UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

July 26, 2019

Return Receipt Requested
Certified Mail#: 7015 3010 0001 1267 1463

In Reply Refer To:
Complaint Nos. 13R-17-R9 and 14R-17-R9

Mr. Paul Cort
Staff Attorney
Earthjustice
50 California Street, Suite 500
San Francisco, CA 94111

RE: Resolution of Administrative Complaints

Dear Mr. Cort:

This letter is to inform you that the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is resolving this complaint based on the enclosed Informal Resolution Agreement (Agreement) entered into between EPA and the City of Oakland (City), a municipal corporation, acting by and through its City Council, and the City of Oakland (Port), a municipal corporation, acting by and through its Board of Port Commissioners. On July 18, 2017, ECRCO accepted for investigation an administrative complaint filed by Earthjustice, on behalf of West Oakland Environmental Indicators Project, against the City and the Port. The complaint was brought under Title VI of the Civil Rights Act of 1964 (Title VI) and EPA's implementing regulation at 40 C.F.R. Part 7, and alleged discrimination based on race, color, and national origin. The complaint against the City and the Port was assigned EPA Complaint Nos. 13R-17-R9 and 14R-17-R9, for the City and the Port, respectively. Specifically, the issues accepted for investigation were:

1. Whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the Oakland Army Base subjects the residents of color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's[1] and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively.

[1] By letter dated April 26, 2019, the U.S. Department of Transportation (DOT) administratively closed its complaint (DOT #17-0093) and "defer[ed] the final voluntary resolution of the matters raised in the complaint to EPA." DOT is not a party to this Resolution Letter or the Informal Resolution Agreement referenced herein.

2. Whether the City's and Port's methods, including their public participation processes, for approving and authorizing new development and expanded activities at the Port of Oakland and Oakland Army Base subject the residents of color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively.

During the course of EPA's investigation, the City and the Port agreed to enter into an Agreement in order to resolve EPA Complaint Nos. 13R-17-R9 and 14R-17-R9. The enclosed Agreement is entered into by EPA pursuant to authority granted to EPA under the federal nondiscrimination laws, including Title VI and EPA's nondiscrimination regulation at 40 C.F.R. Parts 5 and 7. It resolves EPA Complaint Nos. 13R-17-R9 and 14R-17-R9. It is understood that the Agreement does not constitute an admission by the City or the Port of any violation or a finding by EPA of compliance or noncompliance with applicable federal non-discrimination laws and regulation, including Title VI and 40 C.F.R. Parts 5 and 7.

The enclosed Agreement does not affect the City's and the Port's continuing responsibilities under Title VI or 40 C.F.R. Parts 5 and 7, and other federal non-discrimination laws and regulation, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by the Agreement. This letter sets forth EPA's disposition of EPA Complaint Nos. 13R-17-R9 and 14R-17-R9. This letter is not a formal statement of EPA policy and should not be relied upon, cited, or construed as such.

EPA is committed to working with the City and the Port as they implement the provisions of the Agreement. If you have any questions regarding the Agreement between EPA and the City and the Port, please contact me at (202) 564-9649, by e-mail at dorka.lilian@epa.gov, or U.S. mail at U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency

Enclosure

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights and Finance Law Office

Deborah Jordan
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EPA Region 9

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Regional Counsel
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

INFORMAL RESOLUTION AGREEMENT
among the

CITY OF OAKLAND, A MUNICIPAL CORPORATION, ACTING BY AND THROUGH ITS CITY COUNCIL

CITY OF OAKLAND, A MUNICIPAL CORPORATION, ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS

and the

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
External Civil Rights Compliance Office
EPA Complaint Nos. 13R-17-R9 and 14R-17-R9

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I. PURPOSE AND JURISDICTION

A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 ("Title VI"), other federal nondiscrimination laws, and United States Environmental Protection Agency's ("EPA") implementing regulation at 40 C.F.R. Parts 5 and 7 prohibit discrimination on the basis of race, color, national origin, disability, sex, and age in the programs, services and activities of applicants for or recipients of federal financial assistance.[1] The City of Oakland, a municipal corporation, acting by and through its City Council ("City") and the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners ("Port of Oakland" or "Port") receive financial assistance from EPA and, therefore, must ensure nondiscrimination in programs and activities pursuant to the provisions of Title VI and EPA's implementing regulation.

B. By letter dated July 18, 2017, United States Department of Transportation ("DOT") Departmental Office of Civil Rights ("DOCR") and EPA External Civil Rights Compliance Office ("ECRCO") accepted a complaint dated April 4. 2017, brought by Earthjustice on behalf of the West Oakland Environmental Indicators Project ("WOEIP") under Title VI and DOT and EPA regulations (49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively), that alleged discrimination based on race, color, and national origin in violation of Title VI (DOT #2017-0093 and EPA Complaint Nos. 13R-17-R9 and 14R-17-R9) ("Complaint"). In its July 18, 2017, letter, DOT and EPA indicated that their investigation would focus on:

1. Whether the City's and Port's October 4, 2016, approval and/or involvement in approval of a construction management plan and permission for ground-breaking on the Northeast Gateway development project site of the Oakland Army Base subjects the residents of color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7. respectively.

2. Whether the City's and Port's methods, including their public participation processes, for approving and authorizing new development and expanded activities at the Port of Oakland and Oakland Army Base subject the residents of color of West Oakland (predominantly black, Latino, and Asian) to discrimination on the basis of race. color or national origin in violation of Title VI of the Civil Rights Act of 1964 and DOT's and EPA's

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[1] Title VI of the Civil Rights Act of 1964, 42 United States Code §§ 2000d to 2000d-7 (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended. 29 U.S.C. § 794: Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*; Age Discrimination Act of 1975. 42 U.S.C. §§ 6101 *et seq.*; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 (1972)); 49 C.F.R. Part 21; 40 C.F.R. Parts 5 and 7.

implementing regulations at 49 C.F.R. Part 21 and 40 C.F.R. Part 7, respectively.

C. During the course of EPA's investigation, the City and the Port agreed to enter into this Informal Resolution Agreement ("Agreement") to resolve the Complaint and terminate EPA's investigation of it.

D. By letter dated April 26, 2019, DOT administratively closed its complaint (DOT #17-0093) and "defer[ed] the final voluntary resolution of the matters raised in the complaint to EPA." DOT is not a party to this Agreement.

E. This Agreement is entered into voluntarily by the City, the Port, and the EPA.

F. The City and the Port are committed to carrying out their responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and the other federal nondiscrimination laws and regulations enforced by EPA. The activities detailed in this Agreement, which the City and the Port have voluntarily agreed to undertake and implement, are in furtherance of this commitment.

G. This Agreement does not constitute an admission by the City and/or the Port of a violation of, or a finding of compliance or noncompliance by EPA with, applicable federal nondiscrimination laws and regulations.

H. EPA will cease investigation of Complaint Nos. 13R-17-R9 and 14R-17-R9 upon the signing of this Agreement and will provide technical assistance to support the City and the Port in the implementation of the commitments contained herein.

I. The City and the Port understand that EPA will monitor compliance with the provisions of this Agreement until the Agreement is terminated pursuant to Section IV.B and IV.F below. If EPA believes that the City and/or the Port have breached any commitment contained in Section II of this Agreement, EPA shall contact the City and/or the Port to provide technical assistance to remedy the alleged breach and provide the City or the Port the opportunity to cure and/or address the concerns of EPA. The City and the Port understand that a failure to address any alleged breach of any commitment contained in Section II of this Agreement – after the parties have gone through the technical assistance and opportunity to cure described above – may result in EPA resuming the investigation.

J. Extensive background and contextual information related to the West Oakland community as well as actions taken by the Port and the City is provided in this Agreement in Section III Background. Section III provides detailed information about air quality actions, truck management efforts, and public participation activities undertaken by the Port and the City from 2005 to 2019. Information is also provided about the Oakland Army Base ("OAB") Redevelopment Plan and activities to date, California Assembly Bill (AB) 617, and the Port's and the City's nondiscrimination policies and procedures.

II. SPECIFIC COMMITMENTS FROM THE CITY AND THE PORT TO RESOLVE THE COMPLAINT

A. Public Engagement Plan for OAB Redevelopment

1. The City and the Port are committed to meaningful and full public participation by affected communities in West Oakland in the redevelopment of the former OAB per the Amended Reuse Plan for the OAB project approved by the City and the Port in 2012. In furtherance of this commitment, the City and the Port have developed and sent to EPA a Public Engagement Plan ("PEP") for OAB redevelopment. The OAB PEP specifies the following as its goals as they relate to implementing the OAB redevelopment project approved by the City and Port in 2002, as amended in 2012, particularly in regard to actions that affect the air quality in West Oakland:

   a. inform and consult with the public to provide meaningful involvement of residents, businesses, and other stakeholders in West Oakland (collectively, the "West Oakland stakeholders");

   b. provide engagement methodologies to address both specific projects and overall OAB activity;

   c. enhance the City's and the Port's dialogue with West Oakland stakeholders;

   d. provide effective ways to receive, document, and incorporate input and recommendations from West Oakland stakeholders;

   e. reduce barriers to access for under-represented West Oakland stakeholders and to those West Oakland stakeholders who may have not participated in previous public input processes; and

   f. comply with the provisions of federal nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, and applicable regulations and guidance documents.

2. The OAB PEP includes the following components:

   a. The requirement to document and respond to community feedback and show how the feedback influenced final decisions and, where applicable, how final decisions reduced impacts of the project on air quality; documentation shall be readily available to the public.

   b. A list of the projects to which the OAB PEP will be applied; the OAB PEP also contains provisions for additions to this list;

c. Performance measures and evaluation of public engagement to gauge success of the OAB PEP; and

d. A process, to be completed after one year of implementation of the OAB PEP, to evaluate the OAB PEP with EPA and modify it to address any deficiencies in the public engagement process.

3. The OAB PEP was developed in accordance with the principles contained in the EPA public participation guidance, including providing information that is easy to understand, in the appropriate formats and languages to ensure meaningful access to individuals with limited English proficiency ("LEP") and those with disabilities (EPA's Public Participation Guidance found at 71 FR 14,207, 14,210 [March 21, 2006]). EPA commits to provide the City and the Port with appropriate technical assistance regarding its guidance as it relates to the OAB PEP.

4. EPA provided comments on the draft OAB PEP to the City and the Port, which were addressed. The OAB PEP is posted on both the City's and the Port's public websites; accordingly, this commitment is complete.

B. Air Quality Improvement Regarding West Oakland

1. The Port shall continue to implement air quality conditions and mitigation measures under the OAB Standard Conditions of Approval and Mitigation Monitoring and Reporting Program ("SCA/MMRP"); and programs and projects under the Port's Maritime Air Quality Improvement Plan ("MAQIP"), the Seaport Air Quality 2020 and Beyond Plan approved by the Board of Port Commissioners ("Board") on June 13, 2019, dated June 13, 2019 ("2020 and Beyond Plan") and available online at: https://www.portofoakland.com/community/environmental-stewardship/maritime-air-quality-improvement-plan/, and the Comprehensive Truck Management Plan ("CTMP"). By signing this Agreement, the Port commits itself to perform the obligations recited herein and accordingly, its commitment is deemed complete.

2. The City shall continue to implement the air quality conditions and mitigation measures related to the OAB under the SCA/MMRP. By signing this Agreement, the City commits itself to perform the obligations recited herein and accordingly, its commitment is deemed complete.

3. The City and the Port are committed to the principles of improving air quality in West Oakland through participation in the AB 617 Steering Committee and participation in the development of the West Oakland Community Action Plan ("WOCAP") (as described in Section III.F below). The West Oakland Community Air Action Plan Steering Committee Charter and Participation Agreement, Amended September 5, 2018, states:

a. "Our goal is to remedy persistent air pollution problems and excessive local health risk exposures to people who live, work and play in and around West Oakland. We are committed to working collectively and cooperatively with all stakeholders within the community…";

b. Steering Committee members "agree to the following principles, goals, and expected conduct…" including:

   i. "Provide strategic guidance, vision, and oversight, including…Identifying fair, effective and feasible goals to bring about reduced health risk in West Oakland" and "Using data to inform strategy development analysis";

   ii. "Provide leadership and accountability by [i]dentifying obstacles to achieving the goal and develop solutions to overcome them" and "To work towards consensus while recognizing that not everyone will agree on every issue and to resolve conflicts in a positive, swift and constructive manner"

   iii. "Play an active role by [p]articipating in-person at the regularly scheduled meetings" and "coming prepared for engaged discussion. active listening, and respectful dialogue."

c. The commitment in this Section II.B.3 will be complete once the final WOCAP is published.

4. The Port and the City shall incorporate processes in decision-making that affects air quality at the Seaport and OAB to systematically consider and implement emissions reduction measures, as feasible, as follows:

   a. As part of implementing mitigation measure Public Outreach PO-1 ("MM PO-1"), the City works with the specified developers in MM PO-1 to prepare construction and operation air quality plans that are provided to the public for review and comment. Such air quality plan development process includes: (1) identifying and prioritizing emission reduction measures; (2) assessing the feasibility of these measures ("feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account operational, economic, environmental, legal, social, and technological factors); (3) documenting the feasibility assessment; and (4) providing the information to the public. The City shall continue this process until the construction and operation air quality plans are adopted. The City's commitments under this section do not require notice of

completion. By signing this Agreement, the City commits itself to perform the obligations recited herein and accordingly, its commitment is deemed complete.

b. The 2020 and Beyond Plan includes a five-step screening and evaluation process which is described in more detail in Appendix D to the 2020 and Beyond Plan ("5-Step Process"). Through the stakeholder engagement process, the Port received input on the 5-Step Process including, specifically, input from EPA. The 5-Step Process is not quoted verbatim below, but generally consists of:

i. Identify. Port staff and stakeholders suggest concepts, ideas, and actions that might contribute to the 2020 and Beyond Plan goals. The screening and evaluation process characterizes these concepts, ideas, and actions as "Suggested Actions." Port staff will compile the Suggested Actions into a "pool" (Pool #1) for screening in Step 2.

ii. Screen. Port staff screen each Suggested Action against the screening criteria (See Appendix D, Table D-1: Screening Criteria of the 2020 and Beyond Plan) to determine whether the Suggested Action supports the 2020 and Beyond Plan's goals. This is a pass/fail screen. To pass, a Suggested Action has to satisfy all applicable screening criteria. Not all screening criteria are applicable to all Suggested Actions. Generally, the screening criteria (as described in Table D-1) are: (1) Air Quality Action by the Port or a Port-related business: is the Suggested Action an action that the Port or a Port-related business would undertake as part of the 2020 and Beyond Plan, or is this action included in or under the purview of another program (such as the West Oakland Truck Management Plan ("West Oakland TMP"))?; (2) Surplus Emissions Reductions (Avoid Regulatory Duplication): does the Suggested Action achieve "surplus" emissions reductions, which are defined as emissions reductions in advance of new proposed regulations or emissions reductions above and beyond an existing regulation?; (3) Community Health Risk Reduction and Emission Reductions: does the Suggested Action reduce Seaport-related diesel particulate matter ("DPM") emissions, and thereby reduce community exposure to pollutants that are harmful to public health? Does the Suggested Action reduce nitrogen oxides, sulfur oxides, and/or greenhouse gas ("GHG") emissions?; (4) Contribution to Zero-Emissions Pathway: does the Suggested Action contribute to the 2020 and Beyond Plan's path to a zero-emissions Seaport by (as applicable): (a)

developing designs or collecting data in support of infrastructure improvements and/or deployment of zero-emissions or hybrid equipment; and/or (b) delivering infrastructure in support of zero-emissions equipment; and/or (c) deploying zero-emissions equipment; and/or (d) deploying hybrid equipment that substantially reduces criteria air pollutants, DPM and/or GHGs; and/or (e) creating the fiber-optic communications systems infrastructure required to operate some zero-emissions equipment; and/or (f) increasing the availability of zero-emissions fuel or other fuels that contribute to emissions reductions?; and (6) Side Effects: does the Suggested Action avoid or minimize foreseeable negative environmental, economic, or social side effects? Suggested Actions that pass Step 2 are classified as "Screened Actions." The Port will compile the Screened Actions into a second pool (Pool #2). Suggested Actions that fail one or more of the applicable screening criteria in Step 2 are removed from further consideration. Port staff will screen the pool of Suggested Actions on a periodic basis. However, should a new Suggested Action be sufficiently compelling, or if the available time to respond is limited Port staff may screen a new Suggested Action on an individual basis.

iii. Evaluate. Port staff evaluate Screened Actions according to the seven feasibility criteria (see Appendix D, Table D-2: Feasibility Criteria.) The feasibility criteria in Table D-2 (which are elaborated therein) are: (1) exposure reduction; (2) affordability; (3) cost-effectiveness; (4) commercial availability; (5) operational feasibility; (6) acceptability; and (7) need. In contrast to the screening in Step 2, the feasibility assessment is not a pass/fail evaluation; it is an assessment of relative performance against the feasibility criteria.

iv. Prioritize and Engage. Following the feasibility evaluation, Port staff conduct a qualitative assessment of each Screened Action to select the highest-priority actions (these actions are classified as "Selected Actions") for implementation. Selected Actions comprise Pool #3. Non-selected Actions will remain in Pool #2 (Screened Actions). Selected Actions that are to be implemented by another organization (e.g., a licensed motor carrier or an ocean carrier) or that require the participation of another organization in addition to the Port are considered guidance. Port staff may remove a specific Screened

