

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

AGREEMENT BETWEEN  
THE CITY OF LOS ANGELES AND  
UNION PACIFIC RAILROAD COMPANY

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 UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, 1400 Douglas Street, Omaha, Nebraska, 68179 (hereinafter "Subrecipient").

WHEREAS, the City of Los Angeles Harbor Department ("Department" or "Port") applied for and has been awarded a grant in an amount up to \$2,025,000, by the Environmental Protection Agency ("EPA") under its 2021 National Clean Diesel Funding Assistance Program, for the replacement of one diesel switch locomotive with a new battery-electric switch locomotive in order to reduce diesel particulate and other pollutant emissions at the Port of Los Angeles; and

WHEREAS, to accept the grant, the Department will enter into an agreement with the EPA, Cooperative Agreement Grant Number 98T27801 ("Grant Award"); and

WHEREAS, the Grant Award will partially fund the replacement of one diesel switch locomotive with a battery-electric switch locomotive operated by Subrecipient at its rail yard facilities pursuant to Agreement No. 1988 ("Project"); and

WHEREAS, Subrecipient will be responsible for undertaking all aspects of the Project, including the procurement and operation of the battery-electric switch locomotive at its rail yard facilities, pursuant to the terms of the Grant Award and this Agreement; and

WHEREAS, Subrecipient shall contribute approximately \$2,475,000 to the Project for the procurement of the battery-electric switch locomotive; and

WHEREAS, the Department is authorized to receive \$5,000 from the Grant Award for providing administrative oversight services for the Project.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY SUBRECIPIENT

A. Subrecipient shall, to the satisfaction of the EPA and City, and in accordance with all local, state and federal rules and requirements, perform the Project as set forth in the Grant Award including all attachments and referenced documents therein. The Grant Award is attached hereto as Exhibit A and is hereby made a part of this Agreement. Subrecipient and City agree to follow the detailed Scope of Work,

Reimbursement Amounts and Schedule attached hereto as Exhibit B and hereby made a part of this Agreement.

B. Subrecipient, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Project as set forth in the Grant Application and Grant Award, and as may be amended in writing from time to time by the EPA and City.

C. As between City and Subrecipient, Subrecipient is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Project, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, the City, or any other governmental entity.

D. Subrecipient acknowledges and agrees that, with respect to the Project, it lacks authority to perform any services outside those set forth in the Grant Application and Grant Award. Subrecipient further acknowledges and agrees that any services it performs as part of the Project which are outside these documents shall be performed as a volunteer and shall not be compensable under this Agreement.

E. Subrecipient shall be subject to, and perform the Project in accordance with, the terms and conditions set forth in this Agreement, the Grant Award and the Grant Application. Obligations of performing the Project, whether undertaken by Subrecipient or its subconsultants, are and shall be the responsibility of Subrecipient. Subrecipient acknowledges and agrees that this Agreement creates no rights in its subconsultants with respect to City and that obligations that may be owed to its subconsultants, including, but not limited to, the obligation to pay subconsultants for services performed, are those of Subrecipient alone. Upon Executive Director's written request, Subrecipient shall supply the Department with all agreements between it and its subconsultants.

## II. SERVICES TO BE PERFORMED BY CITY

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

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, the Grant Award and the amount of reimbursement due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article XI (Termination) hereof.

## III. EFFECTIVE DATE AND TERM OF AGREEMENT

A. Subject to the provisions of Charter Section 245, the effective date of this Agreement shall be the date of its execution by Executive Director upon authorization of

the Board. Subrecipient is aware that the City Council, pursuant to Charter Section 245 of the City of Los Angeles, has the right to review this Agreement. Accordingly, in no event shall this Agreement become effective until the sixth Council meeting day after Board action or the City Council's approval of the Agreement.

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

1. Three (3) years have lapsed from the effective date of this Agreement;
2. Funding under the Grant Award is for any reason no longer available. City shall provide written notice to Subrecipient and the amount of reimbursement available and due to Subrecipient shall be determined by the EPA and the terms of the Grant Award. Subrecipient shall remain responsible for complying with all reporting and recordkeeping requirements;
3. The Board of Harbor Commissioners, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Subrecipient ten (10) days' notice in writing of its election to cancel and terminate this Agreement. Subrecipient shall be entitled to reimbursement for expenses incurred in accordance with this Agreement and Grant Award as of the date the ten days notice period ends. The EPA shall determine the amount of reimbursement due to Subrecipient. Subrecipient shall remain responsible for complying with all reporting and recordkeeping requirements; or
4. Subrecipient, in its sole discretion, terminates and cancels all or any part of this Agreement for any reason upon giving to City ten (10) days' notice in writing of its election to cancel and terminate this Agreement. Subrecipient shall be entitled to reimbursement for expenses incurred in accordance with this Agreement and the Grant Award as of the date notice is given to City. The EPA shall determine the amount of reimbursement due to Subrecipient. Subrecipient shall remain responsible for complying with all reporting and recordkeeping requirements.

