

**CALENDAR ITEM
C103**

A	Statewide	03/29/12 W9777.295 W9777.234 M. Falkner
S	Statewide	M. Meier

**CONSIDER AUTHORIZING ENTERING INTO A NEW MEMORANDUM OF
AGREEMENT WITH THE CITY OF LOS ANGELES, THE CITY OF LONG BEACH
AND APL CO, PTE LTD, INC. FOR COMMERCIAL SHIPBOARD BALLAST WATER
TREATMENT SYSTEM TECHNOLOGY TESTING**

PARTIES: Port of Los Angeles
P.O. Box 151
425 South Palos Verdes Street
San Pedro, CA 90731

Port of Long Beach
P.O. Box 570
925 Harbor Plaza
Long Beach, CA 90802

American President Lines, Ltd.
1111 Broadway
Oakland, CA 94607

California State Lands Commission
100 Howe Ave., Suite 100-South
Sacramento, CA 95825

PROJECT DESCRIPTION:

This Shipboard Ballast Water Treatment System Technology Testing (Project) consists of two components: (1) Biological testing, which includes developing, conducting and analyzing the biological performance (system efficacy) of the ballast water treatment system; and (2) Engineering analysis, which includes engineering plans, system acquisition, installation, and an evaluation of costs of the treatment system. The ballast water treatment system will be installed and tested aboard the *APL England*, an in-service container ship calling at the Ports of Los Angeles and Long Beach.

BACKGROUND:

The Ports of Los Angeles (POLA) and Long Beach (POLB), along with the California State Lands Commission (Commission), have partnered with the shipping line APL Co. Pte. Ltd (APL) to install and test a shipboard ballast water treatment system designed to

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remove aquatic invasive species from ballast water to prevent their introduction into harbor waters.

In June 2005, the Chesapeake Biological Laboratory, University of Maryland Center for Environmental Science secured a National Oceanic and Atmospheric Administration grant for nearly \$400,000 to develop, conduct, and analyze the results of biological efficacy testing of the ballast water treatment system onboard an in-service cargo vessel. The grant funding did not cover the costs associated with the engineering, acquisition, installation, operations, and evaluation/monitoring of the ballast water treatment system. The total cost of the project is nearly \$1.2 million.

In June 2006, the Commission authorized the Executive Officer to award and execute a contract, in an amount not to exceed \$100,000, with APL to partially offset the engineering, acquisition, installation, and evaluation cost of the shipboard ballast water treatment system research project. APL committed \$100,000 in funding plus the use of its containership for the project. Finally, in June 2007, the POLA and the POLB each agreed to provide \$250,000 to this project.

In May 2008, the Ports of Los Angeles and Long Beach, the Commission and American President Lines entered into an Agreement (POLA Agreement No. 2665/POLB Agreement No. HD-7286), to install a full-scale ballast water treatment system on the vessel, *APL England*. The sole purpose of the Agreement was to establish an Advisory Team and an acceptable plan for the contribution of funds from the Port of Los Angeles, Port of Long Beach, and APL to offset the engineering, acquisition, installation, and evaluation costs of the ballast water treatment system. The Commission's stated roles and responsibilities in the original Agreement included overseeing the execution of the Project and convening meetings of the Advisory Team.

System installation began in late-2008. Due to several unforeseen delays, the evaluation of the ballast water treatment system for biological efficiency has not yet been completed. The original Agreement expired by its own terms on May 7, 2011, before the Project could be completed.

This new MOA will allow for additional time to complete the study and testing of the ballast water treatment system for the project. The new MOA will not cost the Commission additional funds beyond the previously contracted \$100,000 with APL. Staff has analyzed the new MOA, and in light of our contract with APL, has concluded that continued participation in the MOA will be in the best interests of the State.

OTHER PERTINENT INFORMATION:

The staff recommends that the Commission find that the subject authority to execute a Memorandum of Agreement does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the

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environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

PERMIT STREAMLINING ACT:

N/A

EXHIBITS:

Memorandum of Agreement titled "Commercial Shipboard Ballast Water Treatment System Technology Testing," entered into by the City of Los Angeles (POLA), acting by and through its Board of Harbor Commissioner; the City of Long Beach, a municipal corporation, acting by and through its Board of Harbor Commissions (POLB); and American President Lines Co. Pte Ltd (APL).

