

AGREEMENT NO.

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
MARINE TERMINALS CORPORATION

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 MARINE TERMINALS CORPORATION, a Nevada corporation ("Subrecipient"), 2001 John S. Gibson Boulevard, San Pedro, California 90731.

WHEREAS, The City of Los Angeles Harbor Department ("Harbor Department") applied for and was awarded a grant of funds by the U.S. Environmental Protection Agency ("EPA") to fund the EcoCrane Emerging Technologies Project ("Project");

WHEREAS, the Harbor Department entered into Cooperative Agreement No. DE 83467301 ("Cooperative Agreement" or "Grant") with the EPA regarding the receipt of funds in the amount of \$731,298.00 ("Grant Funds") for the Project;

WHEREAS, the Harbor Department, will serve as the Grant Administrator, and will reimburse Subrecipient using the Grant Funds in connection with Subrecipient's implementation of the Project at Subrecipient's container terminal (Ports America Terminal), on the terms and conditions below and as required by the Grant;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY SUBRECIPIENT

A. Subrecipient shall, to the satisfaction of City, obtain and install equipment, materials and professional, expert and technical services necessary to complete the Project as described in Exhibit A ("Scope of Work").

B. The Scope of Work shall be performed by qualified and competent personnel. Obligations of this Agreement, whether undertaken by Subrecipient or Subrecipient's contractors, are and shall be the responsibility of Subrecipient. Subrecipient acknowledges and agrees that this Agreement creates no rights in Subrecipient's contractors with respect to City and/or under the Cooperative Agreement and that obligations that may be owed to Subrecipient's contractors, including, but not limited to, the obligation to pay Subrecipient's contractors for services performed, are those of Subrecipient alone. Upon Executive Director's written request, Subrecipient shall supply Harbor Department with all agreements between it and its contractors. Subrecipient acknowledges that EPA will not help selected employees or contractors hired by Subrecipient.

C. Subrecipient acknowledges that the funds to be paid to Subrecipient under this Agreement are subject to EPA regulations and Federal, state and local laws

("Grant Laws, Duties and Obligations") with which Subrecipient is required to comply. Subrecipient agrees to comply with any and all Grant Laws, Duties and Obligations arising under the Cooperative Agreement (a copy of which is attached hereto as Exhibit B) including but not limited to the Programmatic Conditions, regardless of whether the particular law, duty and/or obligation is provided in this Agreement. Subrecipient further agrees to assist Harbor Department in complying with all of the Harbor Department's duties and obligations arising under the Cooperative Agreement.

II. SERVICES TO BE PERFORMED BY CITY

A. City shall reimburse Subrecipient in accordance with the terms of this Agreement and the Grant.

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 reimbursement due.

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. Consultant 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 Effective Date and shall continue until the earlier of the following occurs:

1. Two years;

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 per the terms of the Grant. Subrecipient shall remain responsible for complying with all reporting and recordkeeping requirements.

or

3. City, in its sole discretion, terminates and cancels all or any 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 as of the date the ten days' notice period ends. City shall determine the amount of reimbursement due to Subrecipient per the terms of the Grant. 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 reimburse Subrecipient for incurred eligible and allowable costs, conditioned upon Subrecipient's compliance with all required Grant Laws, Duties and Obligations and the terms of this Agreement.

B. The maximum payable under this Agreement shall be SEVEN HUNDRED THIRTY-ONE THOUSAND TWO HUNDRED NINETY-EIGHT Dollars (\$731,298.00).

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 invoice is just and correct according to the terms of Agreement No. _____ and that payment has not been received.

(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 X 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.

E. Subrecipient shall provide appropriate supporting documents with each invoice evidencing that Subrecipient has incurred eligible and allowable costs with respect to the Cooperative Agreement. Such documents may include provide invoices, payrolls, and time sheets and any other document(s) reasonably required to determine whether amounts on the invoice are eligible and allowable expenses under the Cooperative Agreement and this Agreement. All invoices are subject to audit.

F. Where Subrecipient employs contractors under this Agreement, the Subrecipient shall submit to City, with each monthly invoice, a Monthly Contractor Monitoring Report Form (Exhibit C) listing SBE/MBE/WBE/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 contractor utilization. Invoices will not be paid without a completed Monthly Contractor Monitoring Report Form.

G. After review and approval of invoices, City (Harbor Department) shall apply to the U.S. EPA for funds to reimburse Subrecipient in accordance with the Cooperative Agreement. Once the funds have been received from EPA, City shall reimburse Subrecipient. It is expressly understood between City and Subrecipient that Subrecipient shall be entitled to reimbursement only after approval of the request by EPA and provision of the funds from EPA to the City.

H. 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

I. Subrecipient shall provide a written final report to City detailing how the Subrecipient expended funds in a format to be provided by City.

V. EMISSION REDUCTION CREDITS

Any emissions reduction credits generated by the projects under this Agreement cannot be used or claimed by Subrecipient for any purpose.

VI. RECORDKEEPING AND HARBOR DEPARTMENT'S 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 Subrecipient's contractors 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, Subrecipient's contractors or any individual or entity acting for or on behalf of Subrecipient or a Subrecipient's contractors, 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 Subrecipient's contractors. 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. INSPECTOR GENERAL'S AUDIT RIGHTS

A. In accordance with the provisions of 40 CFR §30.53, 40 CFR §31.42 and Office of Management and Budget ("OMB") Circular A-110, Subrecipient agrees to allow any appropriate representative of the Office of Inspector General to: (1) examine any records of the Subrecipient, any of its procurement contractors and subcontractors, that pertain to, and involve transactions relating to, the procurement contract, or subcontract; and (2) interview any officer or employee of the Subrecipient, or Subrecipient's regarding such transactions.

B. Subrecipient is advised that providing false, fictitious or misleading information with respect to the receipt and disbursement of EPA grant funds may result in criminal, civil or administrative fines and/or penalties.

VIII. SINGLE AUDITS

In accordance with OMB Circular A-133 which implements the Single Audit Act, Subrecipient hereby agrees to obtain a single audit from an independent auditor if Subrecipient expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or thirty (30) days after receiving the report from the auditor, the recipient shall submit a copy of the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the 2008 and beyond Single Audit Submissions is available on the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>.