#### IV. REIMBURSEMENT AND PAYMENT

A. As reimbursement for the satisfactory performance of the Project as set forth in this Agreement, City shall reimburse Subrecipient in the amount set forth in Exhibit B. The parties acknowledge and agree that Subrecipient shall be obligated to make expenditures for the Project prior to reimbursement by City. The parties also acknowledge and agree that the City shall not be obligated to reimburse Subrecipient for any expenditures made for the Project unless and until payment has been authorized, approved and funds released by the EPA to the City pursuant to the Grant Award.

B. The maximum amount to be reimbursed to Subrecipient pursuant to this Agreement and the Grant Award shall be Two Million Twenty Thousand Dollars (\$2,020,000).

C. Subrecipient shall submit documentation and invoices to City on a monthly basis, or as otherwise required by the Grant Award, following the effective date of this Agreement for Project activities performed during the preceding month. Each such invoice shall be signed by the Subrecipient and shall include the following certification:

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

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

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

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

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

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

V. EMISSION REDUCTION CREDITS

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

## VI. RECORDKEEPING AND AUDIT RIGHTS

A. Subrecipient shall keep and maintain full, complete and accurate books of accounts and records of the work 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, as stipulated by the Grant Award requirements or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever period is longest.

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

## VII. INDEPENDENT CONTRACTOR

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

## VIII. BUSINESS TAX REGISTRATION CERTIFICATE

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

IX. INDEMNIFICATION

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Subrecipient undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Subrecipient's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Subrecipient or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City.

X. INSURANCE

A. In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article IX, Subrecipient shall procure and maintain at its sole cost and expense and keep in force at all times during the term of this Agreement the following insurance:

(1) Commercial General Liability Insurance

Subrecipient acknowledges and agrees that for the purpose of general liability insurance coverage under this Agreement, the general liability insurance coverage, terms and conditions under Subrecipient's Permit No. 1988 with the City, including any subsequent amendments and successive agreements or permits, shall in all cases apply to this Agreement. In addition, whenever work is performed within fifty feet of railroad track, Subrecipient's General Liability coverage shall have the railroad exclusion deleted.

(2) Fire Legal Liability

In addition to and concurrently with the aforesaid insurance coverage, Subrecipient shall also procure and maintain fire legal liability insurance with a minimum limit of Two Hundred Fifty Thousand Dollars (\$250,000), covering legal liability of Subrecipient for damage or destruction by fire or explosion to the works, structures and improvements owned by City provided that said minimum limits of liability shall be subject to adjustments by Executive Director to conform with the deductible amount of the fire insurance policy maintained by the Board. The same cancellation notice as required for the commercial general liability policy shall be included.

(3) Automobile Liability Insurance

Automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Subrecipient's normal limits of liability but not less than One Million Dollars (\$1,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision and a severability of interest clause. Each policy shall name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds.

(4) Workers' Compensation and Employer's Liability

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

B. Accident Reports

Subrecipient shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence related to the Project and involving death of or injury to any person or persons, or damage in excess of Ten Thousand Dollars (\$10,000.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Subrecipient's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Subrecipient, its officers or managing agents.

XI. TERMINATION PROVISION

The Board of Harbor Commissioners, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Subrecipient ten (10) days' advance, written notice of the Board's election to cancel and

terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of the City to hire additional subrecipients or perform the services described in this Agreement either during or after the term of this Agreement.

## XII. PERSONAL SERVICE AGREEMENT

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

## XIII. AFFIRMATIVE ACTION

The Subrecipient, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit D.

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

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

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

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

XV. 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.

XVI. 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.

XVII. 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.

XVIII. 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.

XIX. PROPRIETARY INFORMATION

If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Subrecipient, its officers, agents, employees, or subconsultants, the City shall have,

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

#### XX. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement and any recommendations made by Subrecipient relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Subrecipient or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Subrecipient is required to safeguard such information from access by unauthorized personnel.