IT IS RECOMMENDED THAT THE COMMISSION:

1. Find that the subject authority to execute a Memorandum of Agreement is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.
2. Authorize the Executive Officer to execute the Memorandum of Agreement attached as Exhibit A, Titled "Commercial Shipboard Ballast Water Treatment System Technology Testing."

**MEMORANDUM OF AGREEMENT ("MOA")
COMMERCIAL SHIPBOARD BALLAST WATER
TREATMENT SYSTEM TECHNOLOGY TESTING**

THIS MOA, made the ___ day of _____, 2012, is entered into by the CITY OF LOS ANGELES, ("POLA"), acting by and through its Board of Harbor Commissioners; the City of Long Beach, a municipal corporation, acting by and through its Board of Harbor Commissioners ("POLB"), pursuant to authority granted by the Board of Harbor Commissioners of the City of Long Beach at its meeting of _____, 2012; CALIFORNIA STATE LANDS COMMISSION ("CSLC"); and APL Co. Pte Ltd ("APL"). The signatories to this MOA will be collectively referred to as the "Parties".

RECITALS:

WHEREAS, the spread of Aquatic Invasive Species ("AIS") through ship ballast water exchange is recognized by the State of California to be a serious threat to resident species, coastal ecology and the economy and 46 AIS are known to inhabit San Pedro Bay; and

WHEREAS, the Ports of Los Angeles and Long Beach (the "Ports") are empowered by their respective Tidelands Grants to foster the orderly and necessary development of the Ports, consistent with the public trust for navigation, commerce, recreation, and fisheries; and

WHEREAS, the CSLC is vested with all residual jurisdiction and authority over tidelands which have been granted to governmental subdivisions, and under California law has lead state agency responsibility in matters of controlling AIS, has been mandated by the Marine Invasive Species Act to sponsor a pilot program for the purpose of evaluating alternatives for treating and otherwise managing ballast water discharge-related issues; and

WHEREAS, the National Oceanic and Atmospheric Administration ("NOAA") established the National Center for Research on Aquatic Invasive Species ("NCRAIS) to assure cross-NOAA leadership, communication, and coordination of NOAA's research efforts in support of understanding, preventing, responding to, and managing aquatic species invasions in US coastal ecosystems; and

WHEREAS, APL is a major international vessel operating common carrier calling at San Pedro Bay, that supports and practices responsible stewardship of the environment, and is providing a ship for testing of a treatment system designed to help eliminate or reduce AIS from ship ballast water; and

WHEREAS, in 2006, CSLC approved \$100,000 in grant funding to APL to partially offset the engineering, acquisition installation, and evaluation costs of the ballast water treatment system.

WHEREAS, the Parties entered into POLA Agreement No. 2665/POLB Agreement No. HD-7286 on May 8, 2008 ("prior Agreement"), to install a full scale Ballast Water Treatment System on an APL vessel; and

WHEREAS, by the terms of the prior Agreement, POLA and POLB agreed to each contribute a maximum of \$250,000 for the Project, as further described therein; and

WHEREAS, the system was installed and is currently being evaluated for biological efficiency, i.e., the removal of organisms; and

WHEREAS, the prior Agreement expired by its own terms on May 7, 2011, before the Project could be completed; and

WHEREAS, the Parties wish to enter into this Agreement to allow for additional time to complete the study and testing for the Project.

NOW THEREFORE THE PARTIES AGREE THAT:

TERMS AND CONDITIONS:

I. Definitions.

Aquatic Invasive Species ("AIS"). An aquatic species that is non-native to the ecosystem under consideration and whose introduction may cause economic or environmental harm.

Ballast Water. Water, commonly sea water, carried by a vessel to help maintain proper buoyancy, trim and stability.

Treatment System. A system designed to remove AIS from ballast water prior to discharge.

Advisory Team. Technically competent persons representing the parties of this MOA who shall meet, as agreed at the kick-off meeting, to discuss the status of this project.

USCG STEP Program. United States Coast Guard Shipboard Technology Evaluation Program for experimental ballast Water treatment systems.

II. Project Description. The Shipboard Ballast Water Treatment System Technology Testing (Project) will continue to consist of two components: (1) Biological, which includes designing, conducting and analyzing the biological testing methods related to the ballast water treatment system, and (2) Engineering, which at this time involves evaluation of operational aspects and costs of the treatment system. The ballast water treatment system was installed and will be tested aboard the APL England cargo ship which calls on San Pedro Bay. The system has been accepted into the United States Coast Guard STEP Program and will be evaluated for the following:

- A. Biological Efficacy: Test the ability of the system to reduce concentrations of living ballast water organisms, during normal vessel operations.
- B. Engineering Efficacy: Verify operational abilities, effectiveness to reduce ballast tank corrosion, and reliability of the system onboard an active vessel during long-term continuous operations.

Further evaluation of the system shall be carried out in conformity with the U.S. Coast Guard's Shipboard Treatment Evaluation Process (STEP) program.

- III. Project Background. The Chesapeake Biological Laboratory, University of Maryland Center for Environmental Science has been evaluating and studying a ballast water treatment system that (1) prevents the transport of aquatic invasive species in ballast water, and (2) reduces ballast tank corrosion. Since 2000, the study has moved from Proof-of-Concept (Phase I), to the evaluation of deoxygenation of ballast water treatment in a laboratory (Phase II), and to controlled experiments onboard the TECO bulk carrier *Pat Cantrell* that operates from Jacksonville, FL to Port Author, TX (Phase III). The study has proven effective in reducing AIS and ballast tank corrosion and its success is attributed to the system's ability to reduce oxygen and pH levels, and its mechanical disruption of organisms.

In June 2005, the University of Maryland secured a grant from the National Oceanic and Atmospheric Administration entitled, "Shipboard Evaluation of Venturi Oxygen Stripping During Continuous Routine Vessel Operations" (NOAA Grant# NA050AR4171074). The funding will help move the study into phase IV to design, conduct, and analyze the biological testing of the ballast water treatment system efficacy onboard an in-service cargo vessel. The grant funding does not cover the costs associated with the engineering, acquisition, installation, operations and evaluation/monitoring of the ballast water treatment system which is critical to initiating the final stage of the study.

Since the prior Agreement No. 2665 became effective in May 2008, the system was designed, acquired and installed on the APL vessel England.

- IV. Roles and Responsibilities. The sole purpose of this MOA, which is subject to ratification by the governing body or boards of each of the Parties, is to provide, through written agreement, (1) a list of Advisory Team members, and (2) a mutually acceptable plan for the contribution of funds from the Port of Los Angeles, Port of Long Beach, and APL to offset the engineering, acquisition, installation, and evaluation of costs of the ballast water treatment system. This MOA does not address the overall scope of the study, the control technology, vessel selection, treatment system selection, or agreements between APL and other agencies involved in the study. The Parties intend to undertake the following activities pursuant to this MOA:

Port of Los Angeles. The Parties acknowledge that the Port of Los Angeles has already provided \$187,500 to APL under the prior Agreement. The Port of Los Angeles now agrees under this MOA to provide the remaining \$62,500 to APL for the Project, and to participate in the Project as a member of the Project's Advisory Team. In no event shall the total combined contribution of the Port of Los Angeles under the prior Agreement and this MOA exceed \$250,000.

Port of Long Beach. The Parties acknowledge that the Port of Long Beach has already provided \$187,500 to APL under the prior Agreement. The Port of Long Beach now agrees under this MOA to provide the remaining \$62,500 to APL for the Project, and to participate in the Project. as a member of the Project's Advisory Team. In no event shall the total combined contribution of the Port of Long Beach under the prior Agreement and this MOA exceed \$250,000.

California State Lands Commission. As the lead state agency, the CSLC shall oversee the execution of the Project, and convene meetings of the Advisory Team. Upon acceptance of the vessel and treatment system into the USCG STEP, CSLC will consider approval of the treatment system to operate within State waters. In 2006, CSLC approved \$100,000 in grant funding to APL to partially offset the engineering, acquisition, installation, evaluation costs of the ballast water treatment system. In April, 2011, this agreement was extended to June 30, 2012.

APL. APL shall provide \$100,000 in funds and shall participate in the project as a member of the Project's Advisory Team. In addition to the monetary funds, APL will provide direct and indirect in-kind services to complete the Project. This includes, but is not limit to: providing a cargo ship on which to conduct the testing; collecting funds disbursed by POLA and POLB in accordance with this MOA; coordinating the engineering , acquisition, and installation of the treatment system; providing staff time for overall project management, administration, monitoring, and evaluation; paying vendors to complete the engineering and biological testing aboard their vessel; coordinating sampling and testing efforts with the staff from Chesapeake Biological Laboratory, University of Maryland Center for Environmental Science; participating in the USCG STEP and preparing draft and final project reports to all Parties, in compliance with STEP provisions and conditions set forth by CSLC.

V. Payment. Single payments to APL shall be made forty-five (45) days after the Parties receive written request from APL accompanied by final project report in a form acceptable to the Advisory Team.

VI. Schedule and Deliverables. Although the deliverables should be clearly defined at the outset, if there remains a question of when they should be provided at the same time the agreement is finalized, then upon commencement of this MOA, a meeting shall be convened to set the schedule of deliverables, and to establish respective responsibilities for the deliverables, and to mark future meeting dates:

Future meetings shall cover, but are not necessarily limited to:

1. Establishing project meetings (all Parties).
2. Design of monitoring and evaluation program in accordance with USCG STEP Program.
3. Implementation of monitoring and evaluation program in accordance with USCG STEP Program with APL cooperation.
4. Draft project report (APL).
5. Review of draft project report (all Parties).
6. Final project report (APL).

The final report detailing the results of the treatment system shall be provided to all Parties no later than eleven (11) months from the date of execution of this MOA.

All deliverables shall be provided to each member of the Advisory Team.

VII. Termination. The term of this MOA shall not exceed one year from the last date it is executed by all Parties.

Any party may unilaterally terminate their participation in this project by providing 30 days written notice to all Parties. In the event of termination, APL shall reimburse to the respective Parties any unexpended funds provided by the Parties to APL, within 90 days of termination.

- VIII. Issues Resolution. The Parties shall attempt to resolve disputes through good faith discussions amongst the designated representatives. Absent resolution, the issues shall be elevated in writing to the designated point of contact and, if necessary, to this MOA signatories. In the event that the signatories are unable to reach a resolution, the parties shall continue to perform their obligations under this MOA in so far as they are able.
- IX. Modifications. Modifications altering this MOA may be effected by written agreement between the Parties.
- X. Disclaimers. By participating in this MOA, no party waives or yields to any other party to the MOA any regulatory authority or duty that is necessary to the proper exercise that party's discretion or otherwise imposed law. Nothing in this MOA shall be deemed a waiver of the attorney-client privileges of the Parties. By entering into this MOA, the parties are not endorsing the ballast water treatment system to be tested.
- XI. Notices and Communications. The following persons will serve as points of contact for official notices and major issues for the undersigned parties. One designated representative will be identified at the first technical review team meeting for day-to-day communications and issues and to participate in the Advisory Team.

Director of Environmental Management
Port of Los Angeles
P.O. Box 151
425 South Palos Verdes Street
San Pedro, CA 90731
Fax: 310-547-4643 -

Director of Environmental Planning
Port of Long Beach
P.O. Box 570
925 Harbor Plaza
Long Beach, CA 90802
Fax: 562-901-1728

California State Lands Commission
Marine Invasive Species Program
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Fax: 916-574-1950

Director of Environmental Affairs
American President Lines, Ltd.
1111 Broadway
Oakland, CA 94607
Fax: 510-208-2423

- XII. Affirmative Action. APL, during the performance of this MOA, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated and made a part of this MOA. All subcontracts awarded shall contain a like nondiscrimination provision.
- XIII. Small Business Development Program. It is the policy of the Department to provide Small Business Enterprises (SBE) and Minority-Owned, Women-Owned, and all Other Business Enterprises (MBE/WBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. APL shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, MBEs, WBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including the SBEs, MBEs, WBEs, and OBEs, have equal participation opportunity which might be presented under this MOA.
- XIV. Conflict of Interest. It is hereby understood and agreed that all parties to this MOA have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of section 49.5.1 et seq. and the Conflict of Interest Codes of the City and Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this MOA. Notwithstanding any other provision of this MOA, it is further understood and agreed that if such financial interest does exist at the inception of this MOA, City may immediately terminate this MOA by giving written notice thereof.
- XV. Compliance with Applicable Laws. APL shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of the Executive Directors of the respective Harbor Departments of the City of Los Angeles and the City of Long Beach.
- XVI. Governing Law/Venue. This MOA shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this MOA shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.
- XVII. Trademarks, Copyrights, and Patents. APL agrees to save, keep, hold harmless, protect and indemnify the City of Los Angeles, the City of Long Beach, their respective Boards of Harbor Commissioners and any of their respective officers or agents from any damages, cost, or expenses

in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by APL of any materials supplied by APL in the performance of this MOA.

XVIII. Taxpayer Identification Number (TIN). The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. APL declares that its authorized TIN is 98-0187312. No payments will be made under this MOA without a valid TIN.

XIX. Service Contractor Worker Retention/ Living Wage. The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 5771 on January 13, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Consultant shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this MOA and otherwise pursue legal remedies that may be available.

XX. Wage and Earnings Assignment Orders/Notices of Assignments. APL and/or any subconsultant are obligated to fully comply with all applicable state and federal employment reporting requirements for the APL and/or subconsultant's employees.

APL and/or subconsultant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. The APL and/or subconsultant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. The APL and/or subconsultant will maintain such compliance throughout the term of this MOA.

XXI. Equal Benefits Policy. The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. Consultant shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any agreement with Consultant and pursue any and all other legal remedies that may be available.

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

XXIII. Severability. Should any part of this MOA be found to be invalid, the remainder of this MOA is to continue in full force and effect.

XXIV. Executed Counterparts. The signature pages of this MOA are being executed in counterparts. When all Parties have signed, all executed counterparts taken together shall constitute one and the

same instrument. The Port of Los Angeles shall be responsible for receiving and retaining the originally executed pages for each party, for dating the MOA as the latest date upon which it is executed as among the signatories hereto, and for providing a copy of the dates and executed MOA to each of the parties.

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IN WITNESS WHEREOF, the undersigned have executed this MOA as of the date when the last of the undersigned has signed and dated below.

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

By: _____
GERALDINE KNATZ, PH.D.
Executive Director

Dated: _____, 2012

Attest: _____
Board Secretary

APPROVED AS TO FORM AND LEGALITY

CARMEN A TRUTANICH, City Attorney 2012
THOMAS A RUSSELL, General Counsel

By: _____
CHRISTOPHER B. BOBO
Assistant City Attorney

Account#:	_____	Job#:	_____	W.O.#:	_____
FY2011/2012:	_____				
For Acct Div. Use Only:	_____				
Verified Funds	Available: -----				
Date Approved:	_____				

THE CITY OF LONG BEACH, a municipal
corporation, acting by and through its
Board of Harbor Commissioners.

By: _____
J. CHRISTOPHER LYTLE
Executive Director

Dated: _____, 2012

Attest: _____
Board Secretary

APPROVED AS TO FORM AND LEGALITY

ROBERT E. SHANNON, City Attorney 2012
City of Long Beach

By: _____
TIFFANI L. SHIN, Deputy City Attorney

THE CALIFORNIA STATE LANDS
COMMISSION

By: _____
CURTIS FOSSUM
Executive Officer

Date: _____

Attest: _____

APL CO PTE LTO

By: _____
SHAJ THAYIL
Vice President of Technical Services

Date: _____

Attest: _____

CBB:aeb
1/3/12