

AGREEMENT NO.

AGREEMENT BETWEEN  
THE CITY OF LOS ANGELES AND  
APM TERMINALS PACIFIC LTD.

THIS AGREEMENT ("Agreement") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board") and APM TERMINALS PACIFIC LTD., a California Corporation, 2500 Navy Way, Terminal Island, California 90731 (hereinafter "APMT" or "Subrecipient").

WHEREAS, the City of Los Angeles Harbor Department ("Department") applied for and has been awarded funding by the Environmental Protection Agency ("EPA") under its 2013 National Clean Diesel Funding Assistance Program to retrofit a total of fourteen (14) pieces of cargo handling equipment ("CHE") operating within the Port of Los Angeles with diesel particulate filters ("DPF"); and

WHEREAS, the Department, acting as a fiduciary agent, will administer the reimbursement of \$35,000 to APMT to retrofit one (1) top handler with a Level 3 DPF; and

WHEREAS, all procurements must be made by following federal procurement requirements at 40 C.F.R. 31.36; and

WHEREAS, APMT will be required to report to the Department on a regular basis in order for the Department to submit quarterly reports to the EPA;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY SUBRECIPIENT

A. Subrecipient shall, to the satisfaction of City and in accordance with all local, state and federal rules and requirements, obtain and install a Level 3 DPF on the equipment set forth in Exhibit A ("Scope of Work").

B. Subrecipient, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between City and Subrecipient, Subrecipient is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Scope of Work, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, the City, or any other governmental entity.

C. Subrecipient acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work. Subrecipient further acknowledges and

agrees that any services it performs outside the Scope of Work are performed as a volunteer and shall not be compensable under this Agreement.

D. The Scope of Work shall be performed in accordance with the terms and conditions set forth in the Cooperative Agreement between the Department and the EPA. See Exhibit B. Obligations of this Agreement, whether undertaken by Subrecipient or its subconsultants, are and shall be the responsibility of Subrecipient. Subrecipient acknowledges and agrees that this Agreement creates no rights in its subconsultants with respect to City and that obligations that may be owed to its subconsultants, including, but not limited to, the obligation to pay subconsultants for services performed, are those of Subrecipient alone. Upon Executive Director's written request, Subrecipient shall supply City's Harbor Department ("Department") with all agreements between it and its subconsultants.

## II. SERVICES TO BE PERFORMED BY CITY

A. City shall furnish Subrecipient, upon its request, all documents and papers in possession of City which may lawfully be supplied to Subrecipient and which are necessary for it to perform its obligations.

B. The Executive Director or his or her designee is designated as the contract administrator for City and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Subrecipient and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article X (Termination) hereof.

## III. EFFECTIVE DATE AND TERM OF AGREEMENT

A. Subject to the provisions of Charter Section 245, the effective date of this Agreement shall be the date of its execution by Executive Director upon authorization of the Board. Subrecipient is aware that the City Council, pursuant to Charter Section 245 of the City of Los Angeles, has the right to review this Agreement. Accordingly, in no event shall this Agreement become effective until the sixth Council meeting day after Board action or the City Council's approval of the Agreement.

B. This Agreement shall be in full force and effect commencing from the date of execution and shall continue until the earlier of the following occurs:

1. Three (3) years have lapsed from the effective date of this Agreement;

or

2. Funding under the Cooperative Agreement is for any reason no longer available. City shall provide written notice to Subrecipient and shall determine the amount of reimbursement available and due

Subrecipient. Subrecipient shall remain responsible for complying with all reporting and recordkeeping requirements.

or

3. The Board of Harbor Commissioners, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Subrecipient ten (10) days' notice in writing of its election to cancel and terminate this Agreement. Subrecipient shall be entitled to reimbursement for expenses incurred in accordance with this Agreement and Cooperative Agreement as of the date the ten days notice period ends. City shall determine the amount of reimbursement due to Subrecipient. Subrecipient shall remain responsible for complying with all reporting and recordkeeping requirements.

or

4. Subrecipient, in its sole discretion, terminates and cancels all or any part of this Agreement for any reason upon giving to City ten (10) days' notice in writing of its election to cancel and terminate this Agreement. Subrecipient shall be entitled to reimbursement for expenses incurred in accordance with this Agreement as of the date notice is given to City. City shall determine the amount of reimbursement due to Subrecipient. Subrecipient shall remain responsible for complying with all reporting and recordkeeping requirements.

#### IV. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, City shall pay and reimburse Subrecipient in the amounts set forth in Exhibit A.

B. The maximum payable under this Agreement shall be Thirty Five Thousand Dollars (\$35,000).

C. Subrecipient shall submit invoices in quadruplicate to City monthly following the effective date of this Agreement for services performed during the preceding month. Each such invoice shall be signed by the Subrecipient and shall include the following certification:

"I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement No. \_\_\_\_\_ and that payment has not been received. I further certify that I have complied with the provisions of the City's Living Wage Ordinance. "

\_\_\_\_\_  
(Subrecipient's Signature)

D. Subrecipient must include on the face of each itemized invoice submitted for payment its Business Tax Registration Certificate number, as required at Article VIII of this Agreement. No invoice will be processed for payment by City without this number shown thereon. All invoices shall be approved by the Executive Director or his or her designee prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of City business, the same may be approved, audited and paid.

Subrecipient shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. The City may require, and Subrecipient shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement.

Further, where the Subrecipient employs subconsultants under this Agreement, the Subrecipient shall submit to City, with each monthly invoice, a Monthly Subconsultant Monitoring Report Form (Exhibit C) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts. Subrecipient shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved Subconsultant utilization. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report Form. All invoices are subject to audit. Subrecipient is not required to submit support for direct costs items of \$25 or less.

E. For payment and processing, all invoices should be mailed to the following address:

Accounts Payable Section  
Harbor Department, City of Los Angeles  
P.O. Box 191  
San Pedro, CA 90733-0191

#### V. EMISSION REDUCTION CREDITS

Any emissions reduction credits generated by the work performed pursuant to this Agreement cannot be used or claimed by Subrecipient for any purpose.

#### VI. RECORDKEEPING AND AUDIT RIGHTS

A. Subrecipient shall keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records shall be readily accessible to and open for inspection and copying at the premises by City, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Subrecipient for a period of three (3)

years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

B. During the term of this Agreement, City may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Subrecipient and subconsultants arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Subrecipient, subconsultants or any individual or entity acting for or on behalf of Subrecipient or a subconsultant, and (c) without regard to whether such writings have previously been provided to City. Subrecipient shall be responsible for obtaining access to and providing writings of subconsultants. Subrecipient shall provide City at Subrecipient's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by City. City's right shall also include inspection at reasonable times of the Subrecipient's office or facilities which are engaged in the performance of the Scope of Work. Subrecipient shall, at no cost to City, furnish reasonable facilities and assistance for such review and audit. Subrecipient's failure to comply with this Article VI shall constitute a material breach of this Agreement and shall entitle City to withhold any payment due under this Agreement until such breach is cured.

## VII. INDEPENDENT CONTRACTOR

Subrecipient, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of City. Subrecipient shall not represent itself as an agent or employee of the City and shall have no power to bind the City in contract or otherwise.

## VIII. BUSINESS TAX REGISTRATION CERTIFICATE

The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This Code Section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Department. See Exhibit D.

## IX. INDEMNIFICATION AND INSURANCE

### A. Indemnification

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Subrecipient undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and

cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Subrecipient's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Subrecipient or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City.

B. Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Subrecipient's insurance documents. Subrecipient's insurance broker or agent shall register with the City's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> and submit the appropriate proof of insurance on Subrecipient's behalf.

C. General Liability Insurance

Subrecipient shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the City, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Subrecipient's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Subrecipient. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Subrecipient's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

D. Automobile Liability Insurance

Subrecipient shall procure and maintain at its expense and keep in force at all times during the term of this Agreement, automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not

available) within Subrecipient's normal limits of liability but not less than One Million Dollars (\$1,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

E. Workers' Compensation and Employer's Liability

Subrecipient shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Subrecipient shall comply with such provisions before commencing the performance of the tasks under this Agreement. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. Subrecipient shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City in any circumstance in which it is alleged that actions or omissions of the City contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of Subrecipient, and for all employees of any subcontractor or other vendor retained by Subrecipient.

F. Carrier Requirements

All insurance which Subrecipient is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

G. Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

H. Modification of Coverage

Executive Director, at his or her discretion, based upon recommendation of independent insurance consultants to City, may increase or decrease amounts and

types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Subrecipient.

I. Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Subrecipient shall direct their insurance broker or agent to submit to the City's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If Subrecipient neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance will be deducted from the next payment due Subrecipient.

J. Right to Self-Insure

Upon written approval by the Executive Director, Subrecipient may self-insure if the following conditions are met:

1. Subrecipient has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Subrecipient must have a formal resolution of its board of directors authorizing self-insurance.
2. Subrecipient agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.
3. Subrecipient agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. Subrecipient agrees that any insurance carried by Department is excess of Subrecipient's self-insurance and will not contribute to it.
5. Subrecipient provides the name and address of its claims administrator.
6. Subrecipient submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to Executive Director's consideration of approval of self-insurance and annually thereafter.

7. Subrecipient agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.

8. Subrecipient has complied with all laws pertaining to self-insurance.

K. Accident Reports

Subrecipient shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Subrecipient's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Subrecipient, its officers or managing agents.

X. TERMINATION PROVISION

The Board of Harbor Commissioners, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Subrecipient ten (10) days' advance, written notice of the Board's election to cancel and terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of the City to hire additional subrecipients or perform the services described in this Agreement either during or after the term of this Agreement.

XI. PERSONAL SERVICE AGREEMENT

A. During the term hereof, Subrecipient agrees that it will not enter into other contracts or perform any work without the written permission of the Executive Director where the work may conflict with the interests of the Department.

B. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Subrecipient may permit subconsultant(s) to perform portions of the Scope of Work in accordance with Article I. All subconsultants whom Subrecipient utilizes, however, shall be deemed to be its agents. subconsultants' performance of the Scope of Work shall not be deemed to release Subrecipient from its obligations under this Agreement or to impose any obligation on the City to such subconsultant(s) or give the subconsultant(s) any rights against the City.

XII. AFFIRMATIVE ACTION

The Subrecipient, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for

employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit E.

### XIII. SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM AND LOCAL BUSINESS PREFERENCE PROGRAM

It is the policy of the Department to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises and all Other Business Enterprises (MBE/WBE/DVBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Subrecipient shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement. See Exhibit F.

It is also the policy of the Department to support an increase in local and regional jobs. The Department's Local Business Preference Program aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector. Subrecipient shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for Local Business Enterprises to achieve participation in subcontracts where such participation opportunities present themselves.

NOTE: Prior to being awarded a contract with the City, Subrecipient and all subconsultants must be registered on the City's Contracts Management and Opportunities Database, Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>.

### XIV. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and the 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 Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this

Agreement, City may immediately terminate this Agreement by giving written notice thereof.

XV. COMPLIANCE WITH APPLICABLE LAWS

Subrecipient 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 Executive Director.

XVI. GOVERNING LAW / VENUE

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

XVII. TRADEMARKS, COPYRIGHTS, AND PATENTS

Subrecipient agrees to save, keep, hold harmless, protect and indemnify the City and any of its 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 City of any materials supplied by Subrecipient in the performance of this Agreement.

XVIII. PROPRIETARY INFORMATION

If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Subrecipient, its officers, agents, employees, or subconsultants, the City shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by City. Upon City's request, Subrecipient, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to the City. It is expressly understood and agreed that, as between City and Subrecipient, the referenced license shall arise for City's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. City may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by City.

XIX. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement and any recommendations made by Subrecipient relative thereto shall

be considered confidential and shall not be reproduced, altered, used or disseminated by Subrecipient or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Subrecipient is required to safeguard such information from access by unauthorized personnel.

XX. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the Department shall be addressed to Director of Environmental Management, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, and notice to Subrecipient shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

XXI. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all subrecipients and suppliers of materials and supplies provide a TIN to the party that pays them. Subrecipient declares that its authorized TIN is 133020006. No payments will be made under this Agreement without a valid TIN.

XXII. SERVICE CONTRACTOR WORKER RETENTION POLICY AND LIVING WAGE POLICY REQUIREMENTS

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

XXIII. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

The Subrecipient and/or any subconsultant are obligated to fully comply with all applicable state and federal employment reporting requirements for the Subrecipient and/or subconsultant's employees.

The Subrecipient 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 Subrecipient 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 Subrecipient or subconsultant will maintain such compliance throughout the term of this Agreement.

#### XXIV. 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. Subrecipient shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any Agreement with Subrecipient and pursue any and all other legal remedies that may be available. See Exhibit G.

#### XXV. COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12)

The Subrecipient, subconsultants, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the agreement is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Subrecipient is required to provide and update certain information to the City as specified by law. Any Subrecipient subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subconsultant expected to receive at least \$100,000 for performance under this Agreement:

##### Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a subconsultant on Harbor Department Agreement No. \_\_\_\_\_. Pursuant to City Charter Section 470(c)(12), subconsultant and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the Agreement is signed. Subconsultant is required to provide to Subrecipient names and addresses of the subconsultant's principals and contact information and shall update that information if it changes during the 12 month time period. Subconsultant's information must be provided to Subrecipient within 10 business days. Failure to comply may result in termination of the Agreement or any other available legal remedies including fines. Information about the

restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213-978-1960.

Subrecipient, subconsultants, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available.

#### XXVI. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Subrecipient agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

#### XXVII. INTEGRATION

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

#### XXVIII. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

**XXIX. CONSTRUCTION OF AGREEMENT**

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

**XXX. TITLES AND CAPTIONS**

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

**XXXI. MODIFICATION IN WRITING**

This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

**XXXII. WAIVER**

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

**XXXIII. EXHIBITS; ARTICLES**

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to Articles are to Articles of this Agreement unless stated otherwise.

**XXXIV. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

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

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

Dated: \_\_\_\_\_

By \_\_\_\_\_  
EUGENE D. SEROKA  
Executive Director

Attest: \_\_\_\_\_  
Secretary

APM TERMINALS PACIFIC LTD.

Dated: 8/15/14

By \_\_\_\_\_  
*Nathan Suro*  
NATHAN SURO, J - MANAGER - POWER EQUIP  
(Print/type name and title)

Attest \_\_\_\_\_  
*Steven M. Trombley*  
Steven M. Trombley Managing Director  
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_, 2014  
MICHAEL N. FEUER, City Attorney  
Janna B. Sidley, General Counsel

By \_\_\_\_\_  
HEATHER M. McCLOSKEY, Deputy

Account #	_____	W.O. #	_____
Ctr/Div #	_____	Job Fac. #	_____
Proj/Prog #	_____		
Budget FY:		Amount:	
TOTAL			
For Acc't/Budget Div. Use Only:			
Verified by: _____			
Verified Funds Available: _____			
Date Approved: _____			

# EXHIBIT A

## Scope of Work, Compensation Rates, and Schedule

Subrecipient will retrofit 1 top handler with level 3 diesel particulate filters (DPF) as part of the 2013 National Clean Diesel Funding Assistance Program as specified in the table below. APM Terminals will be responsible for obtaining cost estimates, selecting bid, and purchasing equipment in accordance with EPA procurement requirements. Any updates to scope, compensation, or schedule are subject to approval by the Director of Environmental Management.

<b>Equipment Identification</b>	<b>Engine Year, Manufacturer and Model</b>	<b>Baseline Engine Horsepower</b>	<b>Grant Not to Exceed Amount</b>
35097911	2004 Cummins QSM11	330	\$35,000

### **EPA Quarterly Reporting**

Subrecipient shall submit all information necessary for Harbor Department to complete quarterly project status reports required by the U. S. Environmental Protection Agency ("EPA"). These reports will address the progress made toward the work plan goals. In general, quarterly reports will include summary information on technical progress, planned activities for the next quarter and expenditures.

### **EPA Final Report**


Subrecipient shall submit all information necessary for the Harbor Department to complete final report as required by the EPA. The final project report will include a summary of the project or activity, actual results (outputs and outcomes) and costs, the successes and lessons learned for the entire projects as well as categories of information required for quarterly reporting.

### **Schedule**

The project will begin upon contract execution and shall be completed according to the below schedule.

<b>Milestone Task Description</b>	<b>Milestone Task Schedule</b>
Project partner coordination	June - August 2014
Obtain competitive bids	September - December 2014
Equipment procurement	January - March 2015
Place in service	April - December 2015

# EXHIBIT B

 <p style="font-size: 1.2em; font-weight: bold; margin: 0;">U.S. ENVIRONMENTAL PROTECTION AGENCY</p> <p style="font-weight: bold; margin: 0;">Cooperative Agreement</p>	<b>GRANT NUMBER (FAIN):</b> 83561601 <b>MODIFICATION NUMBER:</b> 0 <b>PROGRAM CODE:</b> DE	<b>DATE OF AWARD</b> 03/26/2014
	<b>TYPE OF ACTION</b> New	<b>MAILING DATE</b> 04/02/2014
	<b>PAYMENT METHOD:</b> ACH	<b>ACH#</b> 90569
	<b>RECIPIENT TYPE:</b> Municipal	
<b>RECIPIENT:</b> City of Los Angeles - Harbor Dept Port Of Los Angeles 425 S Palos Verdes St., 5th Fl San Pedro, CA 90731-3309 EIN: 95-6000735		<b>PAYEE:</b> City of Los Angeles - Harbor Dept Port Of Los Angeles 425 S Palos Verdes St., 5th Fl San Pedro, CA 90731-3309
<b>PROJECT MANAGER</b> Rene Spencer Port Of Los Angeles 425 S Palos Verdes St., 5th Fl San Pedro, CA 90731-3309 E-Mail: rspencer@portla.org Phone: 310-732-3950	<b>EPA PROJECT OFFICER</b> Faye Swift 1200 Pennsylvania Ave, NW, 6406J Washington, DC 20460 E-Mail: Swift.Faye@epamail.epa.gov Phone: 202-343-9147	<b>EPA GRANT SPECIALIST</b> ThuyT Nguyen 1200 Pennsylvania Ave., N.W Washington, DC 20460, 3903R E-Mail: nguyen.thuyt@epa.gov Phone: 202-564-5312
<b>PROJECT TITLE AND DESCRIPTION</b> Port of LA - Cargo Handling Equip Retrofits This project will improve air quality at the Port of Los Angeles and the surrounding communities by reducing emissions from in-use diesel engines. This project will retrofit 14 pieces of cargo handling equipment with diesel particulate filters.		
<b>BUDGET PERIOD</b> 05/01/2014 - 04/30/2016	<b>PROJECT PERIOD</b> 05/01/2014 - 04/30/2016	<b>TOTAL BUDGET PERIOD COST</b> \$469,000.00
		<b>TOTAL PROJECT PERIOD COST</b> \$469,000.00
<h2 style="margin: 0;">NOTICE OF AWARD</h2> <p style="font-size: 0.9em; margin: 5px 0;">Based on your Application dated 02/10/2014 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$469,000. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$469,000. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.</p>		
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>
<b>ORGANIZATION / ADDRESS</b> Grants and Interagency Agreement Management Division 1200 Pennsylvania Ave, NW Mail code 3903R Washington, DC 20460		<b>ORGANIZATION / ADDRESS</b> Environmental Protection Agency Office of Air and Radiation 1200 Pennsylvania Ave, NW Washington, DC 20460
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>		
Digital signature applied by EPA Award Official for Jill D. Young - Chief - Grants Management Branch A Gary Carrozza - Award Official delegate		<b>DATE</b> 03/26/2014

## EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 469,000	\$ 469,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 469,000	\$ 469,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.039 - National Clean Diesel Funding Assistance Program (B)	Diesel Emissions Reduction Act of 2010 codified at 42 U.S.C. 16131 et seq	40 CFR PART 31

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
	1456F30235	13	E4	56FC	102AH4	4122			469,000
									469,000

Budget Summary Page: Port of LA Emissions Reduction Project - Retrofit of CHE

<b>Table A - Object Class Category (Non-construction)</b>	<b>Total Approved Allowable Budget Period Cost</b>
<b>1. Personnel</b>	\$9,000
<b>2. Fringe Benefits</b>	\$0
<b>3. Travel</b>	\$0
<b>4. Equipment</b>	\$460,000
<b>5. Supplies</b>	\$0
<b>6. Contractual</b>	\$0
<b>7. Construction</b>	\$0
<b>8. Other</b>	\$0
<b>9. Total Direct Charges</b>	\$469,000
<b>10. Indirect Costs: 0.00% Base</b>	\$0
<b>11. Total (Share: Recipient 0.00 % Federal 100.00 %.)</b>	\$469,000
<b>12. Total Approved Assistance Amount</b>	\$469,000
<b>13. Program Income</b>	\$0
<b>14. Total EPA Amount Awarded This Action</b>	\$469,000
<b>15. Total EPA Amount Awarded To Date</b>	\$469,000

## Administrative Conditions

### 1. GENERAL TERMS and CONDITIONS

The recipient agrees to comply with the applicable EPA general terms and conditions available at: <http://www.epa.gov/ogd/tc.htm>. These terms and conditions are in addition to the assurances and certifications made as part of the award and the terms, conditions or restrictions cited below.

2. In accordance with Section 2(d) of the Prompt Payment Act (P.L. 97-177), Federal funds may not be used by the recipient for the payment of interest penalties to contractors when bills are paid late nor may interest penalties be used to satisfy cost sharing requirements. Obligations to pay such interest penalties will not be obligations of the United States.

### 3. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

#### GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

#### FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements as described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

#### Accepting the Fair Share Objectives /Goals of Another Recipient

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the California Environmental Protection Agency as follows:

	MBE	WBE
Construction	2%	1%
Supplies	1%	1%
Services	1%	1%
Equipment	1%	1%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as California Environmental Protection Agency.

#### Negotiating Fair Share Objectives /Goals, 40 CFR, Section 33.404

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is not accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity

study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

#### **SIX GOOD FAITH EFFORTS , 40 CFR, Part 33, Subpart C**

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained :

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules , where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process . This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process .

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually .

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

#### **MBE/WBE REPORTING , 40 CFR, Part 33, Subpart E**

MBE/WBE reporting is limited to annual reports and only required for assistance agreements where one or more the following conditions are met:

- (a) there are any funds budgeted in the contractual, equipment or construction lines of the award;
- (b) \$3,000 or more is included for supplies; or
- (c) there are funds budgeted for subawards or loans in which the expected budget(s) meet the conditions as described in items (a) and (b).

This award meets one or more of the conditions as described above, therefore, the recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" report (EPA Form 5700-52A) on an annual basis.

When completing the annual report, recipients are instructed to check the box titled "annual" in section 1B of the form. For the final report, recipients are instructed to check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30<sup>th</sup> of each year. Final reports are due within 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on planned procurements. Recipients with funds budgeted for non-supply procurement and/or \$3,000 or more in supplies are required to report annually whether the planned procurements take place during the reporting period or not. If no procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be sent to Veronica Parker, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW Mail Code 3903R, Room 51225, Washington, DC 20460, 202-564-5347. The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at [http://www.epa.gov/osbp/dbe\\_reporting.htm](http://www.epa.gov/osbp/dbe_reporting.htm)

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D.

#### **CONTRACT ADMINISTRATION PROVISIONS , 40 CFR, Section 33.302**

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

#### **BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)**

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

#### **4. PAYMENT to CONSULTANT**

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2014, the limit is \$602.16 per day and \$75.27 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Contracts with firms for services which are awarded using the procurement requirements in 40 CFR 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b).

#### **5. FOR PROFIT SUB - RECIPIENTS**

In addition to the EPA General Term and Condition #8 "Establishing and Managing Subawards", the recipient agrees to:

- 1) Utilize terms and conditions in all subgrants to for-profit sub-recipients that apply the following regulations to for-profit sub-recipients: 40 CFR Sections 30.2, 30.13, 30.14, 30.16, 30.17, 30.18, 30.20, 30.23, 30.25, 30.26(d), 30.28, 30.31, 30.34, 30.35, 30.36, 30.37, 30.40-47, 30.51, 30.53, 30.61, 30.62. For the purposes of applying the listed regulations to for-profit sub-recipients, the Recipient shall perform the functions that the regulations provide will be performed by EPA.
- 2) Establish a procedure for resolving disputes with for-profit sub-recipients.
- 3) Not reimburse a for-profit sub-recipient until receipt of documentation that the sub-recipient has incurred eligible and allowable costs. Per 40 CFR 30.27, the allowability of costs incurred by for-profit organizations is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR Part 31.
- 4) Obtain a final report detailing how the for-profit sub-recipient expended funds in a format prescribed by the Recipient.
- 5) Ensure that for-profit sub-recipients are aware of requirements imposed upon them by applicable Federal statutes, regulations, and these terms and conditions.

## 6. INVENTION

Rights to inventions made under this assistance agreement are subject to the provisions of Title 37 Code of Federal Regulations (CFR), Part 401, 'Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements', as revised through the date of this assistance agreement.

### **Programmatic Conditions**

#### 1. Substantial Federal Involvement for Cooperative Agreements

EPA will provide substantial involvement in the form of technical assistance, development of outputs, and oversight. Specifically, substantial federal involvement will take the form of monitoring the project by EPA, participation and collaboration between EPA and the recipient in program content, review of project progress, and quantification and reporting of results.

#### 2. Emissions Control Technologies

Emissions Reduction Projects funded by the recipient pursuant to this assistance agreement must use verified technologies and/or must use engines and engine configurations certified by EPA and, if applicable, CARB. Technologies are verified under EPA or California's Retrofit Technology Verification Programs. See <http://epa.gov/cleandiesel/verification/verif-list.htm> for an updated list of EPA's verified technologies and <http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm> for a list of CARB's verified technologies. Any question as to the eligibility or preference of a retrofit technology, including vehicle/equipment replacement and repowers, should be directed to the EPA Project Officer. Technology changes may not be allowed after a final workplan has been approved. If technology compatibility issues arise, EPA may elect to terminate the cooperative agreement, at which time assistance funds must be returned to EPA.

#### 3. Quarterly Reporting and Environmental Results

Quarterly progress reports will be required. Quarterly reports are considered project status reports and will address the progress made achieving the work plan goals. In general, quarterly reports will include summary information on technical progress and expenditures, and planned activities for next quarter. A template for the quarterly report is available at <http://www.epa.gov/cleandiesel/grant-reporting.htm>.

Quarterly reports are due according to the following schedule. If a due date falls on a weekend or holiday, the report will be due on the next business day.

April 1 - June 30 Reporting Period: report due date July 30  
July 1 - September 30 Reporting Period: report due date October 30  
October 1 - December 31 Reporting Period: report due date January 30  
January 1 - March 31 Reporting Period: report due date April 30

If a project start date falls within a defined Reporting Period the recipient must report for that period by the given due date. This quarterly reporting schedule shall be repeated for the duration of the award agreement.

#### 4. Final Report:

The final project report will include all categories of information required for quarterly reporting, including a final, detailed fleet description. The final project report will also include a narrative summary of the project or activity, actual project results (outputs and outcomes) including actual emissions benefit calculations, and the successes and lessons learned for the entire project.

For projects involving vehicle/equipment replacement and repowers the recipient must provide in the final report: 1) Evidence that the replacement activity is an "early replacement," and would not have

occurred through normal attrition/fleet turnover (i.e. without the financial assistance provided by EPA) within three years of the project period start date. Supporting evidence can include verification that the vehicles or equipment being replaced have useful life left and fleet characterization showing fleet age ranges and average turnover rates per the vehicle or fleet owner's budget plan, operating plan, standard procedures, or retirement schedule; 2) Evidence of appropriate scrappage or remanufacture (such as a photograph of the scrapped engine), including the engine serial number and/or the vehicle identification number (VIN); and 3) Specification of the model years and the emission standard levels for PM and NOx, for both the engine being replaced and the new engine.

For projects that take place in an area affected by, or includes vehicles, engines or equipment affected by federal law mandating emissions reductions, the recipient must provide in the final report evidence that emission reductions funded with EPA funds were implemented prior to the effective date of the mandate and/or are in excess of (above and beyond) those required by the applicable mandate.

The final report shall be submitted to the EPA Project Officer within 90 days after the project period end date or termination of the assistance agreement. A template for the final report is available at <http://www.epa.gov/cleandiesel/grant-reporting.htm>.

#### 5. Use of Funds Restriction :

- 1) **Mandated Measures:** Recipient agrees that funds under this award cannot be used for emissions reductions that are mandated under federal law. This refers to specific compliance dates within the mandate, not when the mandate is passed. Voluntary or elective emissions reductions measures shall not be considered "mandated", regardless of whether the reductions are included in the State Implementation Plan of a State.
- 2) **Normal Attrition:** Recipient agrees that funds under this award cannot be used for emission reductions that result from vehicle/equipment replacements or repowers that would have occurred through normal attrition/fleet turnover within three years of the project start date. Any question as to eligibility of a vehicle/equipment replacement or repower should be directed to the EPA Project Officer.
- 3) **Fleet Expansion:** Recipient agrees that funds under this award, including subawards/subgrants, cannot be used for the purchase of vehicles, engines, or equipment to expand a fleet. The recipient agrees that:
  - i. The replacement vehicle, engine, or equipment will perform the same function and operation as the vehicle, engine, or equipment that is being replaced (e.g., an excavator used to dig pipelines would be replaced by an excavator that continues to dig pipelines);
  - ii. The replacement vehicle, engine, or equipment will be of the same type and similar gross vehicle weight rating or horsepower as the vehicle, engine, or equipment being replaced (e.g., a 300 horsepower bulldozer is replaced by a bulldozer of similar horsepower). Horsepower increases of more than 10 percent require written approval from the EPA Project Officer prior to purchase.
  - iii. The engine being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement, or remanufactured to a certified cleaner emission standard. Permanently disabling the engine while retaining possession of the engine is an acceptable scrapping method. Disabling the engine may be completed by drilling a hole in the engine block (the part of the engine containing the cylinders) and manifold. Alternatively, disabling the engine may be completed by removing the engine oil from the crankcase, replacing it with a 40 percent solution of sodium silicate and running the engine for a short period of time at low speeds, thus rendering the engine inoperable. Remanufacturing shall be performed by the original engine manufacturer, or by a dealership/distributor that has a service program that is sponsored/backed by original engine manufacturer warranties (i.e. the new, remanufactured and upgraded engine is warranted by the OEM). Non-road engines shall be remanufactured to the cleanest certified emission standard possible. Highway engines shall be remanufactured to Model Year (MY) 2007 or newer certified emission standards. Remanufacturing must be completed during the project period. Other acceptable scrappage methods may be considered and will require prior written approval from the EPA Project

Officer. If scrapped or remanufactured engines are to be sold, program income requirements apply.

- iv. The vehicle/equipment being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement, or remanufactured to a certified cleaner emission standard. Permanently disabling the chassis and disabling or remanufacturing the engine (see iii above) while retaining possession of the vehicle/equipment is an acceptable scrapping method. Disabling the chassis may be completed by cutting through the frame/frame rails on each side at a point located between the front and rear axles. Other acceptable scrapping methods may be considered and will require prior written approval from the EPA Project Officer. Vehicle/equipment components that are not part of the engine or chassis may be salvaged from the unit being replaced (e.g. plow blades, shovels, seats, etc.). If scrapped or remanufactured vehicles/equipment or salvaged vehicle/equipment chassis or components are to be sold, program income requirements apply.
- 4) **Matching Funds:** Recipient agrees that funds under this award cannot be used for matching funds for other federal grants, lobbying, or intervention in federal regulatory or adjudicatory proceedings, and cannot be used to sue the Federal Government or any other government entity.
- 5) **Formerly Verified Technologies:** Recipient agrees that funds under this award cannot be used for retrofit technologies on EPA's or CARB's, "Formerly Verified Technologies" lists: <http://www.epa.gov/cleandiesel/verification/deleted-list.htm>, [www.arb.ca.gov/diesel/verdev/vt/fv1.htm](http://www.arb.ca.gov/diesel/verdev/vt/fv1.htm), [www.arb.ca.gov/diesel/verdev/vt/fv2.htm](http://www.arb.ca.gov/diesel/verdev/vt/fv2.htm), and [www.arb.ca.gov/diesel/verdev/vt/fv3.htm](http://www.arb.ca.gov/diesel/verdev/vt/fv3.htm). Recipient agrees that funds under this award cannot be used for idle reduction technologies on EPA's "Technologies No Longer Verified" list that can be found at: <http://epa.gov/smartway/forpartners/technology.htm#tabs-4>. Recipient agrees that funds under this award cannot be used for technologies on the Emerging Technologies list which can be found at: [www.epa.gov/cleandiesel/verification/emerg-list.htm](http://www.epa.gov/cleandiesel/verification/emerg-list.htm).
- 6) **Emissions Testing:** Recipient agrees that funds under this award cannot be used for emissions testing and/or air monitoring activities (including the acquisition cost of emissions testing equipment), or research and development.
- 7) **Fueling Infrastructure:** Recipient agrees that funds under this award cannot be used for fueling infrastructure, such as that used for the production and/or distribution of biodiesel, compressed natural gas, liquefied natural gas, and or other cleaner fuels.
- 8) **Drayage Truck Model Year:** With regards to drayage trucks, recipient agrees that funds under this award cannot be used to retrofit, repower or replace a model year 1989 or older engine, or to retrofit a model year 2007 or newer engine with DOCs or DPFs, or retrofit a model year 2010 or newer engine with SCR, or replace model year 2004 or newer engine, or repower or convert model year 2007 or newer engine.
- 9) **Nonroad Useful Life and Operating Hours:** Recipient agrees that funds under this award cannot be used to retrofit, repower, upgrade or replace a nonroad engine or equipment that has less than seven years of useful life remaining. A table distinguishing which nonroad engine model years EPA has determined to have at least seven years of useful life remaining, based on the type and age of vehicle, can be found at <http://www.epa.gov/cleandiesel/documents/fy13-nonroad-remaining-useful-life.pdf>. In addition, recipient agrees that funds under this award cannot be used to retrofit, repower, upgrade or replace nonroad engines and equipment that operate less than 500 hours per year.
- 10) **Nonroad Repower/Replacement:** Recipient agrees that funds under this award cannot be used to repower or replace nonroad Tier 0 (unregulated) engines to a nonroad Tier 1 or lower nonroad engine standard or from a Tier 2 nonroad engine standard to a Tier 3 or lower nonroad engine standard.
- 11) **Marine Repower/Replacement/Upgrade:** Recipient agrees that funds under this award cannot be used to repower, replace or upgrade Tier 3 or Tier 4 marine engines, or to repower or replace marine engines from Tier 1 marine engine standard to Tier 1 or lower marine engine standard, or from a Tier 2 marine engine standard to a Tier 2 or lower marine engine standard.
- 12) **Locomotive Retrofit/Repower/Replacement/Upgrade:** Recipient agrees that funds under this award cannot be used to retrofit unregulated or Tier 0 locomotives with SCR, or to upgrade, repower or replace locomotives from: Tier 0+/1 to Tier 0+ or lower; Tier 1+/2 to Tier 1+ or lower;

Tier 2 to Tier 1+ or lower; or, from Tier 2+ to Tier 2+ or lower. In addition, recipient agrees that funds under this award cannot be used upgrade, repower or replace line-haul locomotives from Tier 2 to Tier 4, or to upgrade, repower or replace line-haul locomotives from Tier 2+ to Tiers 3 and 4, or to install Automatic Engine Start-Stop technologies on locomotives currently certified to Tier 0+ or higher.

- 13) Marine Shore Connection: No funds awarded under this RFP shall be used for marine shore connection system projects that are expected to be utilized less than 2,000 MW-hr/year.
  - 14) Locomotive Shore Connection: No funds awarded under this RFP shall be used for locomotive shore connection system projects that are expected to be utilized less than 1,000 hours/year.
  - 15) Locomotive and Marine Operating Hours: Recipient agrees that funds awarded under this RFP cannot be used to retrofit, repower, replace, upgrade or install idle reduction technologies on eligible locomotives or marine engines that operate less than 1000 hours per year.
  - 16) Engine Upgrade: In the case of an engine upgrade with a certified remanufacture system applied at the time of rebuild (not manufacturer upgrades that are retrofits verified by EPA or CARB), recipient agrees that funds under this award cannot be used for the entire cost of the engine rebuild, but only for the incremental cost of the certified remanufacture system and associated labor costs for installation. Any question as to eligibility of engine upgrade costs should be directed to the EPA Project Officer.
6. **Drayage Vehicle Replacement Project Requirements :**
- 1) In addition to the scrappage requirements for all vehicles/equipment described in E.3.iv above, recipients replacing drayage vehicles are required to establish and document guidelines to ensure that the scrapped vehicle has a history of operating on a frequent basis over the prior year as a drayage truck.
  - 2) The recipient must establish and document guidelines to ensure that all drayage trucks receiving grant funds are operated in a manner consistent with the definition of a drayage truck, defined as any Class 8a and 8b in-use on-road vehicle with a gross weight rating (GVWR) of greater than 33,000 pounds operating on or transgressing through port or intermodal rail yard property for the purpose of loading, unloading or transporting cargo, such as containerized, bulk or break-bulk goods.
7. **Delays or Favorable Developments :**
- The recipient agrees that it will promptly notify the EPA Project Officer of any problems, delays, or adverse conditions which may materially impair its ability to deliver on the outputs/outcomes specified in the work plan. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation. The recipient agrees that it will also notify the EPA Project Officer of any favorable developments which may enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.
8. **Procurement and Sub-grant Procedures :**
- The recipient must follow applicable procurement and sub-grant procedures. EPA will not be a party to these transactions. If EPA funds are used to purchase goods or services, recipient agrees to compete the contracts for those goods and services and conduct cost and price analyses to the extent required by the fair and open competition for procurement provisions of 40 CFR Part 30 or 40 CFR Part 31, as applicable. Approval of a funding proposal does not relieve recipients of their obligations to compete service contracts, conduct cost and price analyses, and use sub-grants only for financial assistance purposes, in accordance with Subpart B Section .210 of OMB Circular A-133.
9. **Employee and/or Contractor Selection :**
- EPA will not help select employees or contractors hired by the recipient.
10. **Program Income :**
- If program income is generated during the course of the project, program income requirements apply. Program income is defined as gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant

period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the Award Document. Program income earned during the project period shall be retained by the recipient and, in accordance with 40 CFR Parts 30.24 and 31.25 as applicable, recipient is authorized to use program income as follows :

- 1) Program income may be added to funds committed to the project by EPA and recipient and used to further eligible project or program objectives . The program income shall be used for the purposes and under the conditions of the grant agreement.
- 2) Program income may be used to finance the non-federal share of the project or program, including any mandatory or voluntary cost-share. The amount of the Federal grant award remains the same.
- 3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the federal share of costs is based. This means that the recipient shall spend program income on project activities before spending/requesting federal funds for project activities . This may result in unspent federal funds at the end of the project period.

The recipient will maintain records adequate to document the extent to which transactions generate program income and the disposition of program income .

#### **11. Equipment Use , Management, and Disposition**

These equipment use, management, and disposition instructions are applicable to assistance agreement recipients and subrecipients acquiring equipment under this award . State agencies may use, manage and dispose of equipment acquired under assistance agreements by the State in accordance with State laws and procedures.

Recipient agrees the equipment acquired under this assistance agreement will be subject to the use and management and disposition regulations at 40 CFR 30.34 and 31.32, as applicable. Equipment is defined as tangible non-expendable personal property having a useful life of more than one year and an acquisition cost and/or current market value of \$5,000 or more per unit. Certified or verified technologies, vehicles, engines and nonroad equipment are considered to be equipment to the extent they fall within this definition .

Recipient agrees that at the end of the project period the recipient will continue to use the equipment purchased under this assistance agreement in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal funds

## MONTHLY SUBCONSULTANT MONITORING REPORT

Instructions: Please indicate the SBE/SBE/MBE/WBE/OBE/DBE participation levels achieved for the month of \_\_\_\_\_ covered by the referenced contract number.

Contract No. \_\_\_\_\_ Division \_\_\_\_\_ Contractor Administrator \_\_\_\_\_

Contractor \_\_\_\_\_ \*Group \_\_\_\_\_ Contract Title/Project \_\_\_\_\_

Contract Amount \_\_\_\_\_ Start Date \_\_\_\_\_ End Date \_\_\_\_\_

Total Amount Invoiced to Date \_\_\_\_\_

SBE Mandated Participation Percentage \_\_\_\_\_ SBE \_\_\_\_\_ VSBE \_\_\_\_\_

Proposed Subcontractor Percentage \_\_\_\_\_ MBE \_\_\_\_\_ WBE \_\_\_\_\_ OBE \_\_\_\_\_ DVBE \_\_\_\_\_

		PROPOSED				ACTUALS		
#	Name of Subcontractor	Type of Work Performed	SBE/SBE/MBE/WBE/OBE/DVBE	Original Proposed Amount	Original Proposed Percentage	Amount Paid to Date	Amount Paid to Date Percentage	Contract Amount Percentage
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

**Directions:**  
 Original Proposed Percentage: \_\_\_\_\_ Original Proposed Percentage of Total Contract Amount  
 Amount Paid to Date Percentage: \_\_\_\_\_ Percentage of Total Amount Invoiced to Date  
 Contract Amount Percentage: \_\_\_\_\_ Percentage Paid to Date of Total Contract Amount

## EXHIBIT D

### BUSINESS TAX REGISTRATION CERTIFICATE (BTRC) NUMBER

The City of Los Angeles Office of Finance requires all firms that engage in any business activity within the City of Los Angeles to pay City business taxes. Each firm or individual (other than a municipal employee) is required to obtain the necessary Business Tax Registration Certification (BTRC) and pay business tax. (Los Angeles Municipal Code Section 21.09 et seq.)

All firms and individuals that do business with the City of Los Angeles will be required to provide a BTRC number or an exemption number as proof of compliance with Los Angeles City business tax requirements in order to receive payment for goods or services. Beginning October 14, 1987, payments for goods or services will be withheld unless proof of tax compliance is provided to the City.

The Tax and Permit Division of Los Angeles Office of Finance has the sole authority to determine whether a firm is covered by business tax requirements. Those firms not required to pay will be given an exemption number.

If you do NOT have a BTRC number contact the Tax and Permit Division at the office listed below, or log on to [www.lacity.org/finance](http://www.lacity.org/finance) to download the business tax registration application.

#### MAIN OFFICE

LA City Hall

201 N. Main Street, Rm. 101 (213) 473-5901

## EXHIBIT E - AFFIRMATIVE ACTION PROGRAM PROVISIONS

### **Sec. 10.8.4 Affirmative Action Program Provisions.**

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

- A. During the performance of City contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
  - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
  - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  - 3. The contractor shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify on an electronic or hard copy form to be supplied, that the contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- D. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

- E. The failure of any contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.
- F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.
- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the City. The plan shall be subject to approval by the

Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve

months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
  2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
  2. Classroom preparation for the job when not apprenticeable;
  3. Pre-apprenticeship education and preparation;
  4. Upgrading training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
  6. The entry of qualified women, minority and all other journeymen into the industry; and
  7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
- P. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.

## EXHIBIT F

### SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM AND LOCAL BUSINESS PREFERENCE PROGRAM

#### (1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM

The City of Los Angeles Harbor Department is committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at the Harbor Department in a manner that reflects the diversity of the City of Los Angeles. The Harbor Department's Small Business Enterprise (SBE) Program was created to provide additional opportunities for small businesses to participate in professional service and construction contracts. An overall Department goal of 25% SBE participation, including 5% Very Small Business Enterprise (VSBE) participation, has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work.

It is the policy of the Harbor Department to solicit participation in the performance of all service contracts by all individuals and businesses, including, but not limited to, SBEs, VSBEs, women-owned business enterprises (WBEs), minority-owned business enterprises (MBEs), and disabled veteran business enterprises (DVBES). The SBE Program allows the Harbor Department to target small business participation, including MBEs, WBEs, and DVBES, more effectively. It is the intent of the Harbor Department to make it easier for small businesses to participate in contracts by providing education and assistance on how to do business with the City, and ensuring that payments to small businesses are processed in a timely manner. **In order to ensure the highest participation of SBE/VSBE/MBE/WBE/DVBES, all proposers shall utilize the City's contracts management and opportunities database, the Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>, to outreach to potential subcontractors.**

The Harbor Department defines a SBE as an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121. Go to [www.sba.gov](http://www.sba.gov) for more information. The Harbor Department defines a VSBE based on the State of California's Micro-business definition which is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.

The SBE Program is a results-oriented program, requiring consultants who receive contracts from the Harbor Department to perform outreach and utilize certified small businesses. **Based on the work to be performed, it has been determined that the percentage of small business participation will be 0%, including 0% VSBE participation.** The North American Industry Classification System (NAICS) Code for the scope of services is 541990. This NAICS Code is the industry code that corresponds to at least 51% of the scope of services and will be used to determine the size standard for SBE participation of the Prime Consultant. The maximum SBE size standard for this NAICS Code is \$14 million.

Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement. Subconsultants must qualify as an SBE based on the type of services that they will be performing under the Agreement. All business participation will be determined by the percentage of the total amount of compensation under the agreement paid to SBEs. The Consultant shall not substitute an SBE firm without obtaining prior approval of the City. A request for substitution must be based upon demonstrated good cause. If substitution is permitted, Consultant shall endeavor to make an in-kind substitution for the substituted SBE.

#### (2) LOCAL BUSINESS PREFERENCE PROGRAM:

The Harbor Department is committed to maximizing opportunities for local and regional businesses, as well as encouraging local and regional businesses to locate and operate within the Southern California region. It is the policy of the Harbor Department to support an increase in local and regional jobs. The Harbor Department's Local Business Preference Program (LBPP) aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector.

The Harbor Department defines a LBE as:

- (a) A business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties; or
- (b) A business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties.

In order for Harbor Department staff to determine the appropriate LBE preference, Consultant shall complete, sign, notarize (where applicable) and submit the attached Affidavit and Contractor Description Form. The Affidavit and Contractor Description Form will signify the LBE status of the Consultant and subconsultants. Prior to contract award, the Harbor Department will verify the status of all LBEs.

Consultant shall complete, sign, notarize (where applicable) and submit as part of the executed agreement the attached Affidavit and Contractor Description Form. The Contractor Description Form, when signed, will signify the Consultant's intent to comply with the SBE and LBPP requirements. Prior to contract award, the Harbor Department will verify the status of all SBEs. In addition, prior to being awarded a contract with the Harbor Department, all contractors and subcontractors must be registered on LABAVN.

In the event of Consultant's noncompliance during the performance of the Agreement, Consultant shall be considered in material breach of contract. In addition to any other remedy available to City under this Agreement or by operation of law, the City may withhold invoice payments to Consultant until noncompliance is corrected, and assess the costs of City's audit of books and records of Consultant and its subconsultants. In the event the Consultant falsifies or misrepresents information contained in any form or other willful noncompliance as determined by City, City may disqualify the Consultant from participation in City contracts for a period of up to five (5) years.

## AFFIDAVIT OF COMPANY STATUS

"The undersigned declares under penalty of perjury pursuant to the laws of the State of California that the following information and information contained on **the attached Contractor Description Form** is true and correct and include all material information necessary to identify and explain the operations of

---

Name of Firm

as well as the ownership thereof. Further, the undersigned agrees to provide either through the prime consultant or, directly to the Harbor Department, complete and accurate information regarding ownership in the named firm, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents in association with this agreement."

(1) **Small/Very Small Business Enterprise Program:** Please indicate the ownership of your company. Please check all that apply. At least one box must be checked:

SBE     VSBE     MBE     WBE     DVBE     OBE

- A Small Business Enterprise (SBE) is an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121.
- A Very Small Business Enterprise (VSBE) is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.
- A Minority Business Enterprise (MBE) is defined as a business in which a minority owns and controls at least 51% of the business. A Woman Business (WBE) is defined as a business in which a woman owns and controls at least 51% of the business. For the purpose of this project, a minority includes:
  - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands); and
  - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- A Disabled Veteran Business Enterprise (DVBE) is defined as a business in which a disabled veteran owns at least 51% of the business, and the daily business operations are managed and controlled by one or more disabled veterans.
- An OBE (Other Business Enterprise) is any enterprise that is neither an SBE, VSBE, MBE, WBE, or DVBE.

(2) **Local Business Preference Program:** Please indicate the Local Business Enterprise status of your company.  
Only one box must be checked:

LBE     Non-LBE

- A Local Business Enterprise (LBE) is: (a) a business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties; or (b) a business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties.
- A Non-LBE is any business that does not meet the definition of a LBE

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_

Title \_\_\_\_\_  
Date Signed \_\_\_\_\_

**NOTARY**

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me appeared  
\_\_\_\_\_ to me personally known, who being duly sworn, did execute the  
Name

foregoing affidavit, and did state that he/she was properly authorized by \_\_\_\_\_  
Name of Firm

to execute the affidavit and did so as his or he free act and deed.

**SEAL**

Notary Public \_\_\_\_\_  
Commission Expires \_\_\_\_\_

# Contractor Description Form

## PRIME CONTRACTOR

Contract #: \_\_\_\_\_ Award Date: \_\_\_\_\_ Contract Term: \_\_\_\_\_  
Contract Title: \_\_\_\_\_  
Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
Local Business Enterprise: YES \_\_\_\_\_ No \_\_\_\_\_ (Check only one)  
Primary NAICS Code: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email Address: \_\_\_\_\_

## SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
Local Business Enterprise: YES \_\_\_\_\_ No \_\_\_\_\_ (Check only one)  
Primary NAICS Code: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email Address: \_\_\_\_\_

## SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
Local Business Enterprise: YES \_\_\_\_\_ No \_\_\_\_\_ (Check only one)  
Primary NAICS Code: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email address: \_\_\_\_\_

## Contractor Description Form

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
Local Business Enterprise: YES \_\_\_\_\_ No \_\_\_\_\_ (Check only one)  
Primary NAICS Code: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email Address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
Local Business Enterprise: YES \_\_\_\_\_ No \_\_\_\_\_ (Check only one)  
Primary NAICS Code: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email address: \_\_\_\_\_

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)  
Local Business Enterprise: YES \_\_\_\_\_ No \_\_\_\_\_ (Check only one)  
Primary NAICS Code: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email address: \_\_\_\_\_

## EXHIBIT G

### Sec. 10.8.2.1. Equal Benefits Ordinance.

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. Los Angeles law prohibits entities doing business with the City from discriminating in employment practices based on marital status and/or sexual orientation. The City's departments and contracting agents are required to place in all City contracts a provision that the company choosing to do business with the City agrees to comply with the City's nondiscrimination laws.

It is the City's intent, through the contracting practices outlined in this Ordinance, to assure that those companies wanting to do business with the City will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Ordinance are designed to ensure that the City's contractors will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City's property.

#### (c) Equal Benefits Requirements.

(1) No Awarding Authority of the City shall execute or amend any Contract with any Contractor that discriminates in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(2) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the DAA, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance.

(3) A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." The posted statement must also include a City contact telephone number which will be provided each Contractor when the Contract is executed.

(4) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by the Equal Benefits Ordinance.

(d) Other Options for Compliance. Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

a. The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits; or

b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

(e) Applicability.

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.

(f) **Mandatory Contract Provisions Pertaining to Equal Benefits.** Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.