#### XXI. NOTICES

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

#### XXII. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Subrecipient declares that it has an authorized TIN which shall be provided to the Department prior to payment under this Agreement. No payments will be made under this Agreement without a valid TIN.

#### XXIII. 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.

#### XXIV. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

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

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

#### XXV. 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 F.

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

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

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a subconsultant on Harbor Department Agreement No. \_\_\_\_\_. Pursuant to City Charter Section 470(c)(12), subconsultant and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the Agreement is signed. Subconsultant is required to provide to Subrecipient names and addresses of the subconsultant's principals and contact information and shall update that information if it changes during the 12 month time period. Subconsultant's information must be provided to Subrecipient within 10 business days. Failure to comply may result in termination of the Agreement or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213-978-1960.

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

#### XXVII. 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.

#### XXVIII. 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.**

#### XXIX. 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.

#### XXX. 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.

#### XXXI. 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.

#### XXXII. 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.

#### XXXIII. 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.

#### XXXIV. 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.

XXXV. COUNTERPARTS

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

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

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

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

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

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

UNION PACIFIC RAILROAD COMPANY

Dated: 12/20/21

By [Signature]  
Carl Garrison AVP Mechanical  
(Print/type name and title)

Attest Grace Butts  
Grace Butts - General Director LEQ  
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

[Signature], 2021  
MICHAEL M. FEUER, City Attorney  
Janna B. Sidley, General Counsel

By [Signature]  
HEATHER M. McCLOSKEY, Deputy





**UNION PACIFIC RAILROAD COMPANY  
CERTIFICATE OF ASSISTANT SECRETARY**

I, John A. Menicucci, Jr., do hereby certify that I am a duly appointed Assistant Secretary of Union Pacific Railroad Company (the "Company"), a Delaware corporation. I hereby certify that Grace E. Butts, General Director Locomotive Engineering and Quality and Carl E. Garrison, Assistant Vice President Mechanical or each of them is authorized to execute that certain Agreement by and between the Company and The City of Los Angeles related to the City of Los Angeles Harbor Department grant to the Company in the amount of \$2,025,000 for replacement of a diesel switch locomotive with a new battery-electric switch locomotive.


IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Company as of the 20<sup>TH</sup> day of December, 2021.

  
\_\_\_\_\_  
John A. Menicucci, Jr.  
Assistant Secretary

**Funds Available**  
**Agreement with Union Pacific Railroad Company**  
**DERA 2021 Zero Emission Switcher Locomotive Project**

Account#	21980	W.O. #	78300
Ctr/Div#	7000	Job Fac.#	637-00
Proj/Prog#	000		
Budget FY:		Amount:	
	21/22	\$	0
	22/23	\$	0
	23/24	\$	2,020,000
	TOTAL	\$	2,020,000
<b>For Acct/Budget Div. Use Only</b>			
Verified by:		Art de Llanos	2021.12.21 12:54:37 -08'00'
Verified Funds Available:		Digitally signed by Frank Liu	Date: 2021.12.21 13:58:40 -0800'
Date Approved:	<b>12/21/2021</b>		