IX. 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.

X. 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.)

XI. INDEMNIFICATION

Except for the sole negligence or willful misconduct of City, Subrecipient shall at all times indemnify, protect, defend, and hold harmless City and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the City, its boards, officers, agents, and/or employees by reason of any damage to property, injury to persons, or any action that may arise out of the performance of this Agreement that is caused by any act, omission, or negligence of Subrecipient, its boards, officers, agents, employees, or Subrecipient's contractors regardless of whether any act, omission, or negligence of City, its boards, officers, agents, or employees contributed thereto; provided that (1) if the City contributes to a loss, Subrecipient's indemnification of the City for the City's share of the loss shall be limited to One Million Dollars (\$1,000,000), (2) notwithstanding the limitation in (1), Subrecipient shall remain responsible for one hundred percent (100%) of any loss attributable to it, and (3) the provisions in (1) and (2) apply on a per-occurrence basis.

XII. 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 Harbor Department.

B. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Subrecipient may permit Subrecipient's contractors to perform portions of the Scope of Work in accordance with Article I. All Subrecipient's contractors whom Subrecipient utilizes, however, shall be deemed to be its agents. Performance of the Scope of Work by Subrecipient's contractors shall not be deemed to release Subrecipient from its obligations under this Agreement or to impose

any obligation on the City to Subrecipient's contractors or give the Subrecipient's contractors any rights against the City.

XIII. AFFIRMATIVE ACTION

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.)

XIV. HARBOR DEPARTMENT'S SMALL BUSINESS DEVELOPMENT PROGRAM

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

NOTE: Prior to being awarded a contract with the City, Subrecipient must be registered with the Department's Contracts Management Database, *e-DiversityXchange*.

XV. EPA REQUIREMENTS RE: UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

A. General Compliance (40 CFR, Part 33) : Subrecipient agrees to comply with the requirements of EPA's Program for Utilization of Minority and Women's Business Enterprises (MBE/WBE) in procurement under assistance agreements as set forth in 40 CFR Part 33. The requirements are set forth in full in the Cooperative Agreement (Exhibit B). (Subrecipient acknowledges that the obligations directed to Recipient are to be fulfilled by Subrecipient.)

B. Fair Share Objectives (40 CFR, Part 33 Subpart D): Subrecipient 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 agreement.

C. Current Fair Share Objective/Goal: The dollar amount of this assistance agreement is \$250,000 or more; or the total dollar amount of all of the Subrecipient's non-TAG assistance agreements from EPA in the current fiscal year is \$250,000, or more.

D. The California State Water Resource Control Board has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA, as follows:

	MBE	WBE
Construction	24%	6%
Equipment	22%	26%
Services	30%	31%
Supplies	29%	20%

E. Negotiating Fair Share Objectives/Goals: 40 CFR, Section 33.404. If Subrecipient has not yet negotiated its MBE/WBE fair share objectives/goals, Subrecipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

Subrecipient 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, Subrecipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

F. SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CRF, Section 33.301, Subrecipient agrees to make the following good faith efforts and to ensure that prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained.

(a) Ensure Disadvantaged Business Enterprises (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State, and local 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 thirty (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 Small Business Administration and the Minority Business Development Agency of the Department of Commerce in finding DBEs.

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

G. MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503

Subrecipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the Subrecipient receives the award, and continuing until the Project is completed. Only procurements with certified MBE/WBEs are counted toward a Subrecipient's MBE/WBE accomplishments. The reports must be submitted semiannually for the periods ending March 31st and September 30th for: Recipients of financial assistance agreements that capitalize revolving loan programs (CWSRF, DWSRF, Brownfields); and all other recipients not identified as annual reports (40 CFR Part 30 and 40 CFR Part 35, Part A, and Subpart B recipients are annual reporters.)

The reports are due within 30 days of the end of the semiannual reporting periods (April 30th and October 30th). Reports should be sent to Veronica Squirrell, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW Mail Code 3903R, Room 51275, Washington, DC 20460, 202-564-5347. Final MBE/WBE Reports must be submitted within ninety (90) days after the Project period of the grant ends. The grant cannot be officially closed without all MBE/WBE reports. EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at www.epa.gov/osbp.

H. CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

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

I. BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Subrecipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Subrecipients 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.

XVI. 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.

XVII. 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.

XVIII. 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.

XIX. 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.

Rights to inventions made under this Agreement are subject to Federal patent and licensing regulations, which are codified at 37 CFR Part 401.

XX. NOTICES

A. 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.

B. The representatives of the parties authorized to receive notices under this Agreement are:

CITY

Director of Environmental Management Division
Los Angeles Harbor Department
425 South Palos Verdes Street
San Pedro, CA 90731

SUBRECIPIENT

Marine Terminals Corporation
2001 John S. Gibson Boulevard
San Pedro, California 90731
Attention: Kenton Pope, Area Equipment Services Manager

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 95-0973175. 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

A. Subrecipient and/or any contractor of Subrecipient are obligated to fully comply with all applicable state and Federal employment reporting requirements for the Subrecipient and/or employees of Subrecipient's contractors.

B. Subrecipient and/or Subrecipient's contractors 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 Subrecipient's contractors 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 and Subrecipient's contractors 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. 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.

XXVI. SUSPENSION AND DEBARMENT

Subrecipient shall fully comply with 2 CFR Part 180, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Subrecipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Subrecipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Subrecipient acknowledges that failing to disclose the information as required at 2 CFR §180.335 (i.e., Subrecipient or Subrecipient's contractors are excluded or disqualified) may result in the delay or negation of this Agreement, or pursuance of legal remedies, including suspension and debarment.

Subrecipient may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

XXVII. TRAFFICKING VICTIM PROTECTION ACT OF 2000

Subrecipient acknowledges and agrees that pursuant to the requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended:

A. EPA, as the Federal awarding agency may unilaterally terminate the award of funds under this Agreement, without penalty, if Subrecipient: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this Agreement; or (b) imputed to Subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by EPA at 2 CFR Part 1532.

B. Subrecipient must inform Harbor Department and EPA immediately of any information received from any source alleging a violation of a prohibition in the Prohibition Statement below.

C. EPA's right to terminate unilaterally that is described in paragraph A of this section: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000

(TVPA), as amended (22 U.S.C. §7104(g); and (2) is in addition to all other remedies for noncompliance that are available to EPA under the Grant.

D. Prohibition Statement. Subrecipient, Subrecipient's employees, Subrecipient's contractors, and employees of Subrecipient's contractors may not engage in severe forms of trafficking in persons during the period of time that this Agreement is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the work required under this Agreement.

XXVIII. DRUG-FREE WORKPLACE CERTIFICATION

A. Subrecipient must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in 40 CFR §§36.200 - 36.230. Additionally, in accordance with these regulations, the Subrecipient must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

B. Subrecipients who are individuals must comply with the drug-free provisions set forth in Title 40 CFR §36.300. The consequences for violating this condition are detailed under 40 CFR §36.510. Subrecipient can access 40 CFR Part 36 at http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html.

XXIX. HOTEL-MOTEL FIRE SAFETY

Pursuant to 40 CFR §30.18, if applicable, and 15 USC §2225a, Subrecipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Subrecipient may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

XXX. LOBBYING AND LITIGATION

Subrecipient shall ensure that no funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. Subrecipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

XXXI. RESTRICTIONS ON LOBBYING

Subrecipient agrees to comply with 40 CFR Part 34, entitled "New Restrictions on Lobbying." Subrecipient shall include the language of this provision in all contracts with Subrecipient's contractors exceeding \$100,000, and require that Subrecipient's contractors submit certification and disclosure forms accordingly. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

XXXII. RECYCLING AND WASTE PREVENTION

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007) and or 40 CFR §30.16, Subrecipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

XXXIII FALSE CLAIM

A. Subrecipient is advised that providing false, fictitious or misleading information with respect to the receipt and disbursement of EPA grant funds may result in criminal, civil or administrative fines and/or penalties.

B. Subrecipient and Subrecipient's contractors must promptly refer to Harbor Department and EPA's Inspector General any credible evidence that a principal, employee, agent, contractor of Subrecipient or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under the Grant or contracts awarded by the Subrecipient.

XXXIV PAYMENT TO CONSULTANTS

A. EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by Subrecipient or by Subrecipient's contractors 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, 2009, the limit is \$596.00 per day and \$74.50 per hour. This rate does not include transportation and subsistence

costs for travel performed (Subrecipient will pay these in accordance with its normal travel reimbursement practices).

B. Agreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide Grantee 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) and 40 CFR §30.27(b).

XXXV. REGULATIONS APPLICABLE TO FOR-PROFIT SUBRECIPIENTS

Per the Cooperative Agreement, the following regulations apply to for-profit subrecipients. For the purposes of applying the listed regulations, City (Recipient) shall perform the functions that the regulations provide will be performed by the EPA: 40 CFR Sections 30.2, 30.13, 30.14, 30.16, 30.17, 30.18, 30.20, 30.23, 30.25, 30.26(d), 30.128, 30.31, 30.24, 30.35, 30.36, 30.37, 30.40-47, 30.51, 3053, 30.61, 30.62.

XXXVI. EMISSIONS CONTROL TECHNOLOGIES

Only technologies listed on EPA's Emerging Technology List as of December 8, 2009, may be eligible for funding pursuant to this Agreement. Eligible Emerging Technologies and the appropriate engine to which the technology may be applied, are listed by EPA on the National Clean Diesel Campaign's website (www.Epa.gov/otaq/diesel/prgemerglist.htm).

XXXVII. USE OF FUNDS RESTRICTION

(a) **Mandated Measures:** Subrecipient agrees that funds under the Grant cannot be used for emissions reductions that are mandated under Federal, State or local 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 to be "mandated," regardless of whether the reductions are included in the State implementation plan of a State.

(b) Subrecipient 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 during the Project period. Any question as to eligibility of a vehicle/equipment replacement or repower should be directed to the EPA Project Officer.

(c)Fleet Expansion: Subrecipient agrees that funds under this award including subawards/grants, cannot be used for the purchase of vehicles or equipment to expand a fleet. Subrecipient agrees that:

- i. The engine being permanently replaced, if Subrecipient elects to keep the subject Ecocrane, will be scrapped or rendered permanently disabled within ninety (90) days of the permanent replacement, or returned to the original engine manufacturer for remanufacturing 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). 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 of non-road engines requires that the engine be returned to the original engine manufacturer for remanufacturing to a certified cleaner emission standard. Remanufacturing of highway engines requires that the engine be returned to the original engine manufacturer for remanufacturing to MY 2007 or newer certified emission standards. Other acceptable scrapping methods may be considered and will require prior EPA approval. If scrapped or remanufactured engines are to be sold, program income requirements apply.

- ii. The vehicle/equipment being permanently replaced, if Subrecipient elects to keep the subject Ecocrane, will be scrapped or rendered permanently disabled within ninety (90) days of the permanent replacement, or returned to the original engine manufacturer for remanufacturing to a certified cleaner emission standard. Permanently disabling the chassis and the engine while retaining possession of the vehicle/equipment is an acceptable scrapping methods. Disabling the chasis may be completed by cutting the chassis in half. Remanufacturing of non-road behicles/equipment requires that the vehidle/equipment be returned to the original engine manufacturer for remanufacturing to a certified cleaner emission standard. Remanufacturing of highway vehicles/equipment rquires that the vehicle/equipment be returned to the original engine manufacturer for remanufacturing to MY 2007 or newer certified emission standards. Other acceptable scrapping methods may be considered and will require prior EPA approval. Vehicle/equipment components that are not part of the engine or chassis may be salvaged from the unit being replaced l(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.

- iii. Subrecipient acknowledges and agrees that: (i) by the end of the term of this Agreement, Subrecipient must make a decision whether Subrecipient will keep the EcoCrane equipment or reinstall its old engine; (ii) Subrecipient may not retain the EcoCrane equipment and its old equipment (which it had previously used in place and instead of the Eco Crane equipment); (iii) if Subrecipient chooses not to retain the EcoCrane equipment, it will return said equipment to the EPA and/or follow the directions of the EPA regarding the disposition of said equipment.

(d) Formerly Verified Technologies: Subrecipient agrees that funds under this award cannot be used for retrofit technologies on EPA's or CARB's, "Formerly Verified Technologies" lists: www.epa.gov/otaq/retrfit/deletedlist.htm; www.arb.ca.gov/diesel/verdev/verdev.htm.

(e) Fueling Infrastructure: Subrecipient 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

XXXVIII. DELAYS OR UNFAVORABLE DEVELOPMENTS

Subrecipient agrees that it will promptly notify Harbor Department 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. Subrecipient agrees that it will also notify Harbor Department 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.

XXXIX. 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 Subrecipient directly generated by a Grant supported activity, or earned only as a result of this Agreement during the grant period. "During the grant period" is the time between the effective date of the Grant and the ending date of the Grant reflected in the final financial report. Program income earned during the project period shall be retained by Harbor Department, in accordance with 40 CFR §31.25 or 40 CFR §30.24, as applicable.

XL. HOMELAND SECURITY DIRECTIVE

In accordance with Homeland Security Presidential Directive, 12 (HSPD-12), Policy for a Common Identification Standard of Federal Employees and Contractors, and Executive Order 10450, Security Requirements for Government Employment, Subrecipient agrees to follow instructions from the EPA Project Officer to ensure compliance with the EPA Personnel Access and Security System (EPASS). Any Subrecipient employees, contractors, or other individuals that meet one of the following two criteria must comply in order to perform work under this assistance agreement:

1. Those personnel on site at an EPA facility at least 24 hours per week for more than six months; or
2. Those personnel needing access to EPA's application or general support systems classified as "HIGH" under FIPS 199 and/or to the information contained within these systems.

Subrecipient agrees not to use funds for any such personnel unless a temporary or permanent EPASS badge has been issued to that person.

XLI. UNIFORM ADMINISTRATIVE REQUIREMENTS

Subrecipient agrees to comply with 40 C.F.R. Part 31, Uniform Administrative Requirements for Grants and Cooperative Agreements.. Work under this Agreement must be completed in accordance with the attached Scope of Work (Exhibit A). Subrecipient agrees to obtain the prior approval of Harbor Department for any revision of the Scope of Work. Subrecipient acknowledges and agrees that no extension of the period of availability of funds under the Grant may be made without the prior approval of Harbor Department and EPA.

XLII. EQUIPMENT DISPOSITION

Subrecipient agrees that at the end of the term of this Agreement, the equipment acquired under this assistance agreement will be subject to the property 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. Emerging Technologies are considered to be equipment to the extent they fall within this definition. Subrecipient agrees that at the end of the term of this Agreement, the Subrecipient 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, if such equipment is retained. (See Section XXXVIII(c)(iii), above).

XLIII. DISPUTE RESOLUTION

- A. Negotiation: In the event of any dispute, claim, controversy, or breach (collectively, "dispute") arising out of or relating to this Agreement, other than any action for injunctive relief, the parties hereto will use their good faith efforts to settle the dispute, claim, controversy, or breach, by negotiating in good faith, and they will attempt to reach a solution satisfactory to both parties no later than thirty (30) days from the date that either City or Subrecipient give written notice of its intent to negotiate in good faith.
- B. Mediation: Should the parties be unable to resolve the dispute giving rise to the negotiation, the parties will submit the dispute to mediation to one mediator selected by both parties within twenty (20) days. If the parties cannot select a mediator, the proposed mediator selected by each of the parties will jointly select a mediator. Submission of the dispute to mediation does not prohibit either party from seeking injunctive relief. All costs incurred in connection with the mediation shall be divided equally between the parties. Should the parties be unable to resolve the dispute by mediation, either party may proceed to litigation.

XLIV. 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 Subrecipient in program content, review of project progress, and quantification and reporting of results.

XLV. QUARTERLY REPORTING AND ENVIRONMENTAL RESULTS

Quarterly progress reports will be required. Quarterly reports are considered Project status reports and will address the progress made regarding achieving the work plan goals. In general, quarterly reports will include summary information on technical progress and expenditures and planned activities for next quarter. Award recipients will be provided with additional information and guidance on reporting Project progress after award.

Quarterly reports are due according to the following schedule:

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: due date April 30

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

XLVI 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 that take place in an area affected by, or includes affected vehicles, engines or equipment affected by Federal, State or local law mandating emissions reductions, the Subrecipient 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 Project Officer within ninety (90) days after the expiration or termination of the assistance agreement.

XLVII QUALITY ASSURANCE PROJECT PLAN

Acceptable quality assurance documentation must be submitted to the EPA Project Officer within sixty (60) days of the acceptance of this agreement. No work involving direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology shall be initiated under this Project until the EPA Quality Assurance Manager, has approved the quality assurance documentation (see 40 CFR 30.54 or 31.45 as appropriate). Additional information on these requirements can be found at the EPA Office of Grants and Debarment Web Site: <http://www.epa.gov//ogd/gratns/assurance.htm>

The Quality Assurance Project Plan (QAPP) is the document that provides comprehensive details about the quality assurance/quality control requirements and technical activities that must be implemented to ensure that Project objectives are met. The Project Officer will provide a QAPP template.

XLVIII. 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.**

XLIX. 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.

L. 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.

LI. 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.

LII. 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.

LIII. 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.

LIV. 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.

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

SUBRECIPIENT

MARINE TERMINALS
CORPORATION, a Nevada corporation

Dated: 11-8-2010

By Kentado Pope
Newton R. Pope Jr.
AREA Equipment Services MGR.
(Print/type name and title)

Attest [Signature]
Shelley L. Reed, Mgr. HR
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY


_____, 2010
CARMEN A. TRUTANICH, City Attorney

By _____
ESTELLE M. BRAAF, Deputy

Account # _____	W.O. # _____
Ctr/Div # _____	Job Fac. # _____
Proj/Prog # _____	
Budget FY: Amount:	
TOTAL	\$0
For Acct/Budget/Div. Use Only	
Verified by: _____	
Verified Funds Available: _____	
Date Approved: _____	

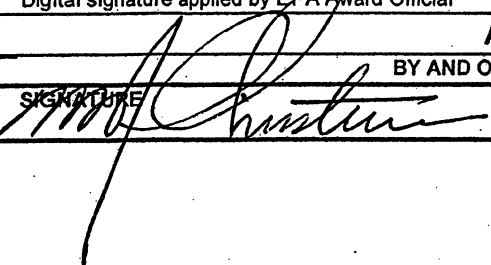
SCOPE OF WORK


Subrecipient will replace a conventional non-road Tier 2 generator with an EcoPower Hybrid Sytem's proprietary EcoCrane system on one conventional diesel Rubber Tired Gantry Crane equipped with a nonroad Tier 3 generator and two battery packs at Subrecipient's container terminal (Ports America) in the Port of Los Angeles in compliance with all terms of the Agreement as well as all rules, regulations, and laws pertaining to the Project including but not limited to those set forth in the Cooperative Agreement, a copy of which is attached to the Agreement as Exhibit B.

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	ASSISTANCE ID NO.			DATE OF AWARD 06/09/2010
		PRG	DOC ID	AMEND#	
		DE -	83467301	- 0	
		TYPE OF ACTION New			MAILING DATE 06/16/2010
PAYMENT METHOD: ACH			ACH# 90569		
RECIPIENT TYPE: Municipal		Harbor Department		Send Payment Request to: Las Vegas Finance Center	
RECIPIENT:		Agreement 10-289		PAYEE:	
City of Los Angeles - Harbor Dept 425 South Palos Verdes St. San Pedro, CA 90731-3309 EIN: 95-6000735		City of Los Angeles		Port of Los Angeles 425 South Palos Verdes St. San Pedro, CA 90731-3309	
PROJECT MANAGER		EPA PROJECT OFFICER		EPA GRANT SPECIALIST	
Kevin Maggay 425 South Palos Verdes St. San Pedro, CA 90731-3309 E-Mail: kmaggay@portla.org Phone: 310-732-3947		Faye Swift 1200 Pennsylvania Ave, NW, 6405J Washington, DC 20460 E-Mail: Phone: 202-343-9147		Carl Davis 1200 Pennsylvania Ave, NW Washington, DC 20460, 3903R E-Mail: Davis.Carl@epa.gov Phone: 202-564-1864	
PROJECT TITLE AND DESCRIPTION ET 09/10 Port of LA-EcoPower Hybrid Gantry Crane This project will improve air quality in the Los Angeles, California, area by reducing emissions from in-use diesel engines. This project will replace a conventional nonroad Tier 2 (520kW, 685 HP) generator with EcoPower Hybrid System's proprietary EcoCrane system on one conventional diesel Rubber Tired Gantry Crane at the Ports America Terminal at the Port of Los Angeles. The EcoCrane system will be equipped with a nonroad Tier 3 generator (80kW, 105 HP) and two battery packs.					
BUDGET PERIOD 05/01/2010 - 04/30/2012		PROJECT PERIOD 05/01/2010 - 04/30/2012		TOTAL BUDGET PERIOD COST \$731,298.00	
				TOTAL PROJECT PERIOD COST \$731,298.00	

NOTICE OF AWARD

Based on your application dated 03/18/2010, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$731,298. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$731,298. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. 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.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS		ORGANIZATION / ADDRESS	
Grants and Interagency Agreement Management Division 1200 Pennsylvania Ave, NW Mail code 3903R Washington, DC 20460		Environmental Protection Agency Office of Air and Radiation 1200 Pennsylvania Ave, NW Washington, DC 20460	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
SIGNATURE OF AWARD OFFICIAL	TYPED NAME AND TITLE	DATE	
Digital signature applied by EPA Award Official	Denise A. Polk, Chief Grants Management Branch B	06/09/2010	
AFFIRMATION OF AWARD			
BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION			
SIGNATURE	TYPED NAME AND TITLE	DATE	
	MICHAEL CHRISTENSEN, DEPUTY EXECUTIVE DIRECTOR	08/11/10	

Approved as to Form
6-23 20 10
CARMEN A. TRUTANICH, City Attorney
By 
Deputy City Attorney

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 731,298	\$ 731,298
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	\$ 731,298	\$ 731,298

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.039 - National Clean Diesel Funding Assistance Program (B)	Energy Policy Act 2005 Public Law 109-58	40 CFR PART 31

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
	1056F00087	10	E4	56FC	101AH4E	4122			731,298
									731,298

Budget Summary Page: National Clean Diesel Funding Assistance Program (B)

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$0
2. Fringe Benefits	\$0
3. Travel	\$0
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$0
7. Construction	\$0
8. Other	\$731,298
9. Total Direct Charges	\$731,298
10. Indirect Costs: <u>0.00%</u> Base	\$0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %.)	\$731,298
12. Total Approved Assistance Amount	\$731,298
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$731,298
15. Total EPA Amount Awarded To Date	\$731,298

Administrative Conditions

1. ADVANCE METHOD OF PAYMENT

In accordance with EPA regulations, the recipient is authorized to receive advance payments under this agreement, provided that the recipient takes action to minimize the time elapsing between the transfer of funds from EPA and the disbursement of those funds.

2. REIMBURSEMENT LIMITATION

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its approved EPA budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk. **The recipient is responsible for ensuring that projects funded under this agreement avoid unnecessary delays and are completed within the EPA approved budget.**

3. MANAGEMENT FEES

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

4. ELECTRONIC TRANSFER OF FUNDS

The Debt Collection Improvement Act of 1996 requires that Federal payments be made by electronic funds transfer after January 2, 1999. In order to comply with the Act, a recipient must receive payments via one of two electronic mechanisms available to them:

A) Automated Standard Application for Payments (ASAP)

ASAP is an automated drawdown system sponsored by the U.S. Department of the Treasury. Recipients must enroll with Treasury. Additional information concerning ASAP can be obtained by contacting the EPA Las Vegas Finance Center, at (702) 798-2485, <http://www.epa.gov/ocfo/finservices/payinfo.htm> or by visiting www.fms.treas.gov/asap.

Under this payment mechanism, the recipient initiates, via ASAP, an electronic payment request which is approved or rejected based on the amount of available funds authorized by EPA in the recipient's account. Approved funds are credited to the recipient organization at the financial institution identified on the recipient's ASAP enrollment application.

In order to receive payments via ASAP the recipient must first complete an ASAP enrollment application and have an ASAP account set up.

B) Electronic Funds Transfer (EFT)

Under this payment mechanism, the recipient submits an EPA Payment Request Form to

EPA for approval. Approved funds are credited to the recipient organization at its designated financial institution. In order to receive EFT payments the recipient must first complete and return the *ACH Vendor/Miscellaneous Payment Enrollment* form (TFS Form 3881) to the EPA Las Vegas Finance Center. The Enrollment form can be found by visiting <http://www.epa.gov/ocfo/finservices/payinfo.htm#grants>. Upon receipt and processing of the enrollment form, the LVFC will send you a letter assigning you an EFT Control Number. At that time you will also receive an EFT payment process Recipient's manual along with a supply of EPA Payment Requests and other required forms. Additional information concerning EFT can be obtained by contacting the EPA Las Vegas Finance Center, at (702) 798-2485.

5. FEDERAL FINANCIAL REPORTS/GRANT CLOSEOUT

A) Interim Federal Financial Report (FFR)

An Interim Federal Financial Report (FFR SF-245) is to be submitted to the appropriate EPA Grants Management Office 90 days after the anniversary of the project period start date. Interim FFRs should be submitted to: USEPA LVFC, P.O. Box 98515, Las Vegas, NV 89193-8515.

B) Final Federal Financial Report

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit a final Federal Financial Report – also called the SF-425 – to EPA's Las Vegas Finance Center (LVFC), within ninety (90) days after the expiration of the budget period end date. Please note that these reports are required by EPA grant regulations (see 40 Code of Federal Regulations §31.41(c)). Completed SF-245s must be faxed to 702-798-2423 or mailed to the following address: USEPA LVFC, P.O. Box 98515, Las Vegas, NV 89193-8515. The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report.

C) Closeout

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR. At that time, the recipient must submit the following forms/reports to the EPA Grants Management Office if applicable:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

Additionally, the recipient's Final Request for Payment should be submitted to the LVFC.

6. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE

If a no cost time extension is necessary to extend the period of availability of funds (budget period), the recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the EPA Region or Headquarters Grants

Management Office prior to the budget/project period expiration dates. An interim FFR must be submitted along with the request which covers all expenditures and obligations to date.

7. SUBAWARD POLICY

Recipient agrees to follow applicable sub-grant procedures in accordance with 40 CFR Part 30, or Part 31, as appropriate. Subgrants/subawards do not have to be competed; however, successful applicants cannot use subgrants/subawards to avoid requirements in EPA regulations for competitive procurement by using subgrants/subawards to acquire commercial services or products from for-profit organizations.

Recipient agrees to comply with the following when selecting sub-recipients and establishing sub-awards:

- a) to establish all sub-award agreements in writing;
- b) to maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a sub-recipient);
- c) to ensure that any sub-award(s) comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and will not be used to acquire commercial goods or services for the recipient;
- d) to ensure that any sub-award(s) are awarded to eligible sub-recipient(s) and that proposed sub-award costs are necessary, reasonable, and allocable;
- e) to ensure that any sub-award(s) to 501(c)(4) organizations do not involve lobbying activities;
- f) to monitor the performance of the sub-recipient(s) and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the sub-award;
- g) to obtain the appropriate consent from the EPA Project Officer prior to making a sub-award to a foreign or international organization, or a sub-award to be performed in a foreign country; and
- h) to obtain prior approval from the EPA Project Officer for any new sub-award work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

Recipient agrees that any questions about the eligibility of a sub-recipient or other issues pertaining to the sub-award(s) will be addressed to the recipient's EPA Project Officer listed on the first page of your assistance award or assistance amendment document.

Recipient agrees to be responsible for selection of any sub-recipient(s) and, if applicable, for conducting sub-award competitions.

Additional information regarding sub-awards may be found at:
<http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>.

Guidance for distinguishing between vendor and sub-recipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 may be found at:
<http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and
<http://www.whitehouse.gov/omb/circulars/a133/a133.html>

Non-profit Subrecipients:

Subrecipients that are non-profit organizations are subject to the provisions of regulations in 40 CFR Part 30, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations."

State and Local Government Subrecipients:

State and local government sub-recipients are subject to the provisions of regulations in 40 CFR Part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

For-profit Subrecipients:

Recipient shall 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.

Recipient shall establish a procedure for resolving disputes with for-profit sub-recipients.

Recipient shall not reimburse a for-profit sub-recipient until receipt of documentation that the subrecipient has incurred eligible and allowable costs.

Recipient shall obtain a final report detailing how the subrecipient expended funds in a format prescribed by the Recipient.

Recipient shall ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations.

Recipient shall ensure that subrecipients are aware of requirements imposed upon them by Federal statutes and regulations.

8. SUSPENSION AND DEBARMENT

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2

CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

9. TRAFFICKING VICTIM PROTECTION ACT OF 2000

To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 1532. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. Our right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

Prohibition Statement - You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

10. DRUG-FREE WORKPLACE CERTIFICATION

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200 - 36.230. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title

40 CFR 36.300.

The consequences for violating this condition are detailed under Title 40 CFR 36.510. Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html.

11. HOTEL-MOTEL FIRE SAFETY

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

12. LOBBYING AND LITIGATION

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

13. RESTRICTIONS ON LOBBYING

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

14. RECYCLING AND WASTE PREVENTION

In accordance with the polices set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007) and or 40 CFR 30.16, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

15. SINGLE AUDITS

In accordance with OMB Circular A-133, which implements the single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal

year or 30 days after receiving the report from the auditor, the recipient shall submit a copy of the SF-SAC and a Single Audit Report Package.

The recipient **MUST** submit a copy of the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the 2008 and beyond Single Audit Submissions is available on the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/> .

16. PAYMENT TO CONSULTANTS

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, 2010, the limit is \$596.00 per day and \$74.50 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).

Subagreements 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).

17. 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.

18. The recipient understands that none of the funds for this project (including funds contributed by the recipient as cost sharing) may be used to pay for the travel of Federal employees or for other costs associated with Federal participation in this project. Except however, if a Federal agency is selected through the recipient's procurement process to carry out some of the work as a contractor to the recipient, funds may be used to allow necessary Federal travel and other costs associated with Federal participation in this project.

19. 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 Program for Utilization of Minority and Women's Business Enterprises (MBE/WBE) in procurement 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 agreement.

Current Fair Share Objective/Goal

The dollar amount of this assistance agreement is \$250,000, or more; or the total dollar amount of all of the recipient's non-TAG assistance agreements from EPA in the current fiscal year is \$250,000, or more.

The California State Water Resource Control Board has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA as follows:

	MBE	WBE
Construction	24.00%	6.00%
Supplies	29.00%	20.00%
Services	30.00%	31.00%
Equipment	22.00%	26.00%

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

If the recipient has not yet negotiated its 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 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 ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure Disadvantaged Business Enterprises (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State, and local 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 Small Business Administration and the Minority Business Development Agency of the Department of Commerce in finding DBEs.
- (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, Sections 33.502 and 33.503

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments. The reports must be submitted semiannually for the periods ending March 31st and September 30th for:

Recipients of financial assistance agreements that capitalize revolving loan programs (CWSRF, DWSRF, Brownfields); and
All other recipients not identified as annual reporters (40 CFR Part 30 and 40 CFR Part 35, Subpart A and Subpart B recipients are annual reporters).

The reports are due within 30 days of the end of the semiannual reporting periods (April 30th and October 30th). Reports should be sent to Veronica Squirrel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW Mail Code 3903R, Room 51275, Washington, DC 20460, 202-564-5347. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at www.epa.gov/osbp.

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 33.5

20. In accordance with 40 CFR 31.34 for State, local and Indian Tribal governments or 40 CFR 30.36 for other recipients, EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- a. the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or;
- b. termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

21. In accordance with Homeland Security Presidential Directive-12 (HSPD-12), Policy for a Common Identification Standard of Federal Employees and Contractors, and Executive Order 10450, Security Requirements for Government Employment, the recipient agrees to follow instructions from the EPA Project Officer to ensure compliance with the EPA Personnel Access and Security System (EPASS). Any recipient employees, contractors, or other individuals that meet one of the following two criteria must

comply in order to perform work under this assistance agreement:

1. Those personnel on site at an EPA facility at least 24 hours per week for more than six months; or
2. Those personnel needing access to EPA's application or general support systems classified as "HIGH" under FIPS 199 and/or to the information contained within these systems.

The recipient agrees not to use funds for any such personnel unless a temporary or permanent EPASS badge has been issued to that person.

22. Congress has prohibited EPA from using its FY 2010 appropriations to provide funds to the Association of Community Organizations for Reform Now (ACORN) or any of its subsidiaries. None of the funds provided under this agreement may be used for subawards/subgrants or contracts to ACORN or its subsidiaries. Recipients should direct any questions about this prohibition to their EPA Grants Management Office.

Programmatic Conditions

1. Uniform Administrative Requirements (Part 31)

Recipient agrees to comply with 40 C.F.R. Part 31, Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments.

Work under this agreement must be completed in accordance with the final approved work plan. Recipient agrees to obtain the prior approval of EPA for any revision of the scope or objectives of the project or the need to extend the period of availability of funds, in accordance with 40 CFR Section 31.30.

Recipient shall consult the Project Officer regarding whether a budget or work plan revision constitutes a change in the scope or the objective of the project or program.

2. 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.

3. Emissions Control Technologies

Only technologies listed on EPA's Emerging Technology List as of December 8, 2009, may be eligible for funding pursuant to this assistance agreement. Eligible Emerging Technologies, and the appropriate engine to which the technology may be applied, are listed by EPA on the National Clean Diesel Campaign's website (www.epa.gov/otaq/diesel/prgemerglist.htm). If an Emerging Technology is redesigned or altered in any way from the original Emerging Technology application, that technology may not be eligible for funding under this assistance agreement. Any question as to the eligibility, application, or modification of an Emerging Technology should be directed to the EPA Project Officer.

The following outlines the general requirements used for technologies included on EPA's National Clean Diesel Campaign's Emerging Technology List:

A technology may reside on the Emerging Technology List for one year.

If a technology is fully verified within the first year, the technology will be added to the EPA Verified Technology List.

If, after the first year, the technology has not been verified, EPA will review the status of the technology and determine whether the technology is eligible to remain on the Emerging Technology List.

Once a technology is selected for use in an Emerging Technology project, that technology may be used for the entire project period, even if the technology has been fully verified by EPA.

Because an Emerging Technology is in the verification process, EPA may continue to evaluate the product, operation, and its impacts on emissions.

Should EPA determine an Emerging Technology was misrepresented in the application, performance was not fully described, or concerns for safety and/or public health exist, EPA may remove a technology from the Emerging Technology List, revise operating criteria, or impose other restrictions for use in Emerging Technology grant programs.

Should a technology be removed from the Emerging Technology List without receiving verification status, that technology is no longer eligible for use on any EPA National Clean Diesel grant program.

The manufacturer or an authorized representative must install the Emerging Technology as described to EPA and in accordance with criteria described in the approval letter.

4. Quarterly Reporting and Environmental Results

Quarterly progress reports will be required. Quarterly reports are considered project status reports and will address the progress made regarding achieving the work plan goals. In general, quarterly reports will include summary information on technical progress and expenditures and planned activities for next quarter. Award recipients will be provided with additional information and guidance on reporting project progress after award.

Quarterly reports are due according to the following schedule.

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: 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.

5. 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 that take place in an area affected by, or includes affected vehicles, engines or equipment affected by Federal, State or local 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 Project Officer within 90 days after the expiration or termination of the assistance agreement.

6. Use of Funds Restriction:

- a) **Mandated Measures:** Recipient agrees that funds under this award cannot be used for emissions reductions that are mandated under Federal, State or local 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 to be "mandated", regardless of whether the reductions are included in the State implementation plan of a State.
- b) **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 during the project period. Any question as to eligibility of a vehicle/equipment replacement or repower should be directed to the EPA Project Officer.
- c) **Fleet Expansion:** Recipient agrees that funds under this award, including subawards/subgrants, cannot be used for the purchase of vehicles or equipment to expand a fleet. The recipient agrees that:
 - i. The engine being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement, or returned to the original engine manufacturer for remanufacturing 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). 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 of non-road engines requires that the engine be returned to the original engine manufacturer for remanufacturing to a certified cleaner emission standard. Remanufacturing of highway engines requires that the engine be returned to the original engine manufacturer for remanufacturing to MY 2007 or newer certified emission standards. Other acceptable scrapping methods may be considered and will require prior EPA approval. If scrapped or remanufactured engines are to be sold, program income requirements apply.
 - ii. The vehicle/equipment being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement, or returned to the original engine manufacturer for remanufacturing to a certified cleaner emission standard.

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 final financial report. Program income earned during the project period shall be retained by the recipient and, in accordance with 40 CFR Part 30.24 or 40 CFR Parts 31.25, as applicable, recipient is authorized to use program income as follows:

(a) 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.

(b) 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.

(c) 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. Emerging Technologies 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.

12. Quality Assurance Project Plan

Acceptable quality assurance documentation must be submitted to the EPA Project Officer within 60 days of the acceptance of this agreement. No work involving direct measurements

Permanently disabling the chassis and 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 the chassis in half. Remanufacturing of non-road vehicles/equipment requires that the vehicle/equipment be returned to the original engine manufacturer for remanufacturing to a certified cleaner emission standard. Remanufacturing of highway vehicles/equipment requires that the vehicle/equipment be returned to the original engine manufacturer for remanufacturing to MY 2007 or newer certified emission standards. Other acceptable scrappage methods may be considered and will require prior EPA approval. 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.

- d) 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: www.epa.gov/otaq/retrofit/deletedlist.htm; www.arb.ca.gov/diesel/verdev/verdev.htm.
- e) 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.

7. Delays or Favorable Developments:

The recipient agrees that it will promptly notify EPA 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 EPA 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 appropriate. 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

or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology shall be initiated under this project until the EPA Project Officer, in concert with the EPA Quality Assurance Manager, has approved the quality assurance documentation (see 40 CFR 30.54 or 31.45 as appropriate). Additional information on these requirements can be found at the EPA Office of Grants and Debarment Web Site:
<http://www.epa.gov/ogd/grants/assurance.htm>.

The Quality Assurance Project Plan (QAPP) is the document that provides comprehensive details about the quality assurance/quality control requirements and technical activities that must be implemented to ensure that project objectives are met. The Project Officer will provide the recipient with a QAPP template.

MONTHLY SUBCONSULTANT MONITORING REPORT

Instructions: Please indicate the 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 _____

Original Proposed Subcontractor Percentage _____ SBE _____ MBE _____ WBE _____ OBE _____ DBE _____

Line Item	Name of Subcontractor	Type of Work Performed	Group SBE/MBE/WBE/OBE/DBE	PROPOSED		ACTUALS		Contract Amount Percentage
				Original Proposed Amount	Original Proposed Percentage	Amount Paid to Date	Amount Paid to Date 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

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 to download the business tax registration application.

LA City Hall

MAIN OFFICE

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

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.

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- 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

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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;

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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 – SMALL BUSINESS DEVELOPMENT 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 Port of Los Angeles in a manner that reflects the diversity of the City of Los Angeles. The Port of Los Angeles Small Business Development Program (SBDP or the "Program") was created to provide additional opportunities for small businesses to participate in any and all contracts. An overall Department goal of 25% has been established for the Program. The specific goal or requirement for each contract to be let 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, small business entities (SBEs), women-owned businesses (WBEs), and minority-owned businesses (MBEs). The Program will allow the Port to target more effectively small business participation (including MBEs and WBEs). It is also the intent of the Department to make it easier for small businesses to participate in Port contracts by providing education and assistance on how to do business with the City, including, but not limited to, insuring that payments to small businesses are processed in a timely manner.

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.

The SBDP is a results-oriented program, requiring contractors who receive contracts from the Port 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 ___%.** Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement. Small 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.

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.

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 Small Business Requirement. In addition, prior to being awarded a contract with the Harbor Department, all contractors and subcontractors must be registered on the City's Contracts Management and Opportunities Database, the Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org/>.

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."

Please indicate the ownership of your company: SBE MBE WBE 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 Minority Business Enterprise (MBE) is defined as a business in which a minority owns and controls at 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).
- An OBE (Other Business Enterprise) is any enterprise that is not a MBE or WBE.

Signature _____

Title _____

Printed Name _____

Date Signed _____

NOTARY

On this _____ day of _____, 20____, before me appeared _____ to me personally
Name

known, who being duly sworn, did execute the foregoing affidavit, and did state that he/she was properly authorized by _____ to execute the affidavit and did so act and deed.

Name of Firm

SEAL

Notary Public _____

Commission Expires _____

Contractor Description Form

PRIME CONTRACTOR

Business Name: _____ Award Total: \$ _____

Services to be provided: _____

Owner's Ethnicity: _____ Gender _____ Group: SBE__ MBE__ WBE__ OBE__ (Please check all that apply)

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__ MBE__ WBE__ OBE__ (Please check all that apply)

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__ MBE__ WBE__ OBE__ (Please check all that apply)

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__ MBE__ WBE__ OBE__ (Please check all that apply)

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__ MBE__ WBE__ OBE__ (Please check all that apply)

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__ MBE__ WBE__ OBE__ (Please check all that apply)

Address: _____

City/State/Zip: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email Address: _____

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.