

MEMORANDUM OF UNDERSTANDING BETWEEN THE STATE OF CALIFORNIA, THE
OFFICE OF THE MAYOR OF THE CITY OF LOS ANGELES, AND THE CITY OF LOS
ANGELES HARBOR DEPARTMENT CREATING A PARTNERSHIP TO REDUCE
GREENHOUSE GASES AND SUPPORT THE PORT OF LOS ANGELES CLEAN AIR
ACTION PLAN

This Memorandum of Understanding (“MOU”) is entered into by and between Antonio R. Villaraigosa, Mayor of the City of Los Angeles (“Mayor”), the City of Los Angeles Harbor Department (“POLA” or the “Port”) and Edmund G. Brown Jr., Attorney General of California, on behalf of the People of the State of California (“Attorney General”), and is dated and effective as of December __, 2007 (the "Effective Date"). The Mayor, POLA, and the Attorney General are collectively referred to herein as the "Parties."

The intent of this MOU is to establish a forward-going partnership to further mutually-shared goals of improving the environmental performance of Port operations by reducing greenhouse gas emissions and establishing a collaborative model that builds upon the parties’ extensive past efforts to situate the state and region at the forefront of environmental leadership.

RECITALS

WHEREAS, the Mayor continues to lead an effort to make the City of Los Angeles the Greenest Big City in America; and

WHEREAS, the Mayor developed and adopted the Los Angeles Sustainability Program and Municipal Climate Action Plan aimed at reducing greenhouse gases by 35% between the years 1990 and 2030; and

WHEREAS, POLA has exhibited strong leadership in reducing port-related emissions by entering into a landmark partnership with the Port of Long Beach, the South Coast Air Quality Management District, the California Air Resources Board and the United States Environmental Protection Agency Region 9 to develop the first San Pedro Bay Ports Clean Air Action Plan (“Clean Air Action Plan”); and

WHEREAS, the \$2 Billion Clean Air Action Plan, the most comprehensive strategy to cut air pollution and reduce health risks ever produced for a global seaport complex, was approved November 20, 2006 by both the Los Angeles Board of Harbor Commissioners and the Port of Long Beach Board of Harbor Commissioners (collectively, the “Ports”); and

WHEREAS, the Clean Air Action Plan specifically calls for aggressive milestones with measurable goals for air-quality improvements, recommendations to eliminate emissions of diesel particulates, and a truck replacement program to phase out all “dirty” diesel trucks from the Ports in five years, to name a few that will reduce emissions by 45 percent over the next five years including coincidental reduction in greenhouse gases; and

WHEREAS, the Clean Air Action Plan also establishes a \$15 Million technology advancement program to establish new technologies that can be applied towards the reduction of the Ports' mobile emission sources; and

WHEREAS, POLA has spent in excess of \$100 Million to date to develop and implement clean air improvements and the Clean Air Action Plan and has budgeted an additional \$150 Million for future implementation of the Clean Air Action Plan; and

WHEREAS, the Harbor Electrification Committee of the Board of Harbor Commissioners and the Board of Water and Power Commissioners of the City of Los Angeles have exhibited strong environmental leadership through the ongoing development of a solar power project for the Port of Los Angeles; and

WHEREAS, POLA is charged with fostering the orderly and necessary development of the Port of Los Angeles, consistent with the public trust for navigation, commerce, fisheries and recreation; and

WHEREAS, under the leadership of the Mayor, POLA's adopted strategic mission is to promote a "grow green" philosophy; with a strategic objective to "Transform the Port of Los Angeles into the greenest port in the world by raising environmental standards and enhancing public health"; and

WHEREAS, POLA has spent in excess of an additional \$100 million to develop and implement related environmental programs and operational strategies, including the habitat improvement programs, environmental compliance programs, clean water initiatives Environmental Management System, green infrastructure improvement programs and the Off Peak Program, to name a few; and

WHEREAS, continuing its national leadership in the environmental arena, the State of California enacted AB 32, the California Global Warming Solutions Act, effective January 2007, which mandates a reduction in California's greenhouse gas ("GHG") emissions to 1990 levels by 2020; and

WHEREAS, the Parties are committed to aggressively addressing the concerns that catalyzed AB 32 and to reducing GHG emissions, and the Port and the City are members of the California Climate Action Registry; and

WHEREAS, the Attorney General for the State of California serves as the chief law officer of California; and

WHEREAS, in that capacity, the Attorney General serves Californians by safeguarding the state's environmental and natural resources; and

WHEREAS, the Parties are committed to comprehensive application of the California Environmental Quality Act ("CEQA") and other applicable statutes to ensure meaningful and constructive consideration of greenhouse gas emissions and feasible mitigation; and

WHEREAS, the Attorney General is committed to the successful implementation of AB 32 and reducing GHG emissions throughout California;

WHEREAS, the Parties strongly believe that, as reflected in the latest reports of the Intergovernmental Panel on Climate Change, the actions taken now and in the next few years with respect to assessing and limiting greenhouse gas emissions will determine our future; and

WHEREAS, the Parties desire to enter into a partnership to further the reduction of Port-related GHG emissions throughout California and to establish model practices to promote the parties' mutual goal of maintaining national and industrial leadership in the environmental arena; and

WHEREAS, the Parties desire to work together to further the development of projects and technologies at the Port to reduce GHG emissions as an important element of establishing the leadership model that the parties seek.

PARTNERSHIP MEMORANDUM OF UNDERSTANDING

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Inventories

- a. POLA agrees to conduct a port-wide annual inventory of GHG emissions, as defined in 1.c., below ("GHG Inventory"), beginning in 2008 (for 2006 emissions) and continuing until regulations governing GHG emissions inventories applicable to the Port or Port facilities are promulgated and become effective pursuant to California Health and Safety Code Division 25.5, sections 38500, et seq., the California Global Warming Solutions Act ("AB32").
- b. POLA shall utilize its established normal criteria pollutant data gathering protocols to collect data on GHGs and prepare the GHG Inventory so as not to interfere with the data-gathering protocols previously established in coordination with CARB and SCAQMD for the Port's criteria pollutant inventory.
- c. The geographic boundary for the GHG Inventory shall encompass:
 - i. For all ships bound to and from Port terminals, the geographic boundary shall extend beyond the Port to encompass the point of origin/destination; and
 - ii. For rail transit to and from Port terminals, the geographic boundary shall encompass major rail cargo destination/distribution points in the United States; and

- iii. For out-of-state truck transit to and from Port terminals, the geographic boundary shall encompass major truck destination/distribution points.
- d. POLA shall define and make publicly available a summary of data analysis that supports any assumptions utilized to perform its obligations under 1.c., above, as part of its GHG Inventory.
- e. In order to facilitate adoption by others of its model practices, POLA agrees to make public a draft for review and comment and a final of the GHG Inventory and annual updates thereto, and transmit copies of the GHG Inventory and annual updates to the California Attorney General, the California Air Resources Board, the California Climate Action Registry, and the South Coast Air Quality Management District. POLA agrees to third-party verification of the annual inventory.

2. Solar Power Project

- a. Continuing the ongoing efforts of the Harbor Electrification Committee of the Board of Harbor Commissioners and the Board of Water and Power Commissioners of the City of Los Angeles, POLA agrees to continue to move forward with a proposed project at the Port, or other land owned by POLA, consisting of an approximately 10 Mega Watt (MW) photovoltaic solar electric system (further described in Attachment C). This Solar Power Project is intended to be a general GHG emission reduction measure to replace electric usage at the Port that would otherwise be provided by the local electric utility by, among other things, the burning of fossil fuels. POLA agrees to use its diligent efforts to perform according to the proposed schedule outlined in Attachment C, subject to reservation of final decision making authority of all appropriate city decision making bodies, as required by law.
- b. The Mayor and the Attorney General will convene a Port Solar Power Working Group consisting of representatives from the Mayor, the Attorney General, POLA, DWP, and the California Air Resources Board, if the Board should choose to participate. The working group will assist POLA and DWP in completing the project and in making the project available as a model environmental mitigation.
- c. POLA agrees to prepare an annual report documenting the progress of each phase of the proposed Solar Power Project described in Attachment C. POLA agrees to prepare the first annual report in June 2008, and every June thereafter until the Solar Power Project is complete. Each report shall be made public and shall be provided to the working group.
- d. POLA anticipates that the 10 MW photovoltaic solar electric system will result in an overall reduction of approximately 17,000 metric tons of carbon dioxide equivalent emissions per year at full build-out.
- e. In the event that the annual report due in June 2008, or any subsequent annual report, indicates that all necessary and appropriate processing steps of the Solar Power Project, as anticipated to occur according to the schedule outlined in

Attachment C, have not occurred, the Working Group shall meet to discuss and agree upon an alternative mechanism by which POLA shall complete the Solar Power Project, or achieve a model offset or reduction of carbon dioxide equivalent emissions comparable to the anticipated reduction of the 10 MW solar system described in Attachment C.

- f. The parties agree to use the Working Group process described above to use their best efforts to resolve any future disputes that may arise regarding the pace or progress of completion of the Solar Power Project, or regarding the amount of emissions reduction resulting from the Solar Power Project.

3. Environmental Impact Reports (“EIR”s)

- a. Believing it consistent with law and sound public policy, POLA used the geographic boundary currently set forth in the TraPac DEIR/EIS, and POLA will use the same boundaries for GHG emission assessment and evaluation in the Berths 136-147 (Trapac) Environmental Impact Report (“EIR”), as well as for any future EIRs prepared for those proposed projects set forth in Attachment A. These boundaries are consistent with the California Climate Action Registry recommendations for reporting California emissions, and with the boundaries set forth in the 2007 South Coast Air Quality Management Plan and the California Air Resources Board proposed State Implementation Plan measures for regulation of Port-related criteria air pollutants.
- b. In further pursuit of full public disclosure, POLA has included and shall include a discussion of existing and reasonably anticipated effects of global warming on California in the Environmental Setting section of the Trapac Final EIR, and any future EIRs prepared for those proposed projects set forth in Attachment A.
- c. POLA shall evaluate and adopt all project-level mitigation measures that it determines to be feasible, including measures in addition to the mitigation measures proposed in the Trapac Draft EIR, to reduce the proposed Trapac Project’s GHG emissions.¹ POLA will include this evaluation in the Trapac Final EIR. The additional measures that POLA shall consider for feasibility in the TraPac Final EIR shall include, but are not limited to, those measures listed in Attachment B.
- d. POLA further shall evaluate and adopt all project-level mitigation measures determined to be feasible to reduce a proposed project’s GHG emissions in any EIR prepared for those proposed projects set forth in Attachment A. The mitigation measures that POLA shall consider for feasibility in these EIRs shall include, but are not limited to, those measures listed in Attachment B.

¹ For purposes of this Agreement, “feasible” shall have the meaning given to that term pursuant to Public Resources Code Section 21061.1

- e. The Port has determined at this time that additional offsets for the GHG emissions of the TraPac project are not financially or otherwise feasible. To achieve maximum disclosure and model best practices, POLA will provide a summary analysis that supports this conclusion in the TraPac Final EIR and/or Statement of Overriding Considerations for the TraPac project.
 - f. POLA shall include in the TraPac Final EIR, and in the EIRs for all of the projects listed in Attachment A, a reference to the port-wide GHG Inventory process in the Environmental Setting description included in these documents.
 - g. In pursuit of its “grow green” philosophy, POLA has determined that the following shall occur with respect to Berths 136-147:
 - (i) The Port will review, in terms of feasibility, any Port-identified or other new emissions-reduction technology. Such technology feasibility reviews shall take place at the time of the Port’s consideration of any lease amendment or facility modification for the Berths 136-147 property. If the technology is determined by the Port to be feasible in terms of cost, technical and operational feasibility, the tenant shall work with the Port to implement such technology.
 - (ii) As partial consideration for the Port's agreement to issue the permit to the tenant, tenant shall implement not less frequently than once every 7 years following the effective date of the permit, new air quality technological advancements, subject to the parties’ mutual agreement on operational feasibility and cost sharing, which shall not be unreasonably withheld.
4. The California Attorney General agrees to the following:
- a. To submit a letter of support for the Trapac EIR.
 - b. To not file a legal challenge or otherwise intervene against POLA in any suit challenging the adequacy of the Trapac EIR.
 - c. To not file a legal challenge based upon, or otherwise intervene against the Port in any suit that challenges the geographic scope of the GHG assessment process outlined in 3.a.
 - d. To meet with POLA and the Mayor at their request regarding development of model Port environmental mitigation practices and the broad dissemination of replicable models.
5. Except as expressly stated, nothing in this MOU shall be construed as a waiver of any party’s discretionary authority or deemed to restrict authority granted to any party under

law in any way with respect to future legislative, administrative or other actions, including but not limited to those actions related to the proposed Trapac Project and those projects set forth on Attachment A and C. Nothing in this MOU shall be construed as a waiver of any applicable third party due-process rights.

6. This MOU shall not be construed to bind or limit the discretion of POLA in any manner to add, subtract or modify mitigation measures described in Section 3 (c) and (d) or otherwise set forth in the Trapac EIR or considered by POLA in any manner, nor to adopt, reject or modify any mitigation prior to adoption based on the totality of all information brought to the attention of POLA, including information provided by other governmental agencies, members of the public, industry representatives or any other interested persons.
7. This MOU represents the entire MOU of the Parties with respect to the subject matter herein, and merges and supersedes any prior written or oral representations, discussions, understandings or MOUs by or between the Parties relating to the subject matter of this MOU.
8. No addition to or modification of any term or provision of this MOU will be effective unless set forth in writing and signed by an authorized representative of each of the Parties.
9. Each Party represents and warrants that it has the right, power, and authority to execute this MOU. Each Party represents and warrants that it has given any and all notices, and obtained any and all consents, powers and authorities, necessary to permit it, and the persons executing this MOU for it, to enter into this MOU.
10. This MOU shall be binding on and inure to the benefit of the successors and assigns of the Parties to the MOU.
11. This MOU shall be governed by and construed in accordance with the laws of the State of California.
12. This MOU may be executed in counterparts, each of which shall be deemed an original. This MOU shall be binding upon the receipt of facsimile signatures.
13. This MOU shall be deemed to have been jointly drafted, so that the general rule of construction that it be construed against the drafter shall not apply.
14. No Admission. Nothing in this MOU shall be deemed as an admission of any wrongdoing, fault, violation of law, or liability of any kind on the part of the parties, or any admission by the parties of any claim or allegations made in any action.
15. Waiver of Civil Code Section 1542. With regard to matters being released herein, the Parties expressly waive the provisions of Section 1542 of the California Civil Code, and any other similar statute, rule or case law. Section 1542 provides as follows:

A general release does not extend to claims which the creditor does not know or expect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

16. Representation by Counsel. Each of the Parties affirmatively represents that it has been represented throughout this matter by attorneys of its own choosing. Each Party has read this MOU and has had the terms used herein and the consequences thereof explained by its attorneys of choice. This MOU is freely and voluntarily executed and given by each party after having been apprised of all relevant information and data furnished by its attorneys of choice. Each Party in executing this MOU does not rely upon any inducements, promises or representations made by any other Party except as set forth herein.
17. Severability. In the event that any provision of the MOU should be held to be void, voidable, unlawful or, for any reason, unenforceable, the remaining portions hereto shall remain in full force and effect.
18. Effective Date: This MOU is effective upon the date that all parties have signed.
19. Integration. This document constitutes the entire MOU between the parties to this MOU with respect to the subject matter set forth and supersedes any and all prior MOUs or contracts on this subject matter between the parties, either oral or written. This MOU may not be amended, waived, or extended, in whole or in part, except in writing signed by both parties.
20. Compliance With Law. To the extent guidance governing GHG emissions inventories applicable to the Port or Port facilities becomes effective through regulations promulgated pursuant to California Health and Safety Code Division 25.5, sections 38500, et seq., the California Global Warming Solutions Act ("AB 32"), and such guidance is incompatible with any provision of this MOU, POLA's compliance with those regulations shall be deemed compliance with any incompatible provision of this MOU. To the extent a change in statutory or case law occurs that governs performance of, or the obligation to perform, any provision(s) of this MOU, and as a result, continued performance of such provision(s) would conflict with POLA's obligations under governing law, POLA's compliance with governing law shall be deemed compliance with such provision(s). Execution of this MOU by POLA shall not preclude POLA from applying for and receiving credit in the future, if applicable, for early voluntary reductions of GHGs pursuant to AB 32, when and if such credit becomes available.
21. This MOU shall not be construed to limit the right or capacity of any party to comment upon or take any action under California Environmental Quality Act with respect to any project except as specifically set forth herein.
22. This MOU shall not be construed to bind any Party in any manner with respect to any person or entity that is not a Party to this MOU, or a successor or assign of a Party.

23. Any notice or report required or permitted to be given under this MOU shall be in writing and shall be deemed to be given when served personally, or on the third day after mailing if mailed in the United States mail, postage prepaid, addressed to the address for each Party set forth below:

For California Attorney General:

Raissa S. Lerner
Office of the Attorney General
1515 Clay St., PO Box 70550
Oakland, CA 94612-0550

For the Mayor of Los Angeles:

Thomas Saenz
Office of the Mayor of Los Angeles
200 N. Spring St., #305
Los Angeles, CA 90012

For Port of Los Angeles:

Geraldine Knatz, Ph.D.
Executive Director
Port of Los Angeles
425 S. Palos Verdes St.
San Pedro, CA 90731

In witness whereof, this MOU is executed by the following:

PEOPLE OF THE STATE OF CALIFORNIA
BY AND THROUGH ATTORNEY GENERAL
EDMUND G. BROWN JR.

Date: _____

MAYOR OF THE CITY OF LOS ANGELES
ANTONIO R. VILLARAIGOSA,

Date: _____

THE PORT OF LOS ANGELES,

Date: _____

By _____
Executive Director

Attest _____
Board Secretary

APPROVED AS TO FORM

_____, 2007
ROCKARD J. DELGADILLO, City Attorney

By _____
JANNA B. SIDLEY, Deputy