# Exhibit A

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b> <b>Cooperative Agreement</b>	<b>GRANT NUMBER (FAIN):</b> 98T27801 <b>MODIFICATION NUMBER:</b> 0 <b>PROGRAM CODE:</b> DE	<b>DATE OF AWARD</b> 08/04/2021
		<b>TYPE OF ACTION</b> New	<b>MAILING DATE</b> 08/11/2021
		<b>PAYMENT METHOD:</b> ASAP	<b>ACH#</b> 90569
		<b>Send Payment Request to:</b> Contact EPA RTPFC at: <a href="mailto:rtpfc-grants@epa.gov">rtpfc-grants@epa.gov</a>	
<b>RECIPIENT TYPE:</b> Municipal		<b>PAYEE:</b> City of Los Angeles - Harbor Dept 425 South Palos Verdes Street San Pedro, CA 90731-3309	
<b>RECIPIENT:</b> City of Los Angeles - Harbor Dept 425 S Palos Verdes St., 5th Fl San Pedro, CA 90731-3309 <b>EIN:</b> 95-6000735			
<b>PROJECT MANAGER</b> Christine Batikian 425 South Palos Verdes Street San Pedro, CA 90731-3309 <b>E-Mail:</b> <a href="mailto:cbatikian@portla.org">cbatikian@portla.org</a> <b>Phone:</b> 310-732-3261	<b>EPA PROJECT OFFICER</b> Asia Yeary 75 Hawthorne Street, AIR-1-1 San Francisco, CA 94105 <b>E-Mail:</b> <a href="mailto:yeary.asia@epa.gov">yeary.asia@epa.gov</a> <b>Phone:</b> 808-541-2726	<b>EPA GRANT SPECIALIST</b> Veronica Adams Grants Branch, MSD-6 75 Hawthorne Street San Francisco, CA 94105 <b>E-Mail:</b> <a href="mailto:adams.veronica@epa.gov">adams.veronica@epa.gov</a> <b>Phone:</b> 415-972-3677	
<b>PROJECT TITLE AND DESCRIPTION</b> National Clean Diesel Program - Zero Emission Switcher Locomotive Project  The purpose of this project is to replace one Tier 0+ switch locomotive with a switch locomotive that uses battery electric technology. The switch locomotive works at switch yards located in the South Coast Air Basin. This replacement will reduce emissions of diesel particulate matter and other pollutants such as nitrogen oxides, carbon monoxide and hydrocarbons.  This assistance agreement provides federal funding in the amount of \$2,025,000.			
<b>BUDGET PERIOD</b> 10/01/2021 - 09/30/2024	<b>PROJECT PERIOD</b> 10/01/2021 - 09/30/2024	<b>TOTAL BUDGET PERIOD COST</b> \$4,500,000.00	<b>TOTAL PROJECT PERIOD COST</b> \$4,500,000.00
<b>NOTICE OF AWARD</b>			
Based on your Application dated 03/16/2021 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$2,025,000.00. EPA agrees to cost-share 45.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$2,025,000.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.			
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>	
<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9 Grants Branch, MSD-6 75 Hawthorne Street San Francisco, CA 94105		<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9, Air Division, AIR-1 R9 - Region 9 75 Hawthorne Street San Francisco, CA 94105	
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>			
Digital signature applied by EPA Award Official Carolyn Truong - Grants Management Officer			<b>DATE</b> 08/04/2021

### EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$0	\$2,025,000	\$2,025,000
EPA In-Kind Amount	\$0	\$0	\$0
Unexpended Prior Year Balance	\$0	\$0	\$0
Other Federal Funds	\$0	\$0	\$0
Recipient Contribution	\$0	\$0	\$0
State Contribution	\$0	\$0	\$0
Local Contribution	\$0	\$0	\$0
Other Contribution	\$0	\$2,475,000	\$2,475,000
Allowable Project Cost	\$0	\$4,500,000	\$4,500,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.039 - Diesel Emission Reduction Act (DERA) National Grants	Diesel Emission Reduction Act of 2010, codified at 42 U.S.C. 16132	2 CFR 200, 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	2109M7S031	21	E4	09M2	000AH4	4122	-	-	\$2,025,000
									\$2,025,000

## Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$5,000
2. Fringe Benefits	\$0
3. Travel	\$0
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$0
7. Construction	\$4,495,000
8. Other	\$4,500,000
9. Total Direct Charges	\$0
10. Indirect Costs: 0.00 % Base :NA	\$4,500,000
11. Total (Share: Recipient <u>55.00</u> % Federal <u>45.00</u> %)	\$2,025,000
12. Total Approved Assistance Amount	\$0
13. Program Income	\$2,025,000
14. Total EPA Amount Awarded This Action	\$2,025,000
15. Total EPA Amount Awarded To Date	\$2,025,000

## **Administrative Conditions**

### **General Terms and Conditions**

The recipient agrees to comply with the current EPA general terms and conditions available at:  
<https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-november-12-2020-or-later>.

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: <https://www.epa.gov/grants/grant-terms-and-conditions#general>.

### **A. Federal Financial Reporting (FFR)**

For awards with cumulative project and budget periods greater than 12 months, the recipient will submit an annual FFR (SF 425) covering the period from "project/budget period start date" to **September 30** of each calendar year to the EPA Finance Center in Research Triangle Park, NC. The annual FFR will be submitted electronically to [rtfrc-grants@epa.gov](mailto:rtfrc-grants@epa.gov) no later than **December 30** of the same calendar year. (NOTE: The grantee must submit the Final FFR to [rtfrc-grants@epa.gov](mailto:rtfrc-grants@epa.gov) within 120 days after the end of the project period.)

### **B. Procurement**

The recipient will ensure all procurement transactions will be conducted in a manner providing full and open competition consistent with 2 CFR Part 200.319. In accordance 2 CFR Part 200.324 the grantee and subgrantee(s) must perform a cost or price analysis in connection with applicable procurement actions, including contract modifications.

