

**AGREEMENT NO. \_\_\_\_\_**

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE CITY OF LOS ANGELES AND  
INTERNATIONAL METALS AND ENERGY TECHNOLOGY, LTD.**

This MEMORANDUM OF AGREEMENT ("MOA" or "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 INTERNATIONAL METALS AND ENERGY TECHNOLOGY, LTD., a Michigan Corporation, 45429 Tournament Drive, Northville, MI 48168 ("GRANTEE").

**WITNESSETH**

WHEREAS, the City of Los Angeles Harbor Department ("Department" or "Port") created a five-year, \$20 million Air Quality Mitigation Incentive Program (hereinafter referred to as "AQMIP") to provide financial incentives to assist in the implementation of air quality mitigation projects; and

WHEREAS, the City released a Request for Proposals in December 2007, seeking proposals for the 2007-2008 AQMIP; and

WHEREAS, in accordance with the China Shipping settlement, the Port Community Advisory Committee recommends Grantee's research and development proposal to demonstrate a particulate matter (PM) and oxides of nitrogen (NOx) control device for marine engine equipment called the GreenPower DPF-Hydrated EGR System (hereinafter referred to as "PROJECT") for approval; and

WHEREAS, Grantee and City originally entered into Agreement 09-2815 to fund implementation of the Project, but Grantee was unable to complete the project due to loss of a test vessel and the agreement expired in November 2011; and

Whereas, Grantee has acquired another test vessel supplied by Holland America Line and funding remains to conduct the demonstration project; and

WHEREAS, the Project will assist in the commercialization of equipment which may provide additional options for equipment owners to reduce emissions, which is a goal of the San Pedro Bay Ports' Clean Air Action Plan;

NOW, THEREFORE, in consideration of the forgoing recitals, the parties agree as follows:

**I. AUTHORIZED REPRESENTATIVES TO RECEIVE NOTICES**

- A. The representatives of the respective parties who are authorized to receive notices for this Agreement are:

International Metals And Energy Technology, Ltd.  
dba IMET, Ltd.  
Dr. Julius Rim, Principal Engineer  
45429 Tournament Drive  
Northville, MI 48168  
Tel: (734) 414-1414  
Fax: (734) 414-8760  
dieseltrap@gmail.com

Lisa Wunder, Air Quality Assistant Supervisor  
Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro, CA 90731  
Tel: (310) 732-3675  
Fax: (310) 547-4643  
[lwunder@portla.org](mailto:lwunder@portla.org)

- B. Formal notices, demands, requests and communications given by either party shall be made in writing to the authorized representatives set forth above.
- C. If the name or address designated above is changed, written notice shall be given to the other party within five (5) working days of said change.

## II. SERVICES TO BE PERFORMED BY GRANTEE

- A. GRANTEE shall, to the satisfaction of the City, obtain those professional, expert and technical services, and materials necessary to complete the PROJECT as described in Exhibit A.
- B. GRANTEE shall test the GreenPower DPF Hydrated EGR System on a Holland America Line Inc. ("HAL") vessel. HAL has provided provisional clearance to utilize one of its vessels for the PROJECT. A confirmation letter from HAL is attached in Exhibit B.
- C. During the term of this Agreement, GRANTEE shall submit a written request to, and obtain written approval from, the Executive Director or his or her designee to change, or modify PROJECT.
- D. GRANTEE shall provide City status updates on the CARB verification effort that may follow completion of the PROJECT and shall notify City if CARB certification is received.
- E. At any time during the term of this Agreement, and upon written request from the City, GRANTEE shall provide to the City within ten (10) days from said written request, any and all information for the PROJECT.
- F. At any time during the term of this Agreement, and upon ten (10) days written request from the City, GRANTEE shall allow the City to conduct site visits to the location(s) where the PROJECT equipment is operated.

- G. Grantee shall submit progress reports pursuant to Exhibit A and a Final Report ten (10) days after the Agreement expires or is terminated pursuant to either Section IV or Section VI. Upon PROJECT completion, GRANTEE shall prepare and submit a draft final report. The report shall include, but not be limited to, a photo record of the PROJECT, a summary of PROJECT objectives and goals achieved, notable problems and their associated resolution, recommendations for future efforts and a discussion of future plans for the technology. The Final Report shall be submitted using the format specified in Exhibit C.