Action from Pool #2 if it continues to perform poorly against the feasibility criteria. Port staff then provide the 2020 and Beyond Task Force Co-Chairs (defined below) with documentation of Steps 1 through 4 for their review and feedback. Where needed or desired, the Co-Chairs may convene a Working Session, which will include Task Force members, for collaborative problem-solving on specified Selected Actions. The Task Force Co-Chairs will document the Working Sessions to inform the qualitative assessment of specified Selected Actions. The Task Force Co-Chairs will present the results of Steps 1 through 4 to the Task Force.

v. Program. Port staff analyze and recommend specific Selected Actions for approval by the Board. This recommendation is informed by the Co-Chairs and Task Force engagement undertaken in Step 4. The Board retains sole and absolute discretion to decide whether to approve or disapprove the recommendation. Following Board approval. an action is classified as a Programmed Action and implementation can begin. If the Board does not approve the recommendation. Port staff will respond to the Board's direction. Other organizations may choose to fund and schedule an Implementing Action; Port staff will also classify these non-Port-sponsored actions as Programmed Actions.

c. Documentation will be as follows: The Port will document Steps 1-4 in a matrix. The Port will document discussions in the Co-Chair Working Sessions in Step 4 as meeting notes which the Port will post on the Port's website. Port staff's recommendations to the Board in Step 5 will be documented in Agenda Reports. which are publicly available.

d. The Port shall implement the above-referenced 5-Step Process, including any revisions to the review process – if applicable –to improve the effectiveness of the review process.

e. Role of the Task Force: As described in Step 4: Prioritize and Engage, above, where needed or desired. the Co-Chairs may convene a Working Session for further review of, or collaborative problem-solving on, specified Selected Actions or other topics in the documentation of Steps 1-3. Task Force Co-Chairs will present the results of Steps 1 through 4 to the Task Force.

f. The Port will report annually on the actions considered during the previous year under the review process described in the 2020 and

Beyond Plan, including documentation of the considerations leading to decisions on those actions.

g. The 2020 and Beyond Plan includes 37 Implementing Actions that comprise the Near-Term Action Plan for years 2019-2023 ("NTAP"). For Implementing Actions that may be considered after the NTAP, the Port will conduct the review process described in the 2020 and Beyond Plan.

h. By signing this Agreement, the Port commits itself to perform the obligations recited herein pertaining to the 2020 and Beyond Plan; accordingly, its commitment is deemed complete.

C. The West Oakland TMP

1. The City and the Port developed and will implement the West Oakland TMP pursuant to Mitigation Measure 4.3-7 of the SCA/MMRP. A public engagement plan was prepared to guide the public participation process, to obtain input from the West Oakland community, residents, businesses, truck drivers, and other stakeholders and to integrate feedback into the West Oakland TMP, including the identification of issues, problems, and solutions. To support public participation in the West Oakland TMP, the Port and the City retained a professional communications consultant to facilitate the community meetings and to assist in the design and implementation of public participation and outreach. The Port and the City conducted outreach to members of the public through (i) workshops with community based organizations, (ii) one-on-one in-person meetings, (iii) using a wide range of media, including e-mail, newsletters, social media platforms, electronic newsletters from District 3 Councilmember, postcards, advertisements in local and ethnic publications and their social media platforms, and posters at community centers, and (iv) providing information that is easy to understand at public libraries, neighborhood community centers, and on the City's public website.

2. The City and the Port held five (5) public workshops in West Oakland to engage with members of the public for feedback, education, and identification of solutions with respect to the West Oakland TMP, as follows:

- Workshop #1: Wednesday, October 11, 2017, 6:00 p.m. – 8:30 p.m. at Taylor Memorial United Methodist Church, 1188 12th Street, Oakland;

- Workshop #2: Saturday, December 2, 2017, 10:00 a.m. – 1:00 p.m. at City Slicker Farms, 2847 Peralta Street, Oakland;

- Workshop #3: Saturday, April 7, 2018, 10:00 a.m. – 12:00 p.m. at West Oakland Senior Center, 1724 Adeline Street, Oakland;

- Workshop #4: Wednesday, July 18, 2018, 6:00 p.m. – 8:30 p.m. at West Oakland Senior Center, 1724 Adeline Street, Oakland; and

- Workshop #5: November 29, 2018, 6:00 p.m. – 8:00 p.m. at West Oakland Senior Center, 1724 Adeline Street, Oakland.

3. The City and the Port used the first two workshops to gather stakeholder input and more clearly define the issues. The third workshop was used to share the preliminary results of the data gathering and analysis done by the Port and the City, based on the community input from the first two workshops. At the fourth workshop, the community was asked to provide input on and prioritize the range of solutions developed based on feedback collected from prior workshops. The fifth workshop focused on the details of the implementation of the West Oakland TMP.

4. The goal of the West Oakland TMP, as stated in the SCA/MMRP, is "to reduce the effects of transport trucks on local streets." This goal was further refined and expanded through public input at the first public workshop to include the following:

   a. Reduce disruptions from truck circulation and truck parking on residents and businesses in West Oakland;

   b. Have truck drivers know preferred routes to reach their destinations and know the City's parking restrictions;

   c. Increase safety on or near designated truck routes; and

   d. Monitor West Oakland TMP implementation and modify implementation strategies to improve outcomes as needed.

5. In addition to public engagement during the preparation of the West Oakland TMP, all requirements of MM PO-1 were followed. On September 28, 2018, the Port and the City issued the required 45-day notice stating that the West Oakland TMP is under development and will be made available with an easy-to-understand summary for public review and comment in mid-November, consistent with the requirements of MM PO-1. On November 16, 2018, the City and the Port issued the notice of public review and comment on the draft West Oakland TMP, providing a six-week comment period until January 4, 2019. The draft West Oakland TMP was provided to EPA and DOT for review and comment, simultaneous with the public review. Port and City staff finalized the West Oakland TMP to address comments received through the stakeholder engagement process. The final West Oakland TMP contains Appendix I,

which includes a written Response to Comments that documents comments received on the November 16, 2018, draft West Oakland TMP and how the comments were addressed in the final West Oakland TMP. Port staff presented the final draft West Oakland TMP to the Board on April 25, 2019. On April 25, 2019, the Board approved the Resolution to delegate to the Port Executive Director the authority to approve the West Oakland TMP. On April 25, 2019, the City Administrator approved the West Oakland TMP. On April 29, 2019, the Port Executive Director approved the West Oakland TMP. The final West Oakland TMP, with an easy-to-understand summary, is posted on both the City's and the Port's public websites.

6. The commitment in this Section II.C. is complete.

Regarding the following subsections II.D through II.J below, which relate to the City's and the Port's specific commitments in this Agreement relative to the OAB, the City, and the Port acknowledge that, as recipients of federal financial assistance (see Section I.A above), their obligation to comply with federal nondiscrimination laws extends outside of the OAB. Upon request of the City or the Port, EPA will provide technical assistance regarding the City's or the Port's obligations under federal nondiscrimination laws, including Title VI and EPA's implementation regulations, with respect to their programs, services and activities outside the OAB.

D. OAB Notice of Nondiscrimination

1. The EPA nondiscrimination regulation requires recipients of financial assistance to post a Notice of Nondiscrimination ("Notice") in a prominent place and identify the Nondiscrimination Coordinator. The regulation further requires that the Notice be made available in languages other than English where appropriate, such as Spanish and Chinese (as well as any other languages identified by the analysis contained in the City's and the Port's OAB LEP Plans (*see* Section II.H below)), and will be made accessible to individuals with disabilities.

2. The City has posted its Notice on its public website in English, Spanish, and Chinese, which is sufficient to complete the Notice commitment of Section II.D of this Agreement.

3. The Port has posted its Notice on its public website in English, Spanish, and Chinese, which is sufficient to complete the Notice commitment of Section II.D of this Agreement.

E. OAB Grievance Procedures

1. The EPA nondiscrimination regulation requires recipients to adopt grievance procedures that assure the prompt and fair and resolution of discrimination complaints.

2. The OAB Grievance Procedures will at a minimum address the following:

   a. Who may file a complaint under the procedures;

   b. Which informal process(es) are available, and the options for complainants to bypass an informal process for a formal process at any point;

   c. That a prompt and fair investigation of any allegations filed under federal nondiscrimination statutes will be conducted:

   d. That the preponderance of the evidence standard will be applied during the analysis of the complaint;

   e. Contain assurances that retaliation is prohibited and that claims of retaliation will be handled promptly if they occur;

   f. That complaints will be investigated in a prompt and fair manner; and

   g. That written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found, and a description of the investigation process. The notice shall also offer persons with disabilities assistance in filing a complaint.

3. The City has posted on its website its Discrimination Complaint and Compliance Review Procedure in English, Spanish, and Chinese, which is sufficient to complete the Grievance Procedures commitment of Section II.E of this Agreement.

4. The Port has posted on its website its Discrimination Complaint and Compliance Review/Grievance Procedure in English, Spanish, and Chinese which is accessible to individuals with disabilities, which is sufficient to complete the Grievance Procedures commitment of Section II.E of this Agreement.

F. Designation of a Nondiscrimination Coordinator

1. The EPA nondiscrimination regulation requires recipients to designate at least one person to coordinate nondiscrimination compliance efforts.

2. The City and the Port have designated an OAB Nondiscrimination Coordinator. The OAB Nondiscrimination Coordinator's responsibilities include the following duties related to programs and activities at the OAB:

   a. Provide information to individuals regarding their right to participation in any City or Port program or activity at the OAB without regard to their race, national origin, creed, color, sex,

disability or age, as well as the right for any individual or group to be free from intimidation and retaliation for the purpose of interfering with any right or privilege guaranteed by nondiscrimination laws and regulation, or because an individual has filed a complaint or has testified, assisted or participated in any way in an investigation, proceeding or hearing regarding discrimination, or has opposed any unlawful discriminatory practice. Also provide notice of the City's and the Port's formal and informal OAB grievance processes and the ability to file a discrimination complaint with the City or the Port.

b. Establish grievance policies and procedures or mechanisms to ensure that all discrimination complaints related to City or Port programs or activities at the OAB under federal nondiscrimination laws are processed fairly and promptly. One element of any policy and procedure or mechanism must include the City and the Port providing meaningful access for limited-English proficient individuals and individuals with disabilities to the City's or the Port's OAB programs and activities.

c. Track all discrimination complaints related to City or Port programs or activities at the OAB under federal nondiscrimination laws including any patterns or systemic problems.

d. Conduct an annual review of all formal and informal discrimination complaints filed with the OAB Nondiscrimination Coordinator under federal nondiscrimination laws and/or any other complaints related to programs or activities at the OAB independently investigated by the City or the Port to identify and address any patterns or systemic problems. In doing so, develop and implement actions to overcome such patterns or problems.

e. Inform and advise the staff assigned responsibilities related to the OAB regarding the City's and the Port's obligations to comply with federal nondiscrimination laws and serve as a resource on such issues.

f. With respect to programs and activities related to the OAB, update complainants on the progress of their discrimination complaints under federal nondiscrimination laws and promptly inform complainants as to any determinations made.

g. Annually assess the efficacy of efforts to maintain compliance with federal nondiscrimination laws concerning OAB programs and activities; and in doing so, the City and the Port will undertake appropriate actions to ensure compliance.

h. Provide or procure appropriate services to appropriately train City and Port employees on the City and the Port's respective OAB nondiscrimination policies and procedures, as well as the nature of the federal nondiscrimination obligations.

3. The OAB Nondiscrimination Coordinator designated by the City and the Port, respectively, will not have other responsibilities that create a conflict of interest with the OAB Nondiscrimination Coordinator responsibilities (*e.g.*, also serving as the legal advisor on discrimination claims filed against the City or the Port).

4. The City has identified its Civil Rights Compliance Coordinator on its website and has established the responsibilities of said coordinator which is sufficient to complete the Coordinator commitment of Section II.F of this Agreement.

5. The Port has identified its Civil Rights Compliance Coordinator on its website and has established the responsibilities of said coordinator which is sufficient to complete the Coordinator commitment of Section II.F of this Agreement.

G. Public Participation

1. The City and the Port understand that meaningful public involvement consists of informing, consulting, and working with potentially affected communities at various stages of the process to address their needs. *See* EPA's Public Participation Guidance found at 71 FR 14,207. 14,210 (March 21. 2006).

2. The City and the Port will continue to implement requirements for public participation under the Brown Act. the City and Port Sunshine Ordinances. the SCA/MMRP, the MAQIP. the CTMP, and CEQA. The City and the Port shall conduct public participation in accordance with the nondiscrimination provisions in this Agreement. The City and the Port may request technical assistance from EPA to ensure that outreach and public participation protocols comply with nondiscrimination guidelines.

3. The City and the Port will continue to implement the requirements of Title VI and other federal nondiscrimination laws. and EPA's implementing regulations to the extent required by law.

4. The City's and the Port's commitments under this Section II.G do not require notice of completion. By signing this Agreement. these commitments are complete.

H. Access for Persons with Limited-English Proficiency

1. The City and the Port have implemented their respective Limited English Proficient ("LEP") Plans to provide meaningful access to OAB programs, services, and activities for limited-English proficient individuals, which includes language assistance services that results in accurate, timely, and effective communication at no cost to limited-English proficient individuals.

2. The City and the Port have conducted the appropriate analysis described in EPA's LEP Guidance found at 69 FR 35602 (June 25, 2004), and http://www.lep.gov to determine what language services it may need to provide to LEP individuals so that they can meaningfully participate in the process. This information is contained in the City's and the Port's LEP Plans, which will be updated periodically, as provided for in the respective LEP Plans.

3. The City and the Port will make the West Oakland community aware of their respective LEP Plans through on-line, print and by other appropriate methods; and will inform the public about how to access the City's and the Port's language assistance services. This information has been provided in Spanish and Chinese.

4. The City has posted its LEP Plan on its website and it is available in appropriate languages other than English as provided for in Section II.H.3. Accordingly, this commitment is complete.

5. The Port has posted its LEP Plan on its public website in English, Spanish, and Chinese, which is sufficient to complete the commitments contained in Section II.H of this Agreement.

I. Access for Persons with Disabilities.

1. The City and the Port will promote the full and fair participation of persons with disabilities by complying with all applicable local, state, and federal laws at the OAB, including the requirements under law and regulation to:

   a. Provide at no cost appropriate auxiliary aids and services including, for example, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals as necessary to provide effective communication or an equal opportunity to participate fully in a timely manner and in such a way as to protect the privacy and independence of the individual.

   b. Provide individuals with disabilities a right to request accommodations and receive reasonable accommodations appropriate to their needs to participate in an accessible, nondiscriminatory, and integrated setting.

2. The City and Port have implemented disability plans for providing individuals with disabilities the opportunity for meaningful access and opportunity for full participation at the OAB.

3. The City and the Port will make the West Oakland community aware that services for individuals with disabilities are available, at no cost, through posting of their respective disability plans on their websites.

4. The City has posted its ADA Plan. which incorporates Section 504, on its website and it is available in appropriate languages other than English as provided for in Section II.H.3, which is sufficient to complete the disability access commitment of Section II.I of this Agreement.

5. The Port has posted its Access for Members of the Public with Disabilities on its website. which is sufficient to complete the Disability Access commitment of Section II.I of this Agreement.

J. Training

1. Within 120 days after this Agreement is fully executed, the City and the Port will train all appropriate Port and City staff assigned to oversee development or tenancies on the OAB regarding the commitments contained within this Agreement. Upon request of the City and/or the Port, EPA will provide technical assistance regarding the training of the City's and/or the Port's respective staffs, including technical assistance from EPA with respect to the City's and the Port's federal nondiscrimination compliance efforts outside of the OAB.

2. Within 90 days after the initial training event, the City and the Port also will develop respective plans to provide such training as a routine part of the on-boarding process for new employees who work on the OAB.

3. The City's and the Port's commitments under this Section II.J will be complete once the City and the Port notify EPA that their training and respective on-boarding plans as described in Section II.J.1 and 2 are complete.

III. BACKGROUND

A. The West Oakland Community

1. West Oakland is located west of downtown Oakland and is generally bounded by Interstate 580 and 40th Street to the north; Interstate 980 to the east; Interstate 880 to the west; and Interstate 880 and 2nd Street to the south. as defined in the West Oakland Specific Plan.

2. As of 2019, the Port is among the 10 busiest seaports in the United States and the 3rd busiest seaport in the State of California. Established in 1927,

the Port includes approximately 1,300 acres of maritime-related facilities, including 18 deep-water ship berths. In 2017, the marine terminal operators reported approximately 2 million total truck trips, although each day's truck volume varies. In 2016, the Port moved approximately 2.37 million 20-foot equivalent units ("TEU") into and out of the Bay Area; this flow of containers is associated with $59.2 billion in goods and supports over 510,000 jobs in California.[2]

3. In 2006, the California Air Resources Board ("CARB") undertook a multi-year collaborative study with the Bay Area Air Quality Management District ("BAAQMD") and the Port to conduct a health risk assessment ("HRA") to estimate public health risks from exposure to DPM emissions in West Oakland in 2005. The CARB HRA found that, in 2005, the West Oakland community was exposed to DPM ambient concentrations that were almost three times higher than the average background DPM levels in the Bay Area. Due to exposure to higher DPM in the ambient air, the HRA concluded that the West Oakland community had an increased estimated lifetime potential cancer risk. The CARB HRA determined that emissions from on-road heavy-duty trucks result in the largest contribution to the overall potential cancer risk levels in the West Oakland Community, followed by ocean-going vessels (combined transiting, maneuvering, anchoring, and hoteling emissions), harbor craft, locomotives, and cargo handling equipment.

4. Based on the results of the HRA, the Port, BAAQMD, CARB, and EPA, took the following actions, among others:

   a. The Port developed the MAQIP which was approved by the Board on April 7, 2009, after the Board adopted the Maritime Air Quality Policy Statement on March 18, 2008 ("Policy Statement"). The Policy Statement documented the Port's adoption of the goal of reducing the health risks to its neighboring communities (expressed as increase in cancer risk) related to exposure of people to DPM emissions from Port sources by 85 percent by the year 2020 through all practicable and feasible means; reduction will be calculated based on the Port's 2005 Seaport Emissions Inventory baseline;

   b. CARB promulgated and enforced regulations on drayage trucks, harbor craft, off-road equipment, ocean-going vessels, and cargo handling equipment;

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[2] The Local and Regional Economic Impacts of the Port of Oakland Seaport for CY2016, Martin Associates, 2018.

c. The Port created and enforced a noncompliant truck ban under the Port's authority. Tariff No. 2-A, Section 02400;

d. BAAQMD commenced real-time monitoring of particulate matter ("PM") 2.5 in West Oakland in 2009 at 1100 21st Street. BAAQMD documents the data from this monitor in an Air Monitoring Network Plan Report issued each July (reflecting data for the prior year) and available online at http://www.baaqmd.gov/about-air-quality/air-quality-measurement/ambient-air-monitoring-network;

e. CARB, BAAQMD, the Port, and EPA collectively invested $33 million (with the Port's share being $5 million) in funding to initially retrofit 1,319 trucks and to subsequently replace an additional 627 trucks. See March 29, 2011, Board Agenda Report: https://www.portofoakland.com/wp-content/uploads/2015/10/2011_agenda.pdf;

f. In 2013, the Port applied for and was awarded an EPA National Clean Diesel Funding Assistance program grant in the amount of $415,932 to repower four rubber tire gantry ("RTG") cranes to help reduce the diesel emissions related to off-road equipment operating on the Port's marine terminals. The RTG repowering project was completed and the grant file closed by the end of 2017;

g. In 2017, the Port advocated before the CARB board for a more expansive eligibility determination for the CARB Zero and Near Zero Freight Facilities ("ZANZEFF") transportation electrification program, as the original staff guidelines could have excluded the majority of the seaport tenants and customers from receiving grant funding. As part of the ZANZEFF grant project, it is expected that $9 million will be awarded to improve air quality associated with Port seaport operations, out of a larger multi-port grant award, to demonstrate the viability of zero emissions cargo handling equipment and heavy-duty Class 8 electric trucks in seaport operations. The Port entered into a Memorandum of Understanding ("MOU") with the Port of Long Beach dated February 7, 2019, to implement the ZANZEFF grant project. As part of the ZANZEFF project and pursuant to the MOU, the Port committed to design and install ten charging stations and provide for a financial match of at least $1.25 million. See: https://ww2.arb.ca.gov/news/carb-announces-more-200-million-new-funding-clean-freight-transportation; June 14, 2018, Agenda Report https://portofoakland.legistar.com/LegislationDetail.aspx?ID=3519486&GUID=1095ED9D-2140-4FC4-86FC-BE9D5C85EFAA. January 24, 2019 Agenda Report

http://portofoakland.legistar.com/gateway.aspx?M=F&ID=a3d0ecf0-8ce6-4db5-b316-c29957c31901.docx;

h. In 2018, the Port assisted with the successful application from one of its marine terminal operators for nearly $5 million in Carl Moyer air quality program funding from BAAQMD to replace and upgrade the diesel engines from all thirteen of that terminal operator's gantry cranes to a hybrid-propulsion system that reduces emissions of some air pollutants by 99 percent. As of July 2019, four of the thirteen cranes have been successfully repowered and are in use. The remaining nine cranes will be done in series. See https://www.portofoakland.com/press-releases/port-oakland-terminal-wants-clean-hybrid-cargo-handlers/, http://www.baaqmd.gov/~/media/files/board-of-directors/2018/brd_min_060618-pdf.pdf?la=en, and http://www.baaqmd.gov/~/media/files/board-of-directors/2018/bod_agenda_060618-pdf.pdf?la=en; and

i. The Port invested approximately $55 million (including grant funding) to install shore side power at 11 berths at the Seaport. Port tenants invested an additional several million dollars on the installation of shore side power on additional berths at the Seaport. The shore side power implementation program was led by the Port but was in association with private marine terminal operators and ship owners, and was completed with grant funding assistance from CARB, BAAQMD, DOT (via a Transportation Investments Generating Economic Recovery ("TIGER") grant) and the Metropolitan Transportation Commission (via a federal pass-through DOT Congestion Management and Air Quality program grant). See November 30, 2010, Board Agenda Report https://www.portofoakland.com/wp-content/uploads/2015/10/2010_agenda.pdf.

5. These efforts, in combination with implementation of CARB regulations requiring emissions reductions from cargo handling equipment, drayage trucks, refrigerated transportation units, ocean-going vessels, harbor craft and ships at berth, have reduced DPM emissions from Port seaport operations. In 2018, the Port conducted the fourth update to its Seaport Emissions Inventory, using data from 2017 operations. The 2017 Seaport Emissions Inventory calculated that DPM emissions from trucking decreased 98% from the 2005 baseline. The Port's 2017 Seaport Emissions Inventory concluded that, overall, DPM emissions from the seaport sources decreased by 81%. These projections are based on emission inventory calculations rather than continuously measured emissions, using methods consistent with CARB's own inventories. See https://www.portofoakland.com/community/environmental-stewardship/seaport-air-emissions-inventory-2005/.

6. Since 2008, when the CARB HRA was published, the California Office of Environmental Health Hazard Assessment ("OEHHA") has changed its guidelines governing the assessment of health risk. The new OEHHA guidelines increased the calculation of health risk from DPM by a factor of approximately 3 to 4 times compared to those used in the CARB HRA. Thus, while DPM emissions and concentrations in the ambient air have been reduced from 2005 levels, OEHHA's updated health risk assessment guidelines project a greater health risk impact from DPM in the ambient air than was projected in the 2008 HRA.

7. According to the 2017 American Community Survey of the US Census Bureau, the demographics of West Oakland are approximately as follows: Caucasian 23.6%; Hispanic 17.6%; Black or African-American 41.7%; Asian 11.1%; Pacific Islander 0.5%; Native American 0.5%; and two or more races 4.8%. The West Oakland data is composed of the following 13 census tracts: 4014, 4015, 4016, 4017, 4018, 4022, 4024, 4025, 4026, 4027, 4105, 9819, and 9820.

B. General Public Participation Activities of the City and the Port

1. The City and the Port have carried out public participation in their decision-making processes. Both the City Council and the Board hold open public meetings pursuant to California's Brown Act ("Act") as well as the Sunshine Ordinances adopted by the City Council and the Board, respectively, which Ordinances provide for ten days (instead of three days under state law) for advance notice for regular meetings. Port Ordinance No. 4265, Exhibit A, Section V; Oakland Municipal Code 2.20.080(A).

2. In 1996, the City established the West Oakland Community Advisory Group ("WOCAG") to provide for West Oakland community involvement in the planning for OAB reuse. WOEIP has been involved in leadership positions for the development of the City's and the Port's air quality improvement and emission reduction programs, including as co-chairs of the Task Force for the Port's MAQIP and 2020 and Beyond Plan (described further below).

3. The Port's Social Responsibility Division ("SRD") reports directly to the Port Executive Director. The SRD "aims to facilitate inclusion, fairness, equity, and access to economic opportunities, programs and services of the Port for the people and businesses in the Port community through innovative policies and programs, strategic partnerships, and outreach..."[3] The Port's SRD's efforts were cited by EPA as one of several examples of

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[3] The Port's Budget Summary (One-Year Operating and Capital Budget Fiscal Year Ended June 30, 2019 and Five-Year Operating Forecast and Capital Improvement Plan Fiscal Years ending June 30, 2019 through 2023) ("Budget Summary"), at p.98.

how ports engage communities in the EPA's July 2016 Draft Environmental Justice for Ports: The Good Neighbor Guide to Building Partnerships and Social Equity with Communities. https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100OYGB.pdf

4. The Port's Environmental Programs and Planning Department ("Environmental Department") "has primary responsibility to promote Port business development, including the 5-year CIP, through environmental stewardship and ensure environmental compliance with all federal, State, and local statutes and regulations in all Port plans, activities, operations, and development programs and projects..."[4] The Port's Environmental Department led the MAQIP planning process and is leading the 2020 and Beyond Plan process described further below.

C. The Oakland Army Base Redevelopment

1. In 1995, the U.S. Army designated the OAB for closure pursuant to the Defense Base Realignment and Closure Act of 1990. In July 2002, the City adopted and approved the Redevelopment Plan for the OAB Redevelopment Project and established an approximately 1,730-acre redevelopment project area. The Redevelopment Plan divides the OAB into the City's Gateway Development Area (approximately 193 acres) and the Port Development Area (approximately 187 acres).

2. The OAB Redevelopment Plan was approved in 2002 after review and public participation pursuant to the California Environmental Quality Act ("CEQA"). The CEQA process allowed for public review and comment and resulted in an Environmental Impact Report ("EIR") that identified mitigation measures, which the City and the Port adopted.

3. In 2012, the City adopted an amended OAB Reuse Plan and prepared an addendum to the EIR, a process that resulted in the approval of additional mitigation measures set forth in the OAB SCA/MMRP. In July 2013, the City Council revised the SCA/MMRP to require additional public participation by adding MM PO-1. This mitigation measure specifies a process for public review of a specified list of plans (required by other mitigation measures) related to air quality and trucking.

4. MM PO-1 (Stakeholder Review of Air Quality and Trucking Plans) in the SCA/MMRP directs the City and its developer to engage the public in the development of required plans[5] related to potential air quality and trucking

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[4] Budget Summary, at p. 90.

[5] Construction Management Plan; Construction-Related Air Pollution Controls; Truck Management Plan; Maritime and Rail-Related Emissions Reduction Plan; Truck Diesel Emission Reduction Plan; Transportation Control Measures; Energy-Conserving Fixtures and Designs; Demonstration Projects; Parking and Transportation Demand Management; Construction Traffic and Parking; and Traffic Control Plan – Hazardous Materials.

impacts during construction and operation of the project. MM PO-1 specifies that the City shall maintain a stakeholder list (the stakeholder list includes anyone who requests to be on the list and currently contains approximately 55 people. including principals of the WOEIP, community-based organizations, residents and business. and representatives of governmental agencies); hold quarterly public meetings with stakeholders to discuss the status of the required plans; provide at least 45-days' notice that a draft plan is under development; provide the draft plan to the stakeholder list with 17 days for stakeholders to review and comment; and following approval of each plan by the City Administrator, provide an informational presentation at a public meeting of the City Council regarding public outreach for, and the content of, the specific plan. Pursuant to MM PO-1, the City Administrator has the authority to approve each of the required plans. An informational presentation to the City Council must be within 90 days of the City Administrator's approval of each plan. The first plan subject to the public outreach process of MM PO-1 was for the City's infrastructure project and was released for public review in July 2013. and the first stakeholder meeting was in September 2013. Since that time. quarterly stakeholder meetings and public review of the specified plans have taken place once the plans have been submitted for City review.

5. The Northeast Gateway Construction Management Plan ("CMP") and the Construction-Related Air Quality Plan ("Northeast Gateway Air Quality Plan") were subject to the public participation process specified in MM PO-1. A presentation of the initial version of the CMP took place at a quarterly stakeholder meeting on March 3. 2016. This meeting included community-based organizations, community residents, and interested governmental agencies. Using input received at that meeting. a revised version of the construction-related diesel emission reduction and air quality measures was submitted to the City on April 25. 2016. Subsequently, the draft CMP was released to the stakeholders on May 13. 2016, for the official 17-day public review period. Written comments were received, reviewed, and considered. The draft CMP was revised again on July 18. 2016. July 27. 2016, and August 30, 2016, based on input the City received from the public, as well as from the regional and state-wide air quality agencies. When the applicant submitted the final draft CMP on August 30. 2016, it also provided responses to comments received from stakeholders. The Northeast Gateway Air Quality Plan contains a set of measures to reduce diesel emissions and reduce air quality impacts during construction. Throughout this process, the developer undertook three separate revisions of the Northeast Gateway CMP and Air Quality Plan. The City Administrator approved the final Northeast Gateway CMP and Air Quality Plan on October 4. 2016.

6. The 2012 Initial Study/Addendum, upon which the City's 2012 approval of the OAB Redevelopment Plan was based, documented several

significant health risk impacts due to exposure to substantial toxic air contaminants, despite inclusion of several mitigation measures related to air quality. These health risk impacts were classified as significant and unavoidable impacts. Because this document was prepared as an Addendum under California's CEQA regulations, the City was not required to and did not circulate a draft Addendum prior to holding a public hearing on the Addendum. *See* Section 15164(c) of the CEQA regulations.

7. In addition, discussions continued outside the purview of CEQA among federal, state and local environmental and public health agencies; the City; the Port; the community; and other stakeholders to consider further reductions to these projected impacts.

8. Prior to adopting the 2012 Initial Study/Addendum, the City convened numerous meetings with City Council members and community members to discuss the project and negotiate community benefits. The City and the community groups entered into a Cooperation Agreement dated December 20, 2012. addressing labor-related issues and creation of a Jobs Center. The Cooperation Agreement was signed by the Alameda County Building and Construction Trades Council, Alameda County Central Labor Council and certain community-based organizations, including the WOEIP. *See* http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak062012.pdf.

9. The Port and CenterPoint-Oakland Development I LLC ("CenterPoint") entered into a Ground Lease Agreement dated January 8, 2018, covering approximately 27 acres of Port-owned land at the OAB. CenterPoint intends to develop a Seaport Logistics Complex on the premises. The Ground Lease Agreement includes as Attachment B an Operations Jobs Policy. https://portofoakland.legistar.com/View.ashx?M=F&ID=5525078&GUID=05AE4CD1-ABBA-4872-A352-8B78BD1302DE. The Port also entered into a Cooperation Agreement dated September 7, 2017, with thirteen community-based organizations, including the WOEIP. https://portofoakland.legistar.com/View.ashx?M=F&ID=5525082&GUID=850C2B8F-E371-48C8-82DF-14F87FC75B8C. The Operations Jobs Policy was between the Port, CenterPoint, and two major community coalitions (Revive Oakland and Oakland Works). These represent over 30 community-based organizations, some of them include the East Bay Alliance for Sustainable Economy, WOEIP, West Oakland Neighbors, and Oakland Community Organizations. CenterPoint retained a community outreach/engagement firm (Craig Communications) to support its outreach/engagement efforts. CenterPoint distributes a bimonthly project update to keep stakeholders informed of current project activities and major milestones. The project update includes a list of "Community

Protection Measures" being implemented, as well as contact information for any questions.

10. Additional public outreach has been undertaken pursuant to the Port's CTMP, discussed in Section III.E.2; the City's MM PO-1, discussed in Sections III.C.3 and III.C.4: and the West Oakland TMP discussed in Section II.C.

D. Air Quality Efforts of the City and the Port

1. The City's OAB development project consists of public improvements and private improvements. Prior to the start of public improvements, the City implemented an Air Quality Monitoring Program for its public improvements construction.

2. As part of the Community Benefits Agreement negotiated with the community to address community concerns about local air quality and public health, the City established an Air Quality Program. The installation of three air quality monitoring devices, one at the OAB and two in West Oakland, allows the City, the air quality agencies, and the public access to air quality data specific to West Oakland. This program recorded data for the past four years throughout the public improvement work. The results have been summarized into quarterly reports since the fourth quarter of 2013 and are available online at: http://ngem.com/OAB_AQM/.

3. As described above in Section III.C.5, the Northeast Gateway Air Quality Plan, prepared in accordance with MM PO-1 (Public Outreach Mitigation), contains a set of measures to reduce diesel emissions and reduce air quality impacts during construction, including:

   a. utilizing an on-site wind speed sensor to determine when site/soil watering is necessary during high winds;

   b. encouraging the use of Tier 4 off-road construction equipment to reduce diesel emissions during construction, with, at a minimum, Tier 3 off-road engines for all equipment brought on site;

   c. not allowing Tier 1 or Tier 2 equipment during construction of the building:

   d. requiring portable construction equipment to use on-site electricity instead of diesel generators; and

   e. requiring a Compliance Manager to maintain daily logs and complete training from CARB for emissions evaluations.

4. On October 20, 2017, the Port and the City met with representatives of CARB, BAAQMD, EPA Region 9, Alameda County Department of Public Health, the Metropolitan Transportation Commission, and the Alameda County Transportation Commission to discuss responses by the Port and the City on a planning proposal made by the BAAQMD entitled "BAAQMD Emissions Reduction Actions for the Port of Oakland/Former Oakland Army Base."

5. Before and after the October 20, 2017, meeting, both Port and City staff participated in multiple air quality planning meetings (including those on September 8, 2017, September 15, 2017, October 3, 2017, October 20, 2017, November 7, 2017, and December 4, 2017) in coordination with the above agencies to analyze near- and long-term efforts and projects that would support emissions reductions related to the operations at the seaport and the OAB. In its October 18, 2017, response, the Port proposed a set of source categories and specific emissions reduction actions that would have the greatest impact on further reducing DPM, GHG, and other criteria pollutant emissions.

6. Since 2005, according to calculations in the Port's third update to its Seaport Emissions Inventory, the Port's emissions reductions programs and projects have reduced seaport-related DPM emissions by 81%. The Port undertook the initial 2005 baseline emissions inventory which was updated three times in 2012, 2015, and 2017, respectively. *See* http://www.portofoakland.com/files/PDF/Port_Oakland_2017_Emissions_Inventory.pdf. In the Port's October 18, 2017, letter, the additional proposed emission control strategies focused on the following sources: harbor craft, cargo-handling equipment, and ocean-going vessels. Potential measures for ocean-going vessels include alternative emissions control devices, vessel speed reduction, and additional shore-power vaults. The Port also proposed electrical system upgrades and improvements to promote near-zero and zero-emissions equipment. The proposed emissions control strategies would require cooperation between the Port, BAAQMD, entities responsible for vessel safety at sea and in San Francisco Bay, and the regulated entities such as harbor craft owners, ocean-going vessel fleets, and terminal operators.

7. Between 2007 and 2009, the Port convened neighborhood and business representatives and State of California and regional air quality regulators to develop the MAQIP. The Port established and convened the MAQIP Task Force - comprised of 35 stakeholders, including representatives of the West Oakland neighborhood, Port tenants, environmental advocacy groups, federal, State and regional air quality regulatory agencies, Alameda County public health agencies, and maritime-related businesses - to develop the goals and actions to guide emissions reductions from maritime mobile sources and contribute to improving local public health in West Oakland.

8. With MAQIP Task Force public participation, the Port finalized, and the Board approved the MAQIP in April 2009. The MAQIP serves as a master plan for the Port's long-term programs and projects to reduce the health risk impacts associated with air emissions from maritime equipment serving the Port. The MAQIP implements the Port's emissions reduction target expressed in the Policy Statement described in Section III.A.4.a.

9. Upon approval of the MAQIP in April 2009, the Port committed to reconvene the MAQIP Task Force in five and ten years to review progress towards the plan's goals and reconsider strategies if modification was needed. To fulfill this commitment, Port staff held a public meeting on November 19, 2013, to present a progress report on the MAQIP to MAQIP Task Force members and other interested members of the public. The Port held co-chairs meetings on January 26, 2018, February 9, 2018, March 12, 2018, and April 18, 2018, to assist in preparing for the MAQIP Task Force reconvening. The Port reconvened the MAQIP Task Force on February 23, 2018, and May 9, 2018, to consider the next phase of specific emissions control strategies, to report on progress on the Port's emissions reduction efforts, and begin seaport air quality planning for the period 2020 and beyond with stakeholder input. The Port held another MAQIP co-chairs meeting on June 5, 2018, to prepare for the next Task Force meeting which was held on June 21, 2018, to focus on the Port's proposed 2020 and Beyond Plan.

10. The Port prepared and posted the Draft 2020 and Beyond Plan on the Port's website on June 29, 2018. The Draft 2020 and Beyond Plan was discussed in open session at the July 12, 2018, Board meeting. According to the Draft 2020 and Beyond Plan, it builds on the foundation established by previous air quality programs and projects, primarily the MAQIP. It renews MAQIP's focus on emissions reduction measures by placing these within the context of the State's GHG emissions reduction targets and zero-emissions initiatives. Like the MAQIP, the Draft 2020 and Beyond Plan provides a master plan-level framework to guide decision-making, policy and action. Whereas the MAQIP focused largely on reducing emissions from existing maritime equipment, the Draft 2020 and Beyond Plan addresses not only equipment, but also fuels, operations, and, significantly, infrastructure. The stated "Vision" of the Draft 2020 and Beyond Plan is: "...the transition of Seaport operations to zero-emissions operations through changes in equipment, operations, fuels, and infrastructure. The vision of the Plan is to contribute to cleaner regional and local air quality; reduce toxic air contaminants and GHG emissions; sustain Seaport business growth, financial health, and development in a competitive market; and contribute to improvements in local public health and quality of life."

11. The Port issued a Notice of Public Review and Comment dated June 29, 2018, inviting the public to comment on the Draft 2020 and Beyond Plan.

On July 24, 2018, the Port issued a revised Notice of Public Review and Comment ("Revised Notice") indicating that comments on the Draft 2020 and Beyond Plan were due by 5:00 pm on Friday, August 31, 2018. The Revised Notice indicated that the Port would present responses to comments at the September 26, 2018, Seaport Air Quality Task Force Meeting.

12. On August 22, 2018, the MAQIP co-chairs held a meeting to discuss the Draft 2020 and Beyond Plan. The Task Force convened again on September 26, 2018, where the Port presented an overview of key areas of the Draft 2020 and Beyond Plan with corresponding input received through public comment and Port responses to public feedback. In addition, at the September 26, 2018, meeting, the Task Force received a presentation on Advancing Race Equity that provided guidance on advancing air quality and public health and heard a discussion by representatives of the maritime industry on their perspectives on the state of clean air technologies and implementation of air quality emissions reductions measures. At the request of stakeholders, the Port issued a Revised Draft of the 2020 and Beyond Plan ("Revised Draft") on December 14, 2018, for additional public review and comment. The deadline for comments was initially January 17, 2019. The Revised Draft included all of the proposed Appendices associated with the subject plan, public comments made during the public review period, responses, and revisions to the Draft 2020 and Beyond Plan, where applicable. The Revised Draft included a 250 page "Response to Comments on the June 29, 2018 Draft Plan" which responded individually to over 300 comments received on the Draft 2020 and Beyond Plan. Appendix G of the Revised Draft is the Public Engagement Plan associated with the 2020 and Beyond Plan. An additional co-chairs meeting was held on December 18, 2018, and an additional Task Force Meeting was held on January 10, 2019, to review and discuss the Revised Draft. On January 15, 2019, WOEIP requested a one-week extension of the January 17, 2019, deadline to provide comments on the Revised Draft. On January 16, 2019, the Port issued a Revised Notice of Public Review and Comment for the Revised Draft extending the deadline for comments to January 24, 2019, at 5pm. A Co-Chairs meeting was held on March 19, 2019, to set the agenda for the next Task Force meeting. A further Task Force Meeting was held on April 23, 2019, to present how comments on the Revised Draft were proposed to be addressed in the final 2020 and Beyond Plan.

13. Many of the comments received on the Revised Draft pertained to the California Low Carbon Fuel Standard ("LCFS"). The goal of the LCFS program is to reduce the carbon intensity of transportation fuel in California. The LCFS program is run by CARB. The LCFS program was approved in 2009 and began in January 1, 2011. The LCFS program was amended in January 2019 to include some port-related fueling activities, such as providing electricity to ships at berth (shore power). Following

suggestions made from stakeholders on the Revised Draft. on March 14. 2019, the Port enrolled in LCFS so it can earn credits for providing shore power electricity. On March 20. 2019, the Port registered its shore power equipment. Future sales of the credits will provide funds that the Port can use to further its 2020 and Beyond Plan goals.

14. On June 13, 2019, the Board passed a resolution approving the 2020 and Beyond Plan and directing Port staff to:

    a. submit an Agenda Report to the Board. within six months following the date of the resolution, on the feasibility of replacing all cargo handling equipment at the Port with zero-emissions equipment including the feasibility of related goals and metrics:

    b. submit an Agenda Report to the Board, within six months following the date of the resolution, on the feasibility of replacing all drayage trucks at the Port with zero-emissions trucks including the feasibility of related goals and metrics;

    c. submit an Agenda Report to the Board, within six months following the date of the resolution. on the capacity of the Seaport's electrical system, tenant needs for electric vehicle charging equipment, and the ability of the Port to provide electric vehicle charging equipment;

    d. submit an Agenda Report to the Board by June 1, 2020, on Port-related strategies and/or implementing actions that are legally required or that, in the Port's judgment, may meet the 2020 and Beyond Plan feasibility criteria (Table D-2), as a result of the final West Oakland Community Air Action Plan prepared pursuant to AB 617 and any potential related updates to the 2020 and Beyond Plan;

    e. submit an Agenda Report to the Board, within 18 months following the date of the resolution. on 2019 emissions associated with ocean going vessels, tugboats, and rail tenants (BNSF and West Oakland Pacific Railroad), and on performance incentive programs of ocean vessels and rail tenats; and

    f. submit an Agenda Report to the Board, within 18 months following the date of the resolution, on costs and financing aspects associated with the 2020 and Beyond Plan including discussions of grant and incentive funding opportunities from outside sources (i.e., CARB. BAAQMD, and the California Energy Commission. etc.) and private sector and Port resources.

E. Truck Management Efforts of the Port and the City

1. As part of the Port's "Vision 2000" Drayage Truck Replacement Program, in late 2005, the Port launched its drayage truck replacement program to provide subsidies to truckers serving the Port of Oakland to "scrap" older heavy-duty diesel trucks and replace these with newer, cleaner-burning heavy-duty trucks. The Port offered truckers up to $40,000 to replace model year 1993 or older trucks with model year 2000 or newer model year trucks with significantly lower emissions. Under this program, approximately 80 trucks were replaced and close to $3,000,000 in incentive funding was awarded.

2. In conjunction with the MAQIP planning process, in 2007, the Port began work on the CTMP. The Port finalized the CTMP in 2009. The CTMP sets forth programs and projects to address air quality, safety and security, business and operations, and community issues associated with trucks serving the Port ("drayage trucks"). Through adoption and implementation of the CTMP, the Port seeks to identify drayage trucks serving the Seaport, support compliance with truck-related regulations to reduce emissions of air pollutants, increase safety and security domain awareness, improve operational efficiencies, reduce traffic and congestion, and involve and educate all Seaport stakeholders.

3. The Port established a CTMP technical advisory committee ("TAC") to assist Port staff in developing the CTMP. The TAC was comprised of West Oakland residents, State and Federal regulators, marine terminal operators, and trucking companies. The TAC met formally on multiple occasions and provided ideas and solutions that shaped the development, programs, and projects of the CTMP.

4. Under the CTMP, the Port contributed $5 million to provide grants to retrofit and/or replace trucks to meet CARB emissions standards and provided truck parking and service facilities on Port property to alleviate the problem of trucks parking in West Oakland. Other elements of the CTMP include provisions for enforcement of truck parking and operations restrictions on neighborhood streets, truck registration for security purposes, and outreach to truckers regarding idling regulations.

5. The City has taken steps to limit the impact of trucking in West Oakland including: (i) establishing truck routes and truck prohibited streets in West Oakland (2006); (ii) developing a new Specific Plan for West Oakland (2014) which specifies the City's policies for future development of West Oakland; and (iii) rezoning of West Oakland which includes restrictions on trucking and truck related businesses (2014).

6. As part of the implementation of SCA/MMRP Mitigation Measure 4.3-7, Port and City staff conducted outreach to residents in West Oakland,

community groups, commerce associations, businesses, elected officials, and truck drivers to solicit input on the development of the West Oakland TMP pursuant to the West Oakland TMP Public Engagement Plan. See Section III.C. The Port and the City completed the Draft West Oakland TMP on November 16, 2018, and circulated the Draft West Oakland TMP for public review and comment. The public review and comment period concluded on January 4, 2019. The final West Oakland TMP included a written response to comments.

F. California's Assembly Bill (AB) 617[6] was approved by the Governor of California on July 26, 2017. It requires CARB to develop a statewide strategy to reduce emissions of toxic air contaminants and criteria air pollutants in communities affected by high cumulative exposure burden and it requires air districts to adopt, for selected communities, a community emissions reduction program.

1. In response to these AB 617 requirements, CARB established the Community Air Protection Program ("CAPP") and selected West Oakland to be among the first 10 communities in California for initial targeted action through a community emissions reduction program, the WOCAP.

2. BAAQMD established the West Oakland Community Air Action Plan Steering Committee ("Steering Committee"), which meets on a monthly basis, since July 27, 2018, and brings together stakeholders, including air district staff, the City and Port, community groups, participants from the school district, land use planning agencies, transportation agencies, local health departments, and other stakeholders. WOEIP is a co-lead, with BAAQMD, on the Steering Committee.

3. The Steering Committee is responsible for advising on the development of the WOCAAP, with the goal that the WOCAP be adopted by BAAQMD by October 2019, as well as disseminating information to and soliciting information from the community stakeholders which the committee members represent.

G. Nondiscrimination Policies and Procedures

During the course of this investigation, EPA reviewed policies and procedures of the City and the Port related to their nondiscrimination programs. This review included the procedural safeguards required by EPA's nondiscrimination regulations, public participation policies and procedures, as well as the legal requirements to provide meaningful access to programs and activities for

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[6] Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402 of, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

individuals with disabilities and limited-English proficiency. *See* Section II.D through II.J.

IV. GENERAL

A. In consideration of implementation of commitments and actions described in Section II of this Agreement by the City and the Port, EPA will end its investigation and consider the complaint in EPA Complaint Nos. 13R-17-R9 and 14R-17-R9 resolved, and EPA will not issue a decision containing findings on the merits of the complaint.

B. EPA will monitor the implementation of the commitments in Section II.D-J of this Agreement as appropriate to ensure they are fully implemented. Once the terms of this Agreement are satisfied, EPA will issue a letter documenting closure of its monitoring action regarding EPA File Nos. 13R-17-R9 and 14R-17-R9.

C. Within thirty (30) days of the completion of each of the commitments identified under Section II.J of this Agreement, the City and the Port will provide documentation demonstrating completion of the commitments by electronic mail to:

Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel (Mail Code 2310A)
Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington D.C. 20460
Dorka.Lilian@epa.gov

D. Within thirty (30) days of receipt of the documentation demonstrating completion of the commitments in Section II.J, EPA will either accept the documentation demonstrating completion of the commitments or notify the City or the Port and provide technical assistance to resolve outstanding issues.

E. If EPA believes that either the City or the Port has not adequately completed the commitments described in Section II.J, then EPA may provide technical assistance to the City or the Port and the affected parties will engage in a consultative process to attempt to resolve any outstanding issues consistent with the terms of this Agreement.

F. This Agreement will remain in effect until closure of EPA monitoring pursuant to Section IV.B, above. The City and the Port understand that a failure to address any alleged breach of any commitment described in Section II.J of this Agreement – after the parties have gone through technical assistance and opportunity to cure described above – may result in EPA resuming the investigation.

V. COMPUTATION OF TIME, EXTENSIONS OF DEADLINES, AND NOTICE

A. As used in this Agreement, "day" will mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period will run until the close of business of the next working day.

B. Either the Port or the City may request an extension of any deadline contained within this Agreement for good cause showing by providing notice to EPA. EPA shall review the Port's or the City's request (as the case may be) for an extension in good faith and not unreasonably withhold consent to an extension especially in those cases where the Port or the City (as the case may be) shows good faith efforts at compliance with the commitments contained within this Agreement and/or where the Port or the City (as the case may be) need to hire staff, hire consultants, or expend funds in order to achieve one of the commitments contained herein.

C. Electronic documents submitted to EPA by the City and the Port via email will be sent to the following email address: **Dorka.Lilian@epa.gov.**

D. Documents submitted by mail by the City and/or the Port to EPA will be sent to:

Ms. Lilian S. Dorka, Director
External Civil Rights Compliance Office,
Office of General Counsel (Mail Code 2310A),
Environmental Protection Agency
1200 Pennsylvania Avenue N.W.,
Washington D.C. 20460

E. Documents submitted by mail by EPA to the City and the Port will be sent to:

Ms. Maria Bee
Chief Assistant City Attorney
City of Oakland, City Attorney's Office
Oakland City Hall
1 Frank H Ogawa Plaza, 6th Floor
Oakland, CA 94612

and

Ms. Michele Heffes
Assistant Port Attorney
Port of Oakland
530 Water Street
Oakland, CA 94607

VI. EFFECT OF THE AGREEMENT

A. The City, the Port, and EPA understand that by signing this Agreement, they agree to provide data and other information in a timely manner in accordance with the requirements of this Agreement. Further, the City and the Port understand that during the monitoring of this Agreement. if necessary, EPA may visit the City and/or the Port, interview staff with counsel present, and request such additional reports or data as are necessary for EPA to determine whether the City and the Port have fulfilled the terms of this Agreement.

B. If any party to this Agreement desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to the City's and/or the Port's program or authorities, or for other good cause, the party seeking a modification will promptly notify the other in writing, setting forth the facts and circumstance justifying the proposed modification. Any modification(s) to this Agreement will take effect only upon written agreement by the City Administrator, the Port Executive Director, and the Director of ECRCO.

C. This Agreement constitutes the entire Agreement among the City, the Port, and EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person will be construed to change any commitment or term of this Agreement, except as specifically agreed to by the City, the Port, and EPA in accordance with the provisions of Section VI.B above.

D. The City and the Port understand that EPA will not close its monitoring of this Agreement until the City and the Port have fully implemented the commitments in Section II.J of this Agreement and that a failure to complete any commitment contained in Section II.J of this Agreement may result in EPA opening an investigation.

E. This Agreement does not affect the continuing responsibility of the City and the Port to comply with Title VI or other applicable federal nondiscrimination laws and EPA's nondiscrimination regulations at 40 CFR Part 7, nor does it affect the investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.

F. The effective date of this Agreement is the date by which the City, the Port, and EPA have all signed the Agreement. This Agreement may be signed in counterparts. The City Administrator, in her capacity as an official of the City of Oakland, and the Executive Director of the Port of Oakland have the authority to enter into this Agreement for purposes of carrying out the obligations and activities outlined in this Agreement.

G. The Director of EPA's ECRCO has the authority to enter into this Agreement for EPA.

On Behalf of the City of Oakland, a municipal corporation, acting by and through its City Council:

Sabrina Landreth,
City Administrator, City of Oakland
Oakland City Hall

7/23/19
Date

This Agreement shall not be valid or effective for any purpose unless and until it is approved by the City Attorney as to form and legality.

Barbara J. Parker
City Attorney, City of Oakland
Oakland City Hall
Resolution # 87817

7/22/19
Date

On Behalf of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners:

Danny Wan
Acting Executive Director
Port of Oakland

7/25/19
Date

This Agreement shall not be valid or effective for any purpose unless and until it is approved by the Port Attorney.

Michele Heffes
Acting Port Attorney
P.A. # 2019-303
Port Resolution No. 19-82

7/25/19
Date

On Behalf of the Environmental Protection Agency:

Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency

July 22, 2019
Date