*State recipients must follow procurement procedures as outlined in 2 CFR Part 200.317.*

### **C. MBE/WBE Reporting, 40 CFR, Part 33, Subpart E (EPA Form 5700-52A)**

The recipient agrees to submit a "MBE/WBE Utilization Under Federal Grants and Cooperative Agreements" report (EPA Form 5700-52A) annually for the duration of the project period. The current EPA Form 5700-52A with instructions can be found at <https://www.epa.gov/grants/epa-form-5700-52a-united-states-environmental-protection-agency-minority-business>

This provision represents an approved exception from the MBE/WBE reporting requirements as described in 40 CFR Section 33.502.

Reporting is required for assistance agreements where funds are budgeted for procuring construction, equipment, services and supplies (including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category) with a cumulative total that exceed the Simplified Acquisition Threshold (SAT) currently, set at \$250,000 (the dollar threshold will be automatically revised whenever the SAT is adjusted; See 2 CFR Section 200.1), including amendments and/or modifications. When reporting is required, all procurement actions are reportable, not just the portion which exceeds the SAT.

Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

When completing the annual report, recipients are instructed to check the box titled "annual" in section 1B of the form. For

the final report, recipients are instructed to check the box indicated for the "last report" of the project in section 1B of the form. For section 2B, the Region 9 EPA DBA Coordinator is Fareed Ali, email: [GrantsRegion9@epa.gov](mailto:GrantsRegion9@epa.gov), phone: 415-972-3665.

The annual reports are due by October 30th of each calendar year and the final report is due within 120 days after the end of the project period, whichever comes first. The recipient will submit the MBE/WBE report(s) and/or questions to [GrantsRegion9@epa.gov](mailto:GrantsRegion9@epa.gov) and the EPA Grants Specialist identified on page 1 of the award document.

**D. Indirect Costs**

The Cost Principles under 2 CFR Part 200, Subpart E apply to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

**E. Non-Federal Third-Party Contributions**

This award includes \$2,475,000.00 of estimated non-federal third party contributions. Third party contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantees. As applicable, these records must reflect how the value is placed on third party contributions. The value of third-party contributions must be applicable to the period to which the cost sharing or matching requirement apply (2 CFR Part 200.306).

**Programmatic Conditions**

Refer to Attachment A for the FY2021 DERA Programmatic Terms and Conditions.

-- End of Document --

## DERA FY2021 National Programmatic Terms and Conditions

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#### A. 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 recipient's project by EPA, participation and collaboration between EPA and the recipient in program content, review of project progress, and quantification and reporting of results.

#### B. Delays or Favorable Developments:

The recipient agrees that it will promptly notify the EPA Project Officer of any problems, delays, or adverse conditions which may materially impair its ability to deliver on the outputs/outcomes specified in the work plan. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation. Failure to make satisfactory progress achieving the timeline and/or milestones defined in the approved workplan may result in termination of the award. The recipient agrees that it will also notify the EPA Project Officer of any favorable developments which may enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

#### C. Final Approved Workplan and Modifications

Recipient agrees to carry out the project in accordance with the final approved workplan. Recipients are required to report deviations from budget or project scope or objective, and must request prior written approval from EPA for:

- any change in the scope or objective of the project or program (even if there is no associated budget revision requiring prior written approval);
- any change in a key person specified in the application or workplan;
- the disengagement from the project for more than three months, or a 25% reduction in time devoted to the project, by the approved project director or principal investigator;
- the inclusion of costs that require prior approval in accordance with 2 CFR Part 200 Subpart E—Cost Principles or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable;
- the transfer of funds budgeted for participant support costs as defined in 2 CFR Section 200.1 Definitions to other categories of expense;
- unless described in the final approved workplan and budget, the subawarding, transferring or contracting out of any work under the award;
- changes in the approved cost-sharing or matching provided by the recipient; or the need arises for additional Federal funds to complete the project.

## DERA FY2021 National Programmatic Terms and Conditions

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Proposed modifications to the approved workplan or budget, including additions, deletions, or changes in the schedule, shall be submitted in a timely manner to the EPA Project Officer for approval. Depending on the type or scope of changes, a formal amendment to the award may be necessary. Major project modifications which include changes to the approved types and number of affected vehicles, engines, or equipment, or the approved types of emission reduction technologies to be implemented, or to the approved project location(s) may not be allowed.

#### D. Use of Funds Restrictions:

D.1. Federal Matching Funds: Recipient agrees that funds under this award cannot be used for matching funds for other federal grants unless expressly authorized by statute. Likewise, recipient may not use federal funds as cost-share funds for the DERA National Grants, including funds received under EPA's DERA State Grants program, DERA Tribal and Insular Area Grants, DERA School Bus Rebates, and federal Supplemental Environmental Project (SEP) funds.

D.2. Emissions Testing: Recipient agrees that funds under this award cannot be used for emissions testing and/or air monitoring activities (including the acquisition cost of emissions testing equipment), or research and development.

D.3. 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.

D.4. Leasing: Recipient agrees that all vehicles, engines, and equipment purchased with funds under this award will be purchased, in full, before the end of the project period. Extensions will not be granted for the purpose of extending payments on purchases.

D.5. Mandated Measures: Recipient agrees that funds under this award cannot be used for emissions reductions that are mandated under federal law. This refers to specific compliance dates within the mandate, not when the mandate is passed. Voluntary or elective emissions reductions measures shall not be considered "mandated", regardless of whether the reductions are included in the State Implementation Plan of a State.

D.6. Ownership, Usage and Remaining Life Requirements: Recipient agrees that funds under this award, including subawards/subgrants, cannot be used to upgrade engines, vehicles, and equipment that does not meet the following criteria:

D.6.1. The existing vehicle, engine, or equipment must be fully operational. Operational equipment must be able to start, move, and have all necessary parts to be operational.

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D.6.2. The participating fleet owner must currently own and operate the existing vehicle or equipment and have owned and operated the vehicle during the two years prior to upgrade.

D.6.3. The existing vehicle, engine, or equipment must have at least three years of remaining life at the time of upgrade. Remaining life is the fleet owner's estimate of the number of years until the unit would have been retired from service if the unit were not being upgraded or scrapped because of the grant funding. The remaining life estimate is the number of years of operation remaining even if the unit were to be rebuilt or sold to another fleet. The remaining life estimate depends on the current age and condition of the vehicle at the time of upgrade, as well as things like usage, maintenance and climate.

D.6.4. Highway Usage: The mileage of multiple units may be combined to reach the thresholds below where those units will be scrapped and replaced with a single unit.

D.6.4.1. School Buses: To be eligible for funding, the existing vehicle must have accumulated at least 7,000 miles/year during the two years prior to upgrade, or during calendar year 2019.

D.6.4.2. All Other Highway Engines: To be eligible for funding, the existing vehicle must have accumulated at least 7,000 miles/year during the two years prior to upgrade.

D.6.5. Nonroad, Locomotive and Marine Usage: The engine operating hours of multiple units may be combined to reach the thresholds below where those units will be scrapped and replaced with a single unit.

D.6.5.1. Agricultural Pumps: To be eligible for funding, agricultural pumps must operate at least 250 hours/year during the two years prior to upgrade.

D.6.5.2. All Other Nonroad Engines: To be eligible for funding, nonroad engines must operate at least 500 hours/year during the two years prior to upgrade.

D.6.5.3. Locomotive and Marine Usage: To be eligible for funding the existing locomotive and marine engines must operate at least 1,000 hours/year during the two years prior to upgrade.

D.7. Fleet Expansion: Recipient agrees that funds under this award, including subawards/subgrants, cannot be used for the purchase of vehicles, engines, or equipment to expand a fleet. Engine, vehicle, and equipment replacement projects are eligible for funding on the condition that the following criteria are satisfied:

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D.7.1. The replacement vehicle/engine/equipment will continue to perform similar function and operation as the vehicle/engine/equipment that is being replaced.

D.7.2. The cost of optional components or “add-ons” that significantly increase the cost of the vehicle may not be eligible for funding under the grant; the replacement vehicle should resemble the replaced vehicle in form and function.

D.7.3. The replacement vehicle, engine, or equipment will be of similar type and similar gross vehicle weight rating or horsepower as the vehicle, engine, or equipment being replaced.

D.7.3.1. Nonroad, Locomotive, and Marine: Horsepower increases of more than 40 percent will require written approval by the EPA Project Officer prior to purchase, and the applicant may be required to pay the additional costs associated with the higher horsepower equipment.

D.7.3.2. Highway: The replacement vehicle must not be in a larger weight class than the existing vehicle (Class 5, 6, 7, or 8). Exceptions may be granted for vocational purposes and will require written approval by the EPA Project Officer prior to purchase.

D.7.4. The vehicle, equipment, and/or engine being replaced must be scrapped or rendered permanently disabled within ninety (90) days of being replaced.

D.7.4.1. If a 2010 engine model year (EMY) or newer highway vehicle is replaced, the 2010 EMY or newer vehicle may be retained or sold if the 2010 EMY or newer vehicle will replace a pre-2009 EMY vehicle, and the pre-2009 EMY vehicle will be scrapped. It is preferred that the scrapped unit currently operates within the same project location(s) as the 2010 EMY or newer vehicle currently operates, however alternative scenarios will be considered. The term “project location” refers to the primary area where the affected vehicles/engines operate. All existing and replacement vehicles are subject to the funding restrictions in this section. All equipment must operate within the United States. Under this scenario, a detailed scrappage plan must be submitted and will require prior EPA approval.

D.7.4.2. If a Tier 2, Tier 3 or Tier 4 locomotive, marine, or nonroad vehicle, equipment and/or engine is replaced, the units may be retained or sold if they will replace a similar, lower Tiered unit, and the lower Tiered unit will be scrapped. It is preferred that the scrapped unit currently operates within the same project location(s) as the original Tier 2 or 3 unit currently operates, however alternative scenarios will be considered. The term “project location” refers to the primary area where the affected

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vehicles/engines operate. All existing and replacement equipment are subject to the funding restrictions in this section. All equipment must operate within the United States. Under this scenario, a detailed scrappage plan must be submitted and will require prior EPA approval.

D.7.4.3. Cutting a three-inch by three-inch hole in the engine block (the part of the engine containing the cylinders) is the preferred scrapping method. Other scrappage methods may be considered and will require prior written approval from the EPA Project Officer.

D.7.4.4. Disabling the chassis may be completed by cutting through the frame/frame rails on each side at a point located between the front and rear axles. Other scrappage methods may be considered and will require prior written approval from the EPA Project Officer.

D.7.4.5. Evidence of appropriate disposal is required in a final assistance agreement report submitted to EPA as detailed in Term and Condition L.

D.7.4.6. Scrapped engines and equipment and vehicle components may be salvaged from the unit being replaced (e.g. plow blades, shovels, seats, tires, etc.). If scrapped or salvaged engines, vehicles, equipment, or parts are to be sold, program income requirements apply.

D.7.4.7. For tire replacement projects, the original tires should be scrapped according to local or state requirements, or the tires can be salvaged for reuse or retreading. If salvaged tires are sold, program income requirements apply.

D.8. Replacement Technologies: Recipient agrees that funds under this award cannot be used for the purchase of engine retrofits, idle reduction technologies, low rolling resistance tires or advanced aerodynamic technologies if similar technologies have previously been installed on the truck or trailer.

D.9. Project Eligibility Criteria: Recipient agrees that funds under this award cannot be used to fund projects that do not meet the following eligibility criteria:

#### D.9.1 Medium and Heavy-Duty Truck, Transit Bus, and School Bus Project Eligibility

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Current Engine Model Year (EMY)	DOC +/- CCV	DPF	SCR	Verified Idle Reduction, Tires, or Aerodynamics	Vehicle or Engine Replacement: EMY 2019+ (2015+ for Drayage)	Vehicle or Engine Replacement: EMY 2019+ Zero Emission <sup>2</sup> or Low-NOx <sup>3</sup>	Clean Alternative Fuel Conversion
older - 2006	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2007 - 2009	No	No	Yes	Yes <sup>1</sup>	Yes	Yes	Yes
2010 - newer	No	No	No	Yes <sup>1</sup>	No	Yes	Yes

<sup>1</sup> Auxiliary power units and generators are not eligible on vehicles with EMY 2007 or newer.

<sup>2</sup> Eligible fuel cell projects are limited to hydrogen fuel cell engine replacements for eligible urban transit buses, shuttle buses and drayage trucks, and hydrogen fuel cell engine replacements for eligible urban transit buses, shuttle buses, and drayage trucks.

<sup>3</sup> Please see the Low-NOx Engine Factsheet found at [www.epa.gov/dera/national#rfa](http://www.epa.gov/dera/national#rfa) for guidance on identifying engines certified to meet CARB's Optional Low NOx Standards.

### D.9.2. Nonroad Engine Project Eligibility

Current Engine Tier	Vehicle/Equipment Replacement					Verified Retrofit
	Compression Ignition			Spark Ignition	Zero Emission <sup>3</sup>	
	Tier 0-2	Tier 3-4i	Tier 4	Tier 2		
Unregulated – Tier 2	No	Yes <sup>1</sup>	Yes	Yes	Yes	Yes
Tier 3	No	No	Yes	Yes	Yes	Yes
Tier 4	No	No	No	No	Yes	No
Current Engine Tier	Engine Replacement					Verified Engine Upgrade
	Compression Ignition			Spark Ignition	Zero Emission <sup>4</sup>	
	Tier 0-2	Tier 3-4i	Tier 4	Tier 2		
Unregulated – Tier 2	No	Yes <sup>2</sup>	Yes	Yes	Yes	Yes
Tier 3	No	No	Yes	Yes	Yes	Yes
Tier 4	No	No	No	No	Yes	No

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<sup>1</sup> Tier 3 and Tier 4 interim (4i) allowed for vehicle/equipment replacement only when Tier 4 final is not yet available from OEM for 2021 model year equipment under the Transition Program for Equipment Manufacturers (TPEM).

<sup>2</sup> Tier 3 and Tier 4i engines may be used for engine replacement only if Tier 4 is demonstrated to not be available or feasible through a best achievable technology analysis as defined in Section E, below.

<sup>3</sup> Eligible fuel cell projects are limited to hydrogen fuel cell equipment replacements for eligible terminal tractors/yard hostlers, stationary generators, and forklifts.

<sup>4</sup> Fuel cell engine replacement is not eligible.

#### D.9.3. Marine Engine Project Eligibility

Engine Category	Engine Horsepower	Current Engine Tier	Engine & Vessel Replacement				Zero Emission <sup>2</sup>	Certified Re-manufacture System <sup>3</sup>	Verified Engine Upgrade
			Compression Ignition			Spark Ignition			
			Tier 1-2	Tier 3	Tier 4				
C1, C2	<803	Un-regulated - Tier 2	No	Yes	No	Yes	Yes	Yes	
C1, C2	≥804	Un-regulated - Tier 2	No	Yes <sup>1</sup>	Yes	Yes	Yes	Yes	
C1, C2	<803	Tier 3	No	No	No	Yes	Yes	No	
C1, C2	≥804	Tier 3	No	No	Yes	Yes	Yes	No	
C1, C2	≥804	Tier 4	No	No	No	No	No	No	
C3	All	Un-regulated - Tier 2	No	Yes	No	No	No	No	
C3	All	Tier 3	No	No	No	No	No	No	

<sup>1</sup> Tier 3 engines may be used for engine replacement only if Tier 4 is demonstrated to not be available or feasible through a best achievable technology analysis as defined in Section E, below. Over 800 HP, Tier 3 engines are not eligible for full vessel replacement.

<sup>2</sup> Fuel cell engine and vessel replacements are not eligible.

<sup>3</sup> Some marine engine projects may be subject to the restriction on mandated measures.

## DERA FY2021 National Programmatic Terms and Conditions

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### D.9.4: Locomotive Engine Project Eligibility

Current Locomotive Tier	Engine & Locomotive Replacement				Verified Retrofit	Idle-Reduction <sup>2</sup> Technology	Certified Remanufacture System 4
	Tier 0-2+	Tier 3	Tier 4	Zero Emission <sup>1</sup>			
Unregulated - Tier 2+	No	Yes <sup>3</sup>	Yes	Yes	Yes	Yes	Yes
Tier 3	No	No	Yes	Yes	Yes	Yes	Yes
Tier 4	No	No	No	No	No	Yes	No

<sup>1</sup> Fuel cell engine and locomotive replacements are not eligible.

<sup>2</sup> Automatic engine start-stop technologies are only eligible to be installed on locomotives currently certified to Tier 0 or unregulated, subject to the restriction on mandated measures.

<sup>3</sup> Tier 3 engines may be used for engine replacement only if Tier 4 is demonstrated to not be available or feasible through a best achievable technology analysis as defined in Section E., below. Tier 3 is not eligible for locomotive replacement.

<sup>4</sup> Some locomotive engine projects may be subject to the restriction on mandated measures.

D.10. Marine Shore Connection: Recipient agrees that funds under this award cannot be used for marine shore connection system projects that are expected to be utilized less than 1,000 MW-hr/year.

D.11. Locomotive Shore Connection: Recipient agrees that funds under this award cannot be used for locomotive shore connection system projects that are expected to be utilized less than 1,000 hours per year.

D.12. Tires and Aerodynamics: