

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 Los Angeles 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 (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Concessionaire, its officers or managing agents.

**City of Los Angeles
Los Angeles Harbor Department - Risk Management Section
GENERAL LIABILITY - ADDITIONAL INSURED ENDORSEMENT**

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

1. **ADDITIONAL INSURED.** The City of Los Angeles Harbor Department, its officers, agents and employees are included as additional insured's with regard to liability and defense of claims arising from the operations and uses performed by or on behalf of the named insured regardless of whether liability is attributable to the named insured or a combination of the named and the additional insured.
2. **CONTRIBUTION NOT REQUIRED.** Any other insurance maintained by the City of Los Angeles Harbor Department shall be excess of this insurance and shall not contribute with it.
3. **SEVERABILITY OF INTEREST.** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
4. **CANCELLATION NOTICE.** With respect to the interest of the additional insured, the insurance shall not be canceled, changed in coverage, reduced in limits or non-renewed except after thirty (30) days prior written notice by certified mail return receipt requested has been given to both the City Attorney of Los Angeles and the Board of Harbor Commissioners addressed as follows:

City Attorney
Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731

Board of Harbor Commissioners
425 South Palos Verdes Street
San Pedro, CA 90731
Attn: Risk Manager

5. **APPLICABILITY.** This insurance pertains to the operations and/or tenancy of the named insured under all written agreements and permits in force with the City of Los Angeles Harbor Department unless checked below in which case only the following specific agreements and permits with the City of Los Angeles Harbor Department are covered:

☐ Agreement/Permit Number(s): _____

Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

<p>I, _____ (print/type name), warrant that I have authority to bind the below-listed insurance company and by my signature hereon do so bind this company.</p> <p>Signature: _____ Authorized Representative (ORIGINAL SIGNATURE required on copy furnished to the Board of Harbor Commissioners)</p> <p>Title: _____ Organization: _____ Address: _____ Telephone: _____</p>		<p>Report claims pursuant to this insurance to:</p> <p>Name: _____ Address: _____ Telephone: _____</p> <p>Includes (check as applicable):</p> <table style="width: 100%;"><tr><td><input type="checkbox"/> Broad Form Property Damage</td><td><input type="checkbox"/> Contractual Liability</td></tr><tr><td><input type="checkbox"/> Personal Injury</td><td><input type="checkbox"/> Owned Automobiles</td></tr><tr><td><input type="checkbox"/> Independent Contractors</td><td><input type="checkbox"/> Non-Owned Automobiles</td></tr><tr><td><input type="checkbox"/> Premises-Operations</td><td><input type="checkbox"/> Hired Automobiles</td></tr><tr><td><input type="checkbox"/> Explosion-Collapse Hazard</td><td><input type="checkbox"/> Fire Legal Liability</td></tr><tr><td><input type="checkbox"/> Underground Hazard</td><td><input type="checkbox"/> _____</td></tr><tr><td><input type="checkbox"/> Products/Completed Operations</td><td><input type="checkbox"/> _____</td></tr></table>		<input type="checkbox"/> Broad Form Property Damage	<input type="checkbox"/> Contractual Liability	<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Owned Automobiles	<input type="checkbox"/> Independent Contractors	<input type="checkbox"/> Non-Owned Automobiles	<input type="checkbox"/> Premises-Operations	<input type="checkbox"/> Hired Automobiles	<input type="checkbox"/> Explosion-Collapse Hazard	<input type="checkbox"/> Fire Legal Liability	<input type="checkbox"/> Underground Hazard	<input type="checkbox"/> _____	<input type="checkbox"/> Products/Completed Operations	<input type="checkbox"/> _____
<input type="checkbox"/> Broad Form Property Damage	<input type="checkbox"/> Contractual Liability																
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Owned Automobiles																
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<input type="checkbox"/> Explosion-Collapse Hazard	<input type="checkbox"/> Fire Legal Liability																
<input type="checkbox"/> Underground Hazard	<input type="checkbox"/> _____																
<input type="checkbox"/> Products/Completed Operations	<input type="checkbox"/> _____																
<p>Type of Coverage _____ Limits of Liability _____ Policy Period _____</p> <p style="text-align: center;">From _____ To _____</p> <p style="text-align: center;"><input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence</p>		<p><input type="checkbox"/> Deductible \$ _____ <input type="checkbox"/> Self-insured Retention \$ _____ For _____ (Coverage) <input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence</p>															

Other Conditions:

Named Insured and Address			
Insurance Company	Policy Number	Endorsement Number	Effective Date of Endorsement

**City of Los Angeles
Los Angeles Harbor Department - Risk Management Section
AUTO LIABILITY - ADDITIONAL INSURED ENDORSEMENT**

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

1. **ADDITIONAL INSURED.** The City of Los Angeles Harbor Department, its officers, agents and employees are included as additional insureds with regard to liability and defense of claims arising from the operations and uses performed by or on behalf of the named insured regardless of whether liability is attributable to the named insured or a combination of the named and the additional insured.
2. **CONTRIBUTION NOT REQUIRED.** Any other insurance maintained by the City of Los Angeles Harbor Department shall be excess of this insurance and shall not contribute with it.
3. **SEVERABILITY OF INTEREST.** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
4. **CANCELLATION NOTICE.** With respect to the interest of the additional insured, the insurance shall not be canceled, changed in coverage, reduced in limits or non-renewed except after thirty (30) days prior written notice by certified mail return receipt requested has been given to both the City Attorney of Los Angeles and the Board of Harbor Commissioners addressed as follows:

City Attorney
Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731

Board of Harbor Commissioners
425 South Palos Verdes Street
San Pedro, CA 90731
Attn: Risk Manager

5. **APPLICABILITY.** This insurance pertains to the operations and/or tenancy of the named insured under all written agreements and permits in force with the City of Los Angeles Harbor Department unless checked below in which case only the following specific agreements and permits with the City of Los Angeles Harbor Department are covered:

☐ Agreement/Permit Number(s): _____

Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

<p>I, _____ (print/type name), warrant that I have authority to bind the below-listed insurance company and by my signature hereon do so bind this company.</p> <p>Signature: _____ Authorized Representative (ORIGINAL SIGNATURE required on copy furnished to the Board of Harbor Commissioners)</p> <p>Title: _____</p> <p>Organization: _____</p> <p>Address: _____</p> <p>Telephone: _____</p>		<p>Report claims pursuant to this insurance to:</p> <p>Name: _____</p> <p>Address: _____</p> <p>Telephone: _____</p> <hr/> <p>Includes (check as applicable): <input type="checkbox"/> All Autos</p> <p><input type="checkbox"/> Owned Automobile <input type="checkbox"/> Hired Automobile</p> <p><input type="checkbox"/> Non-owned Automobile <input type="checkbox"/> _____</p>	
Type of Coverage	Limits of Liability	Policy Period	<input type="checkbox"/> Deductible \$ _____
	From		<input type="checkbox"/> Self-insured Retention \$ _____
	To		For _____ (Coverage)
	<input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence		<input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence

Other Conditions:

Named Insured and Address			
Insurance Company	Policy Number	Endorsement Number	Effective Date of Endorsement

City of Los Angeles
Los Angeles Harbor Department - Risk Management Section
WORKERS' COMPENSATION / EMPLOYER'S LIABILITY - SPECIAL ENDORSEMENT

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

1. **APPLICABILITY.** This insurance pertains to the operations and/or tenancy of the named insured unless checked below in which case only the following specific agreements with the City of Los Angeles Harbor Department are covered:

☐ Agreement/Permit Number(s): _____

2. **CANCELLATION NOTICE.** With respect to the interests of the City of Los Angeles Harbor Department, this insurance shall not be canceled, changed in coverage, reduced in limits or non-renewed except after thirty (30) days prior written notice by certified mail return receipt requested has been given to both the City Attorney of Los Angeles and the Board of Harbor Commissioners addressed as follows:

City Attorney
Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731

Board of Harbor Commissioners
425 South Palos Verdes Street
San Pedro, CA 90731
Attn: Risk Manager

Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

<p>I _____ (print/type name), warrant that I have authority to bind the below-listed insurance company and by my signature hereon do so bind this company.</p> <p>Signature: _____ Authorized Representative (ORIGINAL SIGNATURE required on copy furnished to the Board of Harbor Commissioners)</p> <p>Title: _____</p> <p>Organization: _____</p> <p>Address: _____</p> <p>Telephone: _____</p>	<p>Includes (check as applicable):</p> <p><input type="checkbox"/> Broad Form All States Endorsement</p> <p><input type="checkbox"/> Voluntary Compensation Endorsement</p> <p><input type="checkbox"/> United States Longshoremens and Harbor Workers Compensation Act</p> <p><input type="checkbox"/> Jones Act</p> <p><input type="checkbox"/> Other Continental Shelf Endorsement</p> <p><input type="checkbox"/> _____</p> <p><input type="checkbox"/> _____</p>									
<table style="width: 100%; border: none;"><thead><tr><th style="text-align: left; width: 40%;">Type of Coverage</th><th style="text-align: left; width: 40%;">Limits of Liability</th><th style="text-align: left; width: 20%;">Policy Period</th></tr></thead><tbody><tr><td><i>Workers' Compensation</i></td><td><i>Statutory</i></td><td>From _____</td></tr><tr><td><i>Employer's Liability</i></td><td></td><td>To _____</td></tr></tbody></table>		Type of Coverage	Limits of Liability	Policy Period	<i>Workers' Compensation</i>	<i>Statutory</i>	From _____	<i>Employer's Liability</i>		To _____
Type of Coverage	Limits of Liability	Policy Period								
<i>Workers' Compensation</i>	<i>Statutory</i>	From _____								
<i>Employer's Liability</i>		To _____								

Other Provisions:

Named Insured and Address			
Insurance Company	Policy Number	Endorsement Number	Effective Date of Endorsement

SCHEDULE 4 – DEFAULT AND TERMINATION

4.1 Default

In the event Concessionaire fails to comply with the terms and conditions of this Concession or commits an event of Default (as defined in Section 4.2, 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 this 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. In the event that a Notice of Default is issued by Port to Concessionaire, the provisions of Sections 4.3 and 4.4 below shall apply.

4.2 Events of Default

Circumstances that constitute a default under this Concession by Concessionaire ("Default") shall include, without limitation, the following:

- (a) 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;
- (b) Any failure to comply with the terms and conditions of this Concession;
- (c) Abandonment or discontinuance of Drayage Service;
- (d) Repeated violations of traffic rules and regulations in and around the Harbor District or disregard of public safety;
- (e) Any violation of the Patriot Act of 2001 or Department of Homeland Security regulations, including any facility security plan;
- (f) Any fraud or misrepresentation in the Concession application, information or data submitted to the Port required under the Concession;
- (g) Any effort to misrepresent that a Drayage Truck complies with Section 20 of Port Tariff No. 4, 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 Section 20 of Port Tariff No. 4;
- (h) Any assignment or transfer of this Concession or substantial change in the ownership and control of Concessionaire without prior notice to and consent of the Port;
- (i) The bankruptcy of Concessionaire; or the appointment of a receiver for Concessionaire; or assignment of this Concession for the benefit of creditors; or
- (j) The failure to pay or repeated late payment of fees due under Schedule 2, Concession Fees; or
- (k) Violation of a Port 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 this Concession. If Concessionaire has undertaken obligations contained in truck-grant or other agreements, with the Port or with others, this Concession shall not affect such obligations contained in such other agreements.

4.3. Concession Enforcement Procedures

The following procedures shall apply in the event the Port issues a Notice of Default to Concessionaire.

- 4.3.1. 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 this Concession or committed an event of Default
- 4.3.2. 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.
- 4.3.3. 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 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 City, by reason of the same Default giving rise to the Notice of Default.
- 4.3.4. A Notice of Default shall also state whether the Default is being designated by the Port as a Minor Default or a Major Default.
- 4.3.5. Minor Defaults.
 - 4.3.5.1 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.
 - 4.3.5.2. If the Concessionaire has delivered a completed Notice of Contest under Section 4.3.5.1, 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.

4.3.6. Major Defaults

- 4.3.6.1.** 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 set forth in Section 4.3.6.4, in which event the Remedy shall take immediate effect as provided in Section 4.3.6.4.
- 4.3.6.2** If the Concessionaire has delivered a completed Notice of Contest under Section 4.3.6.1, 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, except as stated in Section 4.3.6.3. 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.
- 4.3.6.3.** The decision of the Hearing Officer under Section 4.3.6.2 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 Executive Director or his/her designee shall conduct the review based upon the record created before the Hearing Officer and such further arguments as may be ordered. The Decision upon review shall be in writing and shall contain the Remedy. The Decision upon review shall be final and whatever sanction is upheld thereby shall take effect immediately.
- 4.3.6.4.** A Notice of Default which designates a Major Default may contain a finding that the Default constitutes a substantial risk of danger or injury to the Port, its customers or facilities, or persons or property at or near the Port. Such a Notice of Default may contain a Remedy that takes effect immediately upon issuance of the Notice and is intended to prevent or lessen the risk of danger or injury. If such an immediate Remedy is contained in the Notice of Default, the Remedy shall take effect immediately and shall remain in effect pending the procedures contained in Sections 4.3.6.2 and 4.3.6.3. If the Concessionaire completes a Notice

of Contest, the Port will endeavor to hold an Informal Hearing as expeditiously as possible.

4.4 Remedy

The following Remedy may be contained in a Notice of Default and may imposed by the Port for a breach of this Concession or other event of Default

- 4.4.1. 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.
- 4.4.2. 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 this Concession Agreement and of the right of the Concessionaire to provide Drayage Services at the Port.
- 4.4.3. 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 Agreement and of the right of the Concessionaire to provide Drayage Services at the Port, without the opportunity to cure the Default.
- 4.4.4. The failure to comply with a Remedy imposed by the Port shall itself be grounds for a Notice of a Major Default.

SCHEDULE 5 – CITY REQUIRED CONTRACT PROVISIONS

The City of Los Angeles requires all City contracts to contain the following provisions.

1. AFFIRMATIVE ACTION

Concessionaire, 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 "5-A."

2. SMALL BUSINESS DEVELOPMENT PROGRAM

It is the policy of the Port to provide Small Business Enterprises (SBE) and Minority-Owned, Women-Owned and all Other Business Enterprises (MBE/WBE/OBE) an equal opportunity to participate in the performance of all Port contracts in all areas where such contracts afford such participation opportunities. Concessionaire shall assist the port in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, MBEs, WBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, MBEs, WBEs, and OBEs, have equal participation opportunity which might be presented under this Concession. See Exhibit "5-B." NOTE: Prior to being awarded a contract with the Port, Concessionaire and all subcontractors must be registered with the Port's Contracts Management Database, *e-DiversityXchange*.

3. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Concession 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 Port. 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, Port may immediately terminate this Agreement by giving written notice thereof.

4. 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. Concessionaire 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.

5. WAGE AND EARNINGS ASSIGNMENT ORDERS/NOTICES OF ASSIGNMENTS

Concessionaire and/or any subcontractor are obligated to fully comply with all applicable state and federal employment reporting requirements for the Concessionaire and/or subcontractor's employees. Concessionaire and/or subcontractor 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. Concessionaire and/or subcontractor 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. Concessionaire or subcontractor will maintain such compliance throughout the term of this Concession.

6. 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. Concessionaire shall comply with the policy wherever applicable. Violation of this policy shall entitle the Port to terminate any Agreement with Concessionaire and pursue any and all other legal remedies that may be available. See Exhibit "5-C."

EXHIBIT 5-A
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.

EXHIBIT 5-A
AFFIRMATIVE ACTION PROGRAM PROVISIONS

- 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

EXHIBIT 5-A
AFFIRMATIVE ACTION PROGRAM PROVISIONS

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

EXHIBIT 5-A
AFFIRMATIVE ACTION PROGRAM PROVISIONS

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 5-B

SMALL BUSINESS DEVELOPMENT 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 Port of Los Angeles in a manner that reflects the diversity of the City of Los Angeles. The Port of Los Angeles Small Business Development Program (SBDP or the "Program") was created to provide additional opportunities for small businesses to participate in any and all contracts. An overall Department goal of 25% has been established for the Program. The specific goal or requirement for each contract to be let 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, small business entities (SBEs), women-owned businesses (WBEs), and minority-owned businesses (MBEs). The Program will allow the Port to target more effectively small business participation (including MBEs and WBEs). It is also the intent of the Department to make it easier for small businesses to participate in Port contracts by providing education and assistance on how to do business with the City, including, but not limited to, insuring that payments to small businesses are processed in a timely manner.

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.

The SBDP is a results-oriented program, requiring contractors who receive contracts from the Port 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 ____%. Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement.

The Consultant shall not substitute an SBE firm without obtaining prior approval of the City and amending its Agreement. 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.

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.

Consultant shall complete, sign, notarize (where applicable) and submit as part of the executed agreement the attached Affidavit and Contract Description Form. The Contract Description Form, when signed, will signify the Consultant's intent to comply with the Small Business Requirement. In addition, prior to being awarded a contract with the City, Consultant and all subconsultant's must be registered with the Department's Contract Management Database, *e-DiversityXchange*.

AFFIDAVIT

"The undersigned declares under penalty of perjury pursuant to the laws of the State of California that the following 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."

Please indicate the ownership of your company: ☐ SBE ☐ MBE ☐ WBE ☐ 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 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).
- An OBE (Other Business Enterprise) is any enterprise that is not a MBE or WBE.

Signature _____

Title _____

Printed Name _____

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 act and deed.

SEAL

Notary Public _____

Commission Expires _____

Contract Description Form

PRIME CONTRACTOR

Contract #: _____ Award Date: _____ Contract Term: _____
Contract Title: _____
Business Name: _____ Award Total: \$ _____
Owner's Ethnicity: _____ Gender _____ Group: SBE MBE WBE OBE ((Please check all that apply))
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 MBE WBE OBE ((Please check all that apply))
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 MBE WBE OBE ((Please check all that apply))
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email address: _____

Authorized Representative of Prime Contractor

Date

EXHIBIT 5-C

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.

ATTACHMENT 3

PORT OF LONG BEACH DRAYAGE CONCESSION APPLICATION



INSTRUCTIONS FOR PORT OF LONG BEACH DRAYAGE SERVICES CONCESSION APPLICATION

Under the Port of Long Beach's Clean Trucks Program, Licensed Motor Carriers (LMCs) need to obtain a Port-approved Drayage Services Concession to provide drayage services at the Port of Long Beach. Beginning October 1, 2008, only trucks operating for LMCs with a Port-approved concession will be allowed to enter Port terminals. LMCs who wish to apply for a five-year concession should review the Port's Concession Agreement at www.polb.com/cleantrucks. The concession approval process is expected to take at least 30 days. LMCs planning to provide drayage services at the Port of Long Beach on October 1, 2008 are encouraged to submit their Concession Application no later than September 1, 2008 to allow time for processing.

To apply for a concession:

- Complete, sign and submit the Concession Application, along with a \$250 application fee (if paying by check, make it payable to the Port of Long Beach and marked "Concession Application Fee"), to:

Clean Trucks Program
Attn: Finance Division
Port of Long Beach
925 Harbor Plaza
Long Beach, CA 90802

- Register drayage trucks in the Port's Internet-based Drayage Truck Registry (DTR), which will be available shortly. Once the Port approves your concession, complete the DTR registration by submitting an annual registration fee of \$100 per truck.

Only trucks registered in the DTR will be allowed entry into Port terminals beginning October 1, 2008. Beginning October 1, 2008, the Port will not allow model year 1988 and older trucks onto its property, so concessionaires should not register these older vehicles.

- Register all drivers, whether employee drivers or independent owner operators, in the Port's Internet-based Driver Registry, which will be available shortly.
- After the Port notifies you that it has verified the application information and confirmed that you meet the concession requirements, print two copies of the Concession Agreement and have the copies signed by an owner or authorized officer of your LMC. Send the two signed copies of the Concession Agreement to:

Clean Trucks Program
Attn: Concessions and Grants Administrator
Port of Long Beach
925 Harbor Plaza
Long Beach, CA 90802

- The concession will be formally approved and fully effective on the date the Concession Agreement is signed by the Port. A fully executed copy of the Concession Agreement will be returned to the concessionaire at the address on the application.



Port of Long Beach
Clean Truck Program
Concession Application Form A - Applicant Information

Please complete the following information about the company applying for the concession. Information on this form must reflect the legal entity that will execute the concession contract. **Completion of this application does not guarantee award of a concession.** All fields must be completed before the application can be processed.

Company

Legal Company Name: _____

DBA (if any): _____

Company Type (check one):

☐ Corporation ☐ LLC ☐ Partnership ☐ Sole Proprietorship ☐ LLP

Standard Carrier Alpha Code (SCAC):

Mailing Address

Street: _____

City: _____ State: Zip Code:

Contacts

Executive Contact

Name: _____

Title: _____

Phone Number: () -

FAX Number: () -

Email (Required): _____

Secondary Contact

Name: _____

Title: _____

Phone Number: () -

FAX Number: () -

Email (if available): _____



The Port of
LONG BEACH
Your Environmentally Friendly Port

Port of Long Beach
Clean Trucks Program
Concession Application Form B - Additional Information

Please complete the following information for the entire company covered by the concession. This may include multiple yards and/or company locations. Do not include information from subsidiaries or other related business entities that will not be a party to the concession agreement. All fields must be completed before the application can be processed.

Tax ID number:

CA Number:

USDOT Number:

FMCSA Operating Authority Number: ☐ MC ☐ FF ☐ MX

Did you obtain your operating authority prior to June 1, 2008? ☐ Yes ☐ No

Approval of a Concession Agreement is dependent on the applicant's ability to provide proof of insurance on Port of Long Beach forms for Automobile Liability and Workers' Compensation. The forms are available in Schedule 3, Exhibits 3-A and 3B, of the Concession Agreement. The forms are also available at the following web addresses:

Automobile Liability <http://www.polb.com/civica/filebank/blobdload.asp?BlobID=3319>

Workers' Compensation <http://www.polb.com/civica/filebank/blobdload.asp?BlobID=3326>

For the amounts of insurance required and the acceptability of insurance companies, see Schedule 3 of the Concession Agreement available at www.polb.com/cleantrucks.

Port of Long Beach
Clean Trucks Program
Concession Application Form C - Financial Viability Demonstration

NOTE: THIS SECTION IS ONLY APPLICABLE TO MOTOR CARRIERS THAT OBTAINED THEIR OPERATING AUTHORITY AFTER JUNE 1, 2008.

Publicly listed companies must submit most current annual report, most recent quarterly filings with SEC, and disclose any pending or current legal actions against the company. The Port has the right to request Dunn & Bradstreet or other credit bureau reports deemed necessary. Private enterprises must submit a proxy balance sheet and income statement. Federal and state income tax returns are valid substitutes to meet the documentation requirement. Private enterprises must also certify that there are no pending or current legal actions against the entity, and/or such pending legal action will not have an adverse impact on the financial condition of the enterprise.



Port of Long Beach
Clean Trucks Program
Concession Application Form D - Signature

I certify that I have reviewed the application and that all of the information provided is true and correct. I also certify that I have read the Port of Long Beach's "Concession Agreement" and fully understand the terms and conditions of the concession for which I am applying.

Authorized Signature _____ Date _____

Print Name _____ Title _____

Company _____

Witness Signature _____ Date _____

Print Name _____ Title _____

Note: Detach the instructions page when submitting your application. Submit only the signed application, along with a check for the non-refundable application fee of \$250 to the:

Clean Trucks Program
Attn. Finance Division
Port of Long Beach
925 Harbor Plaza
Long Beach, CA 90802

Make checks payable to the "Port of Long Beach" and marked "Concession Application Fee."

ATTACHMENT 4

PORT OF LONG BEACH DRAYAGE CONCESSION AGREEMENT

**DRAYAGE SERVICES
CONCESSION AGREEMENT
FOR ACCESS TO THE
PORT OF LONG BEACH**

AGREEMENT NO. _____

THIS DRAYAGE SERVICES CONCESSION AGREEMENT ("Concession") is made and entered into the _____ day of _____, 20____, by and between the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("Port") and _____ ("Concessionaire"). Defined terms used and not otherwise defined herein shall have the meanings set forth in the Clean Air Action Plan Chapter of Port of Long Beach Tariff No. 4 (Section 10).

For and in consideration of the promises, and of the terms, covenants and conditions hereinafter contained to be kept and performed by said parties, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

I. DRAYAGE TRUCK CONCESSION RIGHTS GRANTED

- (a) Subject to the terms of this Concession, including without limitation the terms set forth on the Schedules attached hereto and incorporated herein by reference, the Port hereby grants to the Concessionaire 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 this Concession shall be solely for the purpose of conducting Drayage Service unless the Concessionaire obtains the Executive Director's prior written permission to access Port's property for other purposes. Concessionaire's rights under this Concession shall be non-exclusive and the Port intends to grant similar concession rights to other concessionaires who meet and remain in compliance with Concession requirements. This 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.
- (b) Drayage Trucks providing Drayage Service to the Port and operating under the authority of and in compliance with the terms and conditions of this 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 this Concession ("Contractors' Trucks"). Regardless of ownership status, Concessionaire shall cause all Permitted Trucks to comply fully with all of the terms and conditions of this Concession.
- (c) Concessionaire understands that, by granting this Concession to the Concessionaire, the Port has not secured drayage service contracts between

Concessionaire and any customers, which contracts and obligations therein shall remain the sole responsibility of Concessionaire.

II. TERM OF AGREEMENT

This Concession shall be effective for a term of five (5) years commencing at 12:01 a.m. on _____, 20__ and terminating at 12:00 midnight on _____, 20__.

III. CONCESSION REQUIREMENTS

As a condition to the right to provide Drayage Services under this Concession, Concessionaire shall comply with all of the requirements set forth below and on the Schedules attached hereto and incorporated herein by reference (collectively, the "Concession Requirements") :

- (a) **Clean Truck Tariff.** Concessionaire shall cause all Concessionaire's Trucks to be modernized by either retrofit or replacement to comply with the Clean Truck Program requirements in accordance with Section 10 of Port of Long Beach Tariff No. 4. Concessionaire shall confirm that all Contractors' Trucks that operate under its Concession also comply with the Clean Truck Program requirements in accordance with Section 10 of Port of Long Beach Tariff No. 4.
- (b) **Licensed Motor Carrier.** Concessionaire must be a licensed motor carrier 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).
- (c) **Permitted Trucks.** Concessionaire shall utilize Permitted Trucks to provide Drayage Service to the Port pursuant to this Concession. To qualify as a Permitted Truck, all Drayage Trucks providing Drayage Service operating under this Concession shall have required information entered into and kept updated in the Drayage Trucks Registry and shall comply at all times with Concession Requirements.
- (d) **Driver Compliance.** Concessionaire may utilize employees or independent contractors as drivers, or a combination of the two, provided that Concessionaire shall be responsible for the compliance and performance of all drivers and other personnel utilized pursuant to this Concession, and the Port shall have no responsibility or liability therefor.
- (e) **Driver Hiring.** Concessionaire shall give a hiring preference to drivers with a history of providing drayage services in the port. When Concessionaire has openings for Drayage Truck drivers or administrative staff, Concessionaire shall post such job openings at the First Source Workforce Development Office, a workforce development program that provides prospective employee applicants through a non-exclusive job referral system. Concessionaire shall also consult the First Source list of prospective employee applicants prior to hiring.
- (f) **Compliance with Truck Routes and Parking Restrictions.** Concessionaire shall submit for approval by the Concession Administrator, a parking plan that includes off-street or lawful on-street parking locations for all Permitted Trucks. Concessionaire shall ensure that all Permitted Trucks remain in compliance with the parking plan and all state and local laws and Port tariffs regarding: (1) parking and stopping; and (2) truck routes and permit requirements for hazardous materials, extra-wide, over-height and overweight loads.

- (g) **Truck Maintenance.** Concessionaire shall prepare an appropriate maintenance plan in accordance with manufacturer specifications 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 manufacturer specifications. Maintenance records for all Permitted Trucks shall be available for inspection by the Concession Administrator during business hours.
- (h) **Compliance with Truck Safety and Operations Regulations.** 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 Port's 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.
- (i) **Driver Health Insurance.** Concessionaire shall provide proof to the Port that drivers were duly notified of available health insurance programs, including programs identified by the Port.
- (j) **Driver Credential.** 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.
- (k) **Compliance Tags.** 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 Port's Terminals.
- (l) **Security.** To support the Port's safety and security measures, Concessionaire shall ensure that all Permitted Trucks comply with applicable Federal, State, Municipal and Port 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.
- (m) **Placards.** 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 emissions, safety and security compliance to the Concession Administrator and/or authorities.
- (n) **Technology.** 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.
- (o) **Financial Capability.** With the exception of licensed motor carriers in good standing on June 1, 2008, all Concessionaires shall demonstrate to the satisfaction of the Executive Director that they possess the financial capability to perform their obligations under this Concession over the term of the Agreement.

IV. ADDITIONAL CONCESSION REQUIREMENTS – SCHEDULES AND CONCESSION BULLETINS

The parties agree that this Concession is granted subject to all of the terms and conditions set forth in the Schedules which are attached to this Concession and incorporated herein by reference. In addition, the Port and/or the Concession Administrator(s) shall publish from time to time, Concession Bulletins providing further detailed Concession procedures and information to Concessionaires.

Schedule 1 - Concessionaire Information

Schedule 2 – Concession Fees, Reporting and Audit Requirements

Schedule 3 – Indemnification and Insurance Requirements

Schedule 4 – Default and Termination

Schedule 5 – Standard Contract Provisions

V. PROGRAM ADMINISTRATORS

The Port may designate one or more administrative agent(s) to administer the Clean Trucks Program and this Concession ("Program Administrators"). The Port shall provide written notice to Concessionaire of the designation of Program Administrator(s) and appropriate instructions regarding administrative policies and procedures to be handled by Program Administrator(s).

VI. COMPLIANCE WITH APPLICABLE LAWS

Concessionaire, when entering and leaving Port Property and while on Port Property shall comply with Port of Long Beach Tariff No. 4 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.

VII. INTEGRATION

This document constitutes the entire agreement between the parties to this Concession with respect to the subject matter set forth and supersedes any and all prior agreements or contracts on this subject matter between the parties, either oral or written. This Concession may not be amended, waived, or extended, in whole or in part, except in writing signed by all of the parties.

VIII. SEVERABILITY

Should any part of this Concession be determined by court or agency of competent jurisdiction to be unenforceable, unlawful, invalid, or subject to an order of temporary or permanent injunction from enforcement, such determination shall only apply to the specific provision and the remainder of this Concession shall continue in full force and effect.

IX. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

X. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes

hereof, unless otherwise provided by notice in writing from the respective parties, notice to the Port shall be addressed to: Concession Administrator, P.O. Box 570, Long Beach, California 90801, and notice to Concessionaire shall be addressed to it at the Business Address set forth in Schedule 1. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

XI. EFFECTIVE DATE

The Effective Date of this Concession shall be the last date of the execution dates of the signatories to this Concession, as indicated opposite their signatures below.

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

Dated: _____

By _____

(CONCESSIONAIRE'S NAME),
a (form of entity, e.g. corporation, partnership)

Dated: _____

By _____

(Print/Type Name and Title of Authorized
Signatory)

Attest _____

(Print/Type Name and Title of Attesting Corp.
Secretary or Officer)

APPROVED AS TO FORM

_____, 20____
ROBERT E. SHANNON, Long Beach City Attorney

By _____

SCHEDULE 1 - CONCESSIONAIRE'S INFORMATION

Concessionaire confirms to the Port that the following information is true and correct and shall immediately advise the Port in writing if any of such information changes or ceases to be true and correct. Concessionaire may also be required to update such information by data entry in the Drayage Truck Registry, Concession Registry and/or Driver Registry.

- 1.1 Legal Company Name and DBA: _____
- 1.2 Form of Entity and State of Incorporation/Partnership/Domicile:

- 1.3 Business Address: _____

- 1.4 Telephone: _____ Facsimile: _____
E-mail: _____
- 1.5 Licensed Motor Carrier Information:
Motor Carrier No: _____
Department of Transportation No: _____
Standard Carrier Alpha Code: _____
- 1.6 Tax ID No.: _____

SCHEDULE 2 – CONCESSION FEES, REPORTING AND AUDITS

2.1 Concession Fees

- 2.1.1 An application fee of \$250 and an annual fee of \$100 per Permitted Truck (Annual Truck Fees) will be assessed to the Concessionaire. These fees will be used to cover administrative costs of the Concession and may be adjusted from time to time.
- 2.1.2 The application fee shall be collected at the time of submission of the Concession Application. The Annual Truck Fees will be collected (i) within 30 days of the Effective Date of this Concession for Permitted Trucks registered as of the Effective Date; and (ii) within 30 days of registration of additional Permitted Trucks into the Drayage Truck Registry, and (iii) on the annual anniversary dates of the Effective Date of this Concession. Payments shall be made by Concessionaire in the form of a check or such other form of payment as directed in writing by the Port or Concession Administrator.
- 2.1.3 The failure of Concessionaire to pay the fees specified herein on time is a breach of contract for which the Port may terminate (according to the procedures set forth Schedule 4 of this Concession, DEFAULT, TERMINATION AND WAIVER, or take such legal action hereunder as it deems necessary. The Port expects all fees to be paid on time and Concessionaire has agreed to pay on time.
- 2.1.4 No new or renewed Concession will be approved for a Concessionaire that has remaining unpaid balances under present or past Concessions, or has failed to submit required reports under the present Concessions, or is in Default which is continuing and has not been cured to the satisfaction of the Port.

2.2 Reporting Requirements

The Concessionaire shall be responsible to enter, update and maintain accurate data in the Drayage Truck Registry, Concession Registry and Driver Registry, and notify the Port or its designated agents within ten (10) business days of a change to any of the following information:

- (a) Drayage Truck Registry 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
- (b) Concessionaire Information (Schedule 1)
- (c) Driver list, status of commercial driver's license, and TWIC compliance
- (d) Such other information as may reasonably be required by the Executive Directors and Concession Administrator

2.3 Periodic Reviews/Audits

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

SCHEDULE 3 - INDEMNIFICATION AND INSURANCE

3.1 Indemnity

Except for the sole negligence or willful misconduct of Port, Concessionaire shall at all times indemnify, protect, defend, and hold harmless the Port and any and all of its 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 Port, its 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 this 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 Port, its boards, officers, agents, or employees contributed thereto; provided that (1) if the Port contributes to a loss, Concessionaire's indemnification of the Port for the Port's share of the loss shall be limited to One Million Dollars (\$1,000,000), (2) notwithstanding the limitation in (1), Concessionaire shall remain responsible for one hundred percent (100%) of any loss attributable to it, and (3) the provisions in (1) and (2) apply on a per-occurrence basis.

3.2 Automobile Liability Insurance

Concessionaire shall ensure that the following insurance is in force at all times during the term of this 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 CFR 172.101). Each policy shall contain an additional insured endorsement naming the City of Long Beach Harbor Department, and its board, officers, agents, and employees. See Exhibit "3-A".

3.4 Workers' Compensation

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 this 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 Port in any circumstance in which it is alleged that actions or omissions of the Port contributed to the accident. See Exhibit "3-B".

3.5 Carrier Requirements

All insurance required by this Concession shall be placed 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 Port.

3.6 Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Risk Manager of the Port has been given 30 days' prior written notice by registered mail.

3.7 Evidence of Insurance

Concessionaire shall ensure that Special Endorsement forms, attached hereto as Exhibits 3-A. and 3-B 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.

3.8 Renewal of Policies

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.

3.9. Accident Reports

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 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 (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Concessionaire, its officers or managing agents.

EXHIBIT 3-A TO SCHEDULE 3 AUTO LIABILITY INSURANCE FORM

AUTOMOBILE LIABILITY SPECIAL ENDORSEMENT FOR THE CITY OF LONG BEACH, HARBOR DEPARTMENT		ENDORSEMENT NO.	EFFECTIVE DATE (MM/DD/YY)
PRODUCER		POLICY INFORMATION	
Telephone _____		Insurance Company: _____ Policy No.: _____ Policy Period: (from) _____ (to) _____	
NAMED INSURED & ADDRESS		<input type="checkbox"/> Deductible \$ _____ OR <input type="checkbox"/> Self-Insured Retention of \$ _____	
TYPE OF INSURANCE		APPLICABILITY. This insurance pertains to the operations and activities of the Named Insured under all written permits and agreements in force with the City unless checked here <input type="checkbox"/> in which case only the following specific permits and agreements with the City are covered: AGREEMENTS/PERMITS: _____	
<input type="checkbox"/> BUSINESS AUTO POLICY <input type="checkbox"/> TRUCKERS AND MOTOR CARRIER LIABILITY POLICY <input type="checkbox"/> GARAGEKEEPERS LIABILITY <input type="checkbox"/> STUNT ACTIVITY <input type="checkbox"/> OTHER _____		OTHER PROVISIONS	
LIABILITY LIMIT IN THOUSANDS \$		CLAIMS: Underwriter's Representative for claims pursuant to this Insurance (must be completed if different than producer)	
\$ _____ per accident, for bodily injury and property damage liability		Name: _____ Address: _____ Telephone: () _____	
In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:			
1. ADDITIONAL INSURED. The City of Long Beach, its Board of Harbor Commissioners, individually and collectively, and their officers and employees ("City") are included as additional insureds with regard to liability and defense of suits or claims arising from the operations and activities performed by or on behalf of the Named Insured. 2. CONTRIBUTION NOT REQUIRED. This insurance shall be primary. Any other insurance or self-insurance available to the insureds added by this endorsement shall be in excess of and shall not contribute with this insurance. 3. CANCELLATION NOTICE. With respect to the interests of City, this insurance shall not be canceled or materially reduced in coverage except after thirty (30) days prior written notice by receipted delivery has been given to City at address indicated below. (Except 10 days shall be allowed for non-payment of premium.) 4. SCOPE OF COVERAGE. This endorsement shall afford coverage at least as broad as Insurance Services Office form number CA0001, Code 1 ("any auto"). Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.			
ENDORSEMENT HOLDER / ADDITIONAL INSURED		AUTHORIZED REPRESENTATIVE	
CITY OF LONG BEACH BOARD OF HARBOR COMMISSIONERS 925 HARBOR PLAZA LONG BEACH, CA 90802 ATTENTION: <u>Risk Management Division</u> TELEPHONE: <u>562-901-1775</u>		I _____ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement. Signature _____ Title _____ Employer of Signatory _____ Telephone: () _____ Date Signed _____	

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**EXHIBIT 3-B TO SCHEDULE 3
WORKER'S COMPENSATION INSURANCE FORM**

WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY SPECIAL ENDORSEMENT					
FOR THE CITY OF LONG BEACH, HARBOR DEPARTMENT				ENDORSEMENT NO.	EFFECTIVE DATE (MM/DD/Y)
PRODUCER		POLICY INFORMATION			
		Insurance Company: Policy No.: Policy Period: (from) _____ (to) _____ <input type="checkbox"/> Self-insured Retention of \$ _____			
Telephone _____		APPLICABILITY. This insurance pertains to the operations and activities of the Named Insured under all written agreements and permits in force with the City unless checked here <input type="checkbox"/> in which case only the following specific agreements and permits with the City are covered:			
NAMED INSURED & ADDRESS		AGREEMENTS/PERMITS:			
		OTHER PROVISIONS			
COVERAGES (check as applicable)					
<input type="checkbox"/> Statutory Workers' Compensation		<input type="checkbox"/> Employers Liability Limits _____		Bodily Injury (each accident) _____	
<input type="checkbox"/> U. S. L. & H.				Bodily Injury by Disease (each employee) _____	
<input type="checkbox"/> Jones Act				Bodily Injury by Disease (policy limit) _____	
<input type="checkbox"/> Federal Employers Liability Act (FELA)					
In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:					
1. WAIVER OF SUBROGATION. The Insurance Company agrees to waive all rights of subrogation against the City of Long Beach, its Board of Harbor Commissioners, individually and collectively, and their officers and employees ("City") for losses paid under the terms of this policy.					
2. CANCELLATION NOTICE. With respect to the interests of City, this insurance shall not be canceled or materially reduced in coverage except after thirty (30) days prior written notice by receipted delivery has been given to City at address indicated below. (Except 10 days shall be allowed for non-payment of premium.)					
Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.					
ENDORSEMENT HOLDER					
CITY OF LONG BEACH BOARD OF HARBOR COMMISSIONERS 925 HARBOR PLAZA LONG BEACH, CA 90802			AUTHORIZED REPRESENTATIVE		
ATTENTION: <u>Risk Management Division</u>			I _____ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.		
TELEPHONE: <u>562-901-1775</u>			Signature _____ Title _____ Employer of Signatory _____ Telephone: () _____ Date Signed _____		

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SCHEDULE 4 – DEFAULT AND TERMINATION

4.1 Default

In the event Concessionaire fails to comply with the terms and conditions of this Concession or commits an event of Default (as defined in Section 4.2, 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 this 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. In the event that a Notice of Default is issued by Port to Concessionaire, the provisions of Sections 4.3 and 4.4 below shall apply.

4.2 Events of Default

Circumstances that constitute a default under this Concession by Concessionaire ("Default") shall include, without limitation, the following:

- (a) 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;
- (b) Any failure to comply with the terms and conditions of this Concession;
- (c) Abandonment or discontinuance of Drayage Service;
- (d) Repeated violations of traffic rules and regulations in and around the Harbor District or disregard of public safety;
- (e) Any violation of the Patriot Act of 2001 or Department of Homeland Security regulations, including any facility security plan;
- (f) Any fraud or misrepresentation in the Concession application, information or data submitted to the Port required under the Concession;
- (g) Any effort to misrepresent that a Drayage Truck complies with Section 10 of Port Tariff No. 4, 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 Section 10 of Port Tariff No. 4;
- (h) Any assignment or transfer of this Concession or substantial change in the ownership and control of Concessionaire without prior notice to and consent of the Port;
- (i) The bankruptcy of Concessionaire; or the appointment of a receiver for Concessionaire; or assignment of this Concession for the benefit of creditors; or
- (j) The failure to pay or repeated late payment of fees due under Schedule 2, Concession Fees; or
- (k) Violation of a Port 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 this Concession. If Concessionaire has undertaken obligations contained in truck-grant or other agreements, with the Port or with others, this Concession shall not affect such obligations contained in such other agreements.

4.3. Concession Enforcement Procedures

The following procedures shall apply in the event the Port issues a Notice of Default to Concessionaire.

- 4.3.1. 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 this Concession or committed an event of Default
- 4.3.2. 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.
- 4.3.3. 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 Long Beach 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 City, by reason of the same Default giving rise to the Notice of Default.
- 4.3.4. A Notice of Default shall also state whether the Default is being designated by the Port as a Minor Default or a Major Default.
- 4.3.5. Minor Defaults.
 - 4.3.5.1 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.
 - 4.3.5.2. If the Concessionaire has delivered a completed Notice of Contest under Section 4.3.5.1, 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.

4.3.6. Major Defaults

- 4.3.6.1.** 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 set forth in Section 4.3.6.4, in which event the Remedy shall take immediate effect as provided in Section 4.3.6.4.
- 4.3.6.2** If the Concessionaire has delivered a completed Notice of Contest under Section 4.3.6.1, 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, except as stated in Section 4.3.6.3. 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.
- 4.3.6.3.** The decision of the Hearing Officer under Section 4.3.6.2 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 Executive Director or his/her designee shall conduct the review based upon the record created before the Hearing Officer and such further arguments as may be ordered. The Decision upon review shall be in writing and shall contain the Remedy. The Decision upon review shall be final and whatever sanction is upheld thereby shall take effect immediately.
- 4.3.6.4.** A Notice of Default which designates a Major Default may contain a finding that the Default constitutes a substantial risk of danger or injury to the Port, its customers or facilities, or persons or property at or near the Port. Such a Notice of Default may contain a Remedy that takes effect immediately upon issuance of the Notice and is intended to prevent or

lessen the risk of danger or injury. If such an immediate Remedy is contained in the Notice of Default, the Remedy shall take effect immediately and shall remain in effect pending the procedures contained in Sections 4.3.6.2 and 4.3.6.3. If the Concessionaire completes a Notice of Contest, the Port will endeavor to hold an Informal Hearing as expeditiously as possible.

4.4 Remedy

The following Remedy may be contained in a Notice of Default and may imposed by the Port for a breach of this Concession or other event of Default

- 4.4.1. 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.
- 4.4.2. 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 this Concession Agreement and of the right of the Concessionaire to provide Drayage Services at the Port.
- 4.4.3. 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 Agreement and of the right of the Concessionaire to provide Drayage Services at the Port, without the opportunity to cure the Default.
- 4.4.4. The failure to comply with a Remedy imposed by the Port shall itself be grounds for a Notice of a Major Default.

SCHEDULE 5 – STANDARD CONTRACT PROVISIONS

1. DISCRIMINATION

Concessionaire, 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.

2. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Concession 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 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, Port may immediately terminate this Agreement by giving written notice thereof.

CERTIFICATE OF SERVICE

I, Patricia O'Keefe, hereby certify that I have today, August 18, 2008, sent a copy of the attached Comments of the Intermodal Motor Carriers Conference of the American Trucking Associations, by First Class mail, to:

C. Jonathan Benner, Esq.
Troutman Sanders LLP
401 9th Street, N.W.
Washington, D.C. 20004

Counsel for the Port of Los Angeles and the Port of Long Beach



Patricia O'Keefe