### III. SERVICES TO BE PERFORMED BY CITY

- A. City shall reimburse GRANTEE for the PROJECT in accordance with the terms of this Agreement.
- B. Unless set forth herein, City shall not be obligated to provide assistance to GRANTEE to assure completion of PROJECT as required herein.

### IV. TERM OF THE MOA

Subject to the provisions of Charter Section 245, the effective date of this Agreement shall be the date of its execution by the Executive Director upon authorization of the Board and shall remain in full force for three (3) years.

GRANTEE 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.

### V. COMPENSATION

- A. For the satisfactory completion of the PROJECT, City shall reimburse GRANTEE an amount not-to-exceed FIVE HUNDRED EIGHTY FOUR THOUSAND FIVE HUNDRED EIGHTY ONE DOLLARS (\$584,581) as follows:
  - 1. Upon satisfactory completion of Task 1, Forty Nine Thousand Dollars (\$49,000).
  - 2. Upon satisfactory completion of Task 2, Thirty Two Thousand Five Hundred Dollars (\$32,500).
  - 3. Upon satisfactory completion of the Task 3, as follows:
    - a. Task 3(A), One Hundred Twenty Two Thousand Five Hundred Dollars (\$122,500).
    - b. Task 3(B), Seventy Five Thousand Dollars (\$75,000)
    - c. Task 3(C), Seventeen Thousand Five Hundred Dollars (\$17,500).
  - 4. Upon completion of Task 4, an amount not to exceed Thirty One Thousand Eighty One Dollars (\$31,081).

5. Upon satisfactory completion of Task 5, an amount not to exceed Thirty Nine Thousand Five Hundred Dollars (\$39,500).
6. Upon satisfactory completion of Task 6, as follows:
  - a. Task 6(A), an amount not to exceed Six Thousand Five hundred Dollars (\$6,500).
  - b. Task 6(B), an amount not to exceed nineteen Thousand Five Hundred Dollars (\$19,500).
7. Upon satisfactory completion of Task 7, Seventy Seven Thousand Five Hundred Dollars (\$77,500).
8. Upon satisfactory completion of Task 8, Sixteen Thousand Dollars (\$16,000).
9. Upon satisfactory completion of Task 9, as follows:
  - a. Task 9(A), Six Thousand Dollars (\$6,000).
  - b. Task 9(B), Twenty Six Thousand Dollars (\$26,000).
10. Upon completion of Task 10, Thirty Three Thousand Dollars (\$33,000).
11. Upon completion of Task 11, Thirty Three Thousand Dollars (\$33,000).

- B. GRANTEE shall submit itemized invoice statements in quadruplicate form as specified in Exhibit D. Each such invoice shall be signed by GRANTEE and shall include the following certification:

"I certify under penalty of perjury that this statement is true and correct according to the terms of this MOA (Agreement No. \_\_\_\_\_) and that payment therefore has not been received.

\_\_\_\_\_  
Project Manager

- C. Each itemized invoice must include the GRANTEE's Los Angeles Business Tax Registration Certificate number, as required in Section XVII of this Agreement. No invoice will be processed for payment by City without this number shown thereon.
- D. 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. City shall use all reasonable efforts to pay said sums within sixty (60) days of receipt of each invoice.
- E. GRANTEE shall submit appropriate supporting documents with each invoice. The City may require, and GRANTEE shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement. GRANTEE is not required to submit support for direct costs items of \$25 or less.
- F. For payment and processing, all invoices should be mailed to the following address:

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

VI. TERMINATION

- A. City in its sole discretion may terminate and cancel all or any part of this Agreement for any reason upon giving to GRANTEE ten (10) days notice in writing of its election to cancel and terminate this Agreement. Upon receipt of the termination notice, GRANTEE shall cease the performance of the PROJECT. GRANTEE shall be entitled to reimbursement for expenses incurred in accordance with Section V of this Agreement. The City shall determine the amount of services actually performed and shall allocate the portion of the total compensation due to GRANTEE.
- B. If the equipment, vehicle(s) and/or vessel(s) become inoperable through mechanical failure of components or systems related to this Agreement, and such failure is not caused by GRANTEE's negligence, misuse, or malfeasance, GRANTEE shall submit written documentation requesting early termination of the Agreement. Any request by GRANTEE for early termination of the Agreement shall be presented by Department staff to the Board for acceptance and approval.
- C. In the event that GRANTEE seeks early termination of this Agreement prior to the termination date for any reason, or no reason whatsoever, GRANTEE shall submit a written request to the City. Department staff shall submit GRANTEE's written request for early termination to the Board for acceptance and approval. In the event that City accepts GRANTEE's request for early termination, GRANTEE shall reimburse the City at the rates stipulated in Section VI.E.
- D. In the event that facts available to the Department indicate that GRANTEE has breached any term of this Agreement prior to the end of the Agreement term, the Executive Director shall submit the reasons for the breach to the Board for its determination and concurrence that GRANTEE has breached the Agreement. In the event that City determines that GRANTEE has breached the Agreement, GRANTEE shall reimburse the City at the rates stipulated in Section VI.E.
- E. In the event that either City or GRANTEE terminate this Agreement as described in Sections VI.C or VI.D, GRANTEE shall reimburse City for all monies paid to GRANTEE by City at the following rates:

100% if termination occurs within thirty-six (36) months from the effective date of the Agreement;

The reimbursable amount shall be paid by GRANTEE to the City within sixty (60) days of the Board either 1) accepting GRANTEE's request for

early termination under Section VI.C or 2) determining that GRANTEE breached the Agreement under Section VI.D.

VII. ACCEPTABILITY OF WORK

The City shall decide any and all questions that may arise as to the quality or acceptability of the work performed by GRANTEE under this Agreement, including errors and omissions, and as to the amount of reimbursement due to GRANTEE. Decisions shall be final, and the City shall have authority to enforce and make effective such decisions and orders with respect to the performance of this Agreement.

GRANTEE understands that no board member, officer, agent or employee of City has the authority to require work outside this Agreement other than is allowed by this Agreement.

VIII. EMISSION REDUCTION CREDITS (ERCs)

All Emission Reduction Credits generated by the PROJECT belong to the City and cannot be used by GRANTEE for any purpose.

IX. ASSIGNMENT

GRANTEE shall not assign, sell, license or otherwise transfer the PROJECT equipment, vehicle(s) and/or vessel(s) or any of the rights granted by this Agreement without the prior written consent of the City. Any attempted transfer or assignment without the prior written consent of the Cities shall be void and confer no rights whatsoever upon a transferee or assignee. Any attempted transfer or assignment without the prior written consent of the Cities shall be considered a breach of this Agreement and the City may proceed with termination of the agreement under Section VI.

Any request for consent to an assignment shall be made in writing, accompanied by information relevant to the City's determination as to the financial and operational responsibility and appropriateness of the proposed assignee, including but not limited to the intended use and/or required modifications to the PROJECT equipment, vehicle(s) and/or vessel(s), if any. GRANTEE agrees to provide to the City such other or additional information and/or documentation pertaining to the requested consent as may be reasonably requested by the City.

X. 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, GRANTEE 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 GRANTEE'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 GRANTEE 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 GRANTEE's insurance documents. GRANTEE'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 GRANTEE's behalf.

C. General Liability Insurance

GRANTEE 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 GRANTEE'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 GRANTEE. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of GRANTEE'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. Workers' Compensation and Employer's Liability

GRANTEE 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 GRANTEE 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. GRANTEE 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 GRANTEE, and for all employees of any subcontractor or other vendor retained by GRANTEE.

E. Ocean Marine Liability

GRANTEE shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connections with GRANTEE's operations. The cost of the insurance shall be borne by GRANTEE. The coverage shall be 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 Rating is not available). Coverage shall include, but not be limited to:

- (i) Hull and machinery coverage up to the value of the vessel(s);
- (ii) Protection and Indemnity coverage with combined single limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury, illness, death, loss of or damage to the property of another, and Jones Act risks or equivalent thereto internationally.

Coverage shall contain a defense of suits provision and a severability of interest clause. Each policy shall also contain 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.

In the event that project participant Holland America Line Inc. provides ocean marine liability insurance, the terms and conditions shall be the same as provided for herein and shall name GRANTEE and the City of Los Angeles Harbor Department, its officers, agents, and employees as Primary additional insureds.

F. Carrier Requirements

All insurance which GRANTEE 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 GRANTEE.

I. Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, GRANTEE 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 GRANTEE 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 GRANTEE.

J. Right to Self-Insure

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

1. GRANTEE has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, GRANTEE must have a formal resolution of its board of directors authorizing self-insurance.
2. GRANTEE 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. GRANTEE agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.

4. GRANTEE agrees that any insurance carried by Department is excess of GRANTEE's self-insurance and will not contribute to it.
5. GRANTEE provides the name and address of its claims administrator.
6. GRANTEE 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. GRANTEE 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. GRANTEE has complied with all laws pertaining to self-insurance.

K. Accident Reports

GRANTEE 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 GRANTEE'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 GRANTEE, its officers or managing agents.

XI. COMPLIANCE WITH APPLICABLE LAWS

GRANTEE shall, at all times, in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, enacted and adopted by federal, state, regional, municipal or other governmental bodies, departments or offices thereof. In addition to the foregoing, GRANTEE shall comply immediately with any and all orders or directions issued by the City under authority of any such law, statute, ordinance, rule or regulation.

XII. INDEPENDENT CONTRACTOR

GRANTEE in the performance of the work required by this Agreement is an independent contractor and not an agent or employee of the City. GRANTEE 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.

### XIII. 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 Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of the City and Department. The parties 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.

### XIV. TRADEMARKS, COPYRIGHTS AND PATENTS

GRANTEE agrees to save, keep, hold harmless, protect and indemnify the City and any of its officers or agents from any damages, costs, 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 GRANTEE in the performance of this Agreement.

### XV. OWNERSHIP OF DOCUMENTS

All data, documents, reports or other materials, copies of working papers which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement shall become the property of the City. The City reserves the right to use, duplicate, disclose in whole or in part in any manner for any purpose whatsoever all said data, documents, reports or other materials, and to authorize others to do so.

### XVI. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. GRANTEE declares that its authorized Taxpayer Identification Number (TIN) is 39-2290817. No payments will be made under this Agreement without a valid TIN.

### XVII. 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 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 Los Angeles Harbor Department ("Department"). See Exhibit E.

XVIII. AFFIRMATIVE ACTION

GRANTEE, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, religion, natural 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 the Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit F.

XIX. PROPRIETARY INFORMATION

GRANTEE may not disclose to any party without City's permission any information developed pursuant to this Agreement. The Department will, however, have the right to disclose the information as it determines appropriate considering the nature of the information, its use and the laws applicable to the Department.

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

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The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 5771 on January 3, 1999, agreeing to adopt the provisions of the 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. GRANTEE shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate the Agreement and otherwise pursue legal remedies that may be available.

XXI. WAGE AND EARNING ASSIGNMENT ORDERS/NOTICES OF ASSIGNMENTS

GRANTEE and/or any subcontractor are obligated to fully comply with all applicable state and federal employment reporting requirements for GRANTEE and/or subcontractor's employees.

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

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

## XXIII. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tideland 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. GRANTEE agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

## XXIV. GOVERNING LAW AND 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.

## XXV. 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.**

## XXVI. 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.

## XXVII. 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.

## XXVIII. 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.

## XXIX. 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.

## XXX. 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.

XXXI. 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.

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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 \_\_\_\_\_  
Executive Director

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

INTERNATIONAL METALS AND ENERGY TECHNOLOGY, LTD.

Dated: Sep 27, 2012

By *Julius J. Rim*  
JULIUS J. RIM PRESIDENT  
Type/print Name and Title

Attest *Elena W. Rim*  
Elena W. Rim v.p.  
Type/print Name and Title

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_, 2012  
CARMEN A. TRUTANICH, City Attorney  
Thomas A. Russell, General Counsel

By \_\_\_\_\_  
Heather M. McCloskey, Deputy

Account#	W.O. #
Ctr/Div#	Job Fac.#
Proj/Prog#	
Budget FY:	Amount:
TOTAL	

**For Acct/Budget Div. Use Only**

Verified by: \_\_\_\_\_

Verified Funds Available: \_\_\_\_\_

Date Approved: \_\_\_\_\_

**EXHIBIT A  
PROJECT SCOPE AND PAYMENT SCHEDULE**

The primary goal of the Project is to evaluate and demonstrate a particulate matter (PM) and oxides of nitrogen (NOx) control device for marine engine applications. The International Metals & Energy Technology, Ltd. (IMET) device is called the GreenPower DPF-Hydrated EGR System. The Holland America Line (HAL) is the vessel equipment partner. Holland America Line will provide an ocean going vessel (OGV) for demonstration and emissions testing of the IMET device.

As proof-of-concept, the device will be installed on a 1,200 KW Gen-Set engine which is used as an auxiliary emergency generator on the HAL's OGV. If the results from this proof-of-concept show promise as an option to significantly reduce NOx (by 40%) and PM (by 85%), and commitment from HAL is secured, the demonstration will continue on a 8,000 KW main engine on HAL's vessel of a similar configuration to reduce NOx emission by cleaning the EGR portion of gases with IMET device.

The key objectives to meet this goal are encompassed in the following tasks.

<b>Task/Payment Milestone</b>	<b>Description</b>	<b>Timing</b>
<b>Task #1</b>	<b>Development of Test Protocol for IMET-device for marine application on HAL's vessel 1,200 KW engine</b> IMET will develop a test protocol, subject to CARB's approval. This test protocol will detail the use of the IMET system on a 1,200 KW emergency generator on board the HAL OGV as a proof-of-concept for the 8,000 KW main engine demonstration.	0-3 months after issue of new contract
<b>Payment Milestone #1</b>	Completion of Task #1. Payment: \$49,000. To receive payment, grantee must receive port staff approval of the test protocol, in consult with CARB.	
<b>Task #2</b>	<b>Lab-based Engine Testing with Marine Fuel</b> Baseline engine testing of IMET device using Marine Gas Oil at or below 1.0% sulfur or Marine Diesel Oil. IMET is to develop a report that summarizes laboratory bench test results of the IMET system with use of marine fuels.	Concurrent with Task #1
<b>Payment Milestone #2</b>	Completion of Task #2. Payment: \$32,500. To receive payment, grantee must submit test report to Port staff. Report is subject to Port staff approval.	
<b>The following tasks may be amended based on CARB's input to test protocol, subject to a written request from IMET and approval by the Director of Environmental Management or designee within 10 business days.</b>		
<b>Tasks #3 A-C</b>	<b>Equipment and Supply Acquisition and Integration</b>	0-3 months after completion of Task #1
<b>3A)</b>	Purchase materials and additives necessary for project, such as: stainless pipes and sheets, diesel particulate filters, pumps, blowers, heaters, burners, motorized diverting valve, catalyst engine oil additives (up to 5 drums), and miscellaneous.	
<b>3B)</b>	Development of the IMET Electronic Control Unit (ECU) by third party.	
<b>3C)</b>	Integration of all components of the IMET system into a working model to be later installed on a 1,200 kw emergency generator on board the HAL's test vessel.	

<b>Payment Milestone #3</b>	<p><b>Completion of Tasks #3 A - C.</b>  <b>Payment: \$215,000, with partial payment allowed as follows:</b></p> <ul style="list-style-type: none"> <li>• 3A) \$122,500 to purchase materials and additives;</li> <li>• 3B) \$75,000 for development of the ECU; and</li> <li>• 3C) \$17,500 for the integration of components.</li> </ul> <p>To receive payment, Grantee must provide documentation (i.e. purchase order receipts, photographs, written correspondence) to demonstrate the completion of sub-tasks in Task 3.</p>	
<b>Task #4</b>	<p><b>Acquisition of Monitoring Equipment</b>  Acquire the necessary equipment (continuous emissions monitoring system (CEMS)) to be stationed on the vessel during the vessel test period.</p>	0-3 months after completion of Task #1
<b>Payment Milestone #4</b>	<p><b>Completion of Task #4.</b>  <b>Payment: Not to exceed \$31,081.</b>  To receive payment, grantee must submit documents (i.e. purchase order receipt) to demonstrate the completion of Task #4.</p>	
<b>Task #5</b>	<p><b>On-vessel Baseline Emission Testing.</b>  Conduct baseline emission measurement to quantify exhaust emissions and acquire engine operating data. Testing will be conducted by University of California, Riverside, or equivalent laboratory, and IMET technician.</p>	0-6 months after completion of Task #4
<b>Payment Milestone #5</b>	<p><b>Completion of Task #5.</b>  <b>Payment: Not to exceed \$39,500.</b>  To receive payment, Grantee must provide a progress report detailing the Baseline results and demonstrating the completion of Task #5.</p>	
<p><b>Task #6 A,B</b></p> <p><b>6A)</b> The IMET system will be assembled and shipped to HAL's designated location on the west coast for installation on the HAL's test vessel.</p> <p><b>6B)</b> Installation of IMET-device on 1,200 KW emergency generator.</p>	<p><b>Shipping and Installation of IMET-device on HAL's test vessel for 1,200 KW emergency generator.</b></p>	0-3 months after completion of Task #5
<b>Payment Milestone #6</b>	<p><b>Completion of Task #6.</b>  <b>Payment: Not to exceed \$26,000, with partial payment allowed as follows:</b></p> <ul style="list-style-type: none"> <li>• 6A) \$6,500 for shipment of IMET system to HAL and</li> <li>• 6B) \$19,500 for installation.</li> </ul> <p>To receive payment, Grantee must provide documentation (i.e. written correspondence, receipt of delivery) to demonstrate the completion of sub-tasks in Task #6.</p>	

<b>Task #7</b>	<p><b>On-vessel Emissions Testing and Reporting on 1,200 KW engine.</b> In accordance with the protocol developed in Task #1, grantee shall test emissions, document test results and prepare a Final Report on the 1,200 KW engine.</p> <p>The Final Report shall include detailed final emissions tests and results, and engine tests and results. Report should also document any adjustments that will need to be made to the system to transfer it to a main engine on the Holland America Line vessel.</p>	6 months after completion of Tasks #6 A and B.
<b>Payment Milestone #7</b>	<p><b>Completion of Task #7</b> <b>Payment: \$77,500</b> To receive payment, grantee must receive port staff approval of final report summarizing results of the emission testing.</p>	
<b>Task #8</b>	<p><b>Water Tank Acidity Control and Engine Oil Quality Monitoring.</b> Measure the acidity of the water-solution of IMET's Hydrated-EGR system to maintain the alkaline solution in IMET's Hydrated-EGR system. Obtain Engine Oil check samples for lab analysis. Measure the effects of IMET's Green Oil Additive on oil and fuel consumption rate.</p>	Concurrent with Task #7.
<b>Payment Milestone #8</b>	<p><b>Completion of Task #8</b> <b>Payment: \$16,000</b> To receive payment, Grantee must submit a progress report detailing the results of the Acidity Control and Engine Oil Monitoring tests, as well as any adjustment necessary to the system as a result of the tests.</p>	
<p>Holland America Line has tentatively agreed to allow IMET to install their IMET system on one 8,000 KW main diesel engine in the vessel's engine room. At this time, the Proof of Concept test results will be reviewed with IMET, Holland America Line, Port staff, and other consultants as necessary to determine if the project will continue on the 8,000 KW engine.</p> <p>If the project does not progress to the 8,000 KW engine, the project will terminate and any remaining grant funds will be reprogrammed by the Port.</p> <p>If the project progresses to the larger engine, the remaining scope will be as follows.</p>		
<b>Task #9A</b>	<p><b>Development of Test Protocol for IMET-device for marine application on HAL's vessel 8,000 KW engine</b> IMET will develop a test protocol, subject to CARB's approval. This test protocol will detail the use of the IMET system on 8,000 KW engine on HAL's vessel.</p>	0-6 months after completion of Task #7
<b>Task #9B</b>	<p><b>Baseline testing on 8,000KW main engine</b> Conduct baseline testing and quantification of exhaust emissions from the 8,000 KW gen-set in accordance with the protocol developed in Task #1. Testing will be conducted by University of California, Riverside (UCR) or equivalent laboratory recommended by port staff in consult with CARB.</p>	
<b>Payment Milestone #9</b>	<p><b>Completion of Task #9A</b> <b>Payment: \$6,000</b> To receive payment, grantee must receive port staff approval of the test protocol, in consult with CARB.</p>	

	<p><b>Completion of Task #9B</b>  <b>Payment: \$26,000</b>  To receive payment, Grantee must provide a progress report detailing the Baseline results and demonstrating the completion of Task #9B.</p>	
<b>Task #10</b>	<p><b>Installation on 8,000 KW engine.</b>  Remove IMET's DPF-Hydrated EGR unit from 1,200 KW Gen-Set and install the IMET-DPF unit to the 8,000 KW main Diesel gen-set making any necessary adjustments. Accomplishing this task will include coordination with HAL ship engineers, consultation with experts, and will require IMET technicians on board the vessel multiple times.</p>	0-3 months after completion of Task #9.
<b>Payment Milestone #10</b>	<p><b>Completion of Task #8.2.</b>  <b>Payment: \$33,000</b>  To receive payment, Grantee must provide documentation (i.e. written correspondence from HAL) to demonstrate the completion of Task #10.</p>	
<b>Task #11</b>	<p><b>Emission testing from 8,000 KW engine with IMET system installed.</b>  Emissions measurement will be done by UCR or equivalent in accordance with CARB approved Test Protocol developed in Task #1. Accomplishing this task will require coordination with HAL ship engineers, consultation with experts, and IMET and other technicians on board the vessel. Prepare a Final Report on the 8,000KW engine.</p>	3-4 months after completion of Task #10
<b>Payment Milestone #11</b>	<p><b>Completion of Task #11</b>  <b>Payment: \$33,000</b>  To receive payment, the Grantee must receive Port approval of a Final Project Report, which will include the following information on the 8,000KW gen-set demonstration: Baseline emissions testing procedures and results; Summary of the installation process; Emission testing procedures and results with IMET System installed; and Quantification of emissions reductions. This report should be written in accordance with the CARB approved protocol as established in Task #1.</p>	



# Holland America Line Inc.

Fleet Operations Department

Dan Grausz  
Executive Vice President

July 21, 2011

Julius J. Rim, Ph.D.  
President  
International Metals & Energy Technology (IMET) Ltd.  
45429 Tournament Dr.  
Northville, MI 48168

Re: IMET' GreenPower "DPF-Hydrated EGR"-Vessel Demonstration Project

Dear Dr. Rim:

Holland America Line (HAL) operates a fleet of 15 passenger vessels on worldwide itineraries. We place great emphasis on reducing the environmental impact of our fleet as we recognize that our future success depends on our doing so. A healthy ocean is essential to our guests enjoying our cruise product.

We have reviewed IMET's GreenPower Fuel Saver DPF-Hydrated EGR patented technology for marine engines. We find IMET's emerging technology has great potential to benefit the marine industry through reducing both particulate emissions (PM) and NOx and improving fuel consumption. We are prepared to assist IMET in determining whether its technology can be adapted to large marine engines.

Towards that end, we are working with IMET to devise a test protocol that will initially enable IMET to install its technology on the 1.2 MW Emergency Diesel Generator (EDG) on one of our ships, expected to be the ms Amsterdam, a vessel registered in the Netherlands. If successful, we would then look to developing with IMET a pilot test on one of the ship's main engines. The initial pilot with the EDG is described in more detail on Exhibit A, "Scope of Work," and is expected to be conducted within the time frame provided for in the contract awarded to IMET from the Port of Los Angeles (POLA) for such purpose.

As part of this pilot, IMET will be able to take baseline and post-refitting emissions and fuel consumption measurements. The work needs to be done so as not to interfere with the vessel's operations and in full compliance with Classification Society (Lloyds Register), Dutch flag, U.S. Coast Guard and all other applicable requirements, rules and regulations.

We look forward to working with IMET in the development and implementation of this pilot project.

Sincerely,

Dan Grausz  
Executive Vice President, Fleet Operations

**Port of Los Angeles  
Air Quality Mitigation Program  
2007-2008**

**Final Report**

**Project Name:** \_\_\_\_\_

**Agreement No.** \_\_\_\_\_

**Technology Background Description and Comparison**

Provide a brief introduction describing the technology used in the Agreement.

Discuss how the operation of the technology used under this Agreement is different from other available technology, including a description of any advancements or improvements that exist over other available technologies.

**Status**

Describe the status of the Project. If the Project was completed, provide the completion date and note that the final report on file includes technical details of the Project. Describe major Project events, such as the development, testing, and/or delivery of equipment (if applicable).

Include a photo of the technology used under this Agreement. The picture, preferably a digital photograph, should clearly illustrate the technology. The size of the image should be approximately 3" x 3".

**Emissions Reductions Results**

Provide a summary of all available emissions results and key performance characteristics.

The term "performance characteristics" is to include (as applicable) operation and maintenance requirements, overall environmental impacts and performance tradeoffs. The primary emphasis of this section is for the presentation of project data. Performance results should be summarized with clear, graphical depictions whenever possible. Measured performance is to be compared with objectives/ goals set for the project. Comparisons should focus on targeted emissions reductions and/or other key performance goals.

**Benefits**

Describe the actual benefits that accrued during the Agreement in comparison with the benefits that were anticipated at the start of the Project. Be as detailed as possible, including discussion of the Project's overall environmental impacts and benefits.

**EXHIBIT C**

**Project Costs**

Describe the actual costs of the Project (e.g. the Port’s funding contribution as well as any costs incurred by the Grantee) and how these costs compare with the originally projected costs of the Project as stated in the Agreement. Cost information can be presented graphically, in a table, or in paragraph form. This section does not need to address cost-effectiveness.

**Signature Requirement**

Please sign the Final Report with the certification line:

“I certify under penalty of perjury that the information provided in this Final Report is true and correct according to the terms of Agreement No. \_\_\_\_\_:

\_\_\_\_\_  
Project Manager

PLEASE PRINT INVOICE ON COMPANY LETTERHEAD

**Port of Los Angeles Air Quality Mitigation Incentive Program  
2007-2008  
Research and Development**

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

Invoice #: \_\_\_\_\_  
Agreement No.: \_\_\_\_\_  
BTRC No. \_\_\_\_\_  
Billing Period: \_\_\_\_\_

Project Description	Total POLA Budget	Current Expenditures	Expenditures to Date	Amount to be Paid in this Invoice	Percent of Task Completed to Date
	\$	\$	\$	\$	%

INCLUDE A NARRATIVE DESCRIPTION OF TASK COMPLETED

AND

ATTACH A PROGRESS REPORT.

**TOTAL DUE THIS INVOICE: \$** \_\_\_\_\_

*I certify under penalty of perjury that this statement is true and correct according to the terms of this MOA (Agreement No. \_\_\_\_\_) and that payment therefore has not been received.*

\_\_\_\_\_  
Project Manager

\_\_\_\_\_  
Date

**NOTICE**

**PORT OF LOS ANGELES APPROVAL**

*I certify that I have reviewed the progress report, verified the deliverables, and I approve the invoice for payment. I verify that the amount is consistent with the submissions.*

\_\_\_\_\_  
POLA Project Representative

\_\_\_\_\_  
Date

**EXHIBIT D**

## EXHIBIT E

### 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 F - AFFIRMATIVE ACTION PROGRAM PROVISIONS

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

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

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

## EXHIBIT F - AFFIRMATIVE ACTION PROGRAM PROVISIONS

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

## EXHIBIT F - AFFIRMATIVE ACTION PROGRAM PROVISIONS

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;

## EXHIBIT F - AFFIRMATIVE ACTION PROGRAM PROVISIONS

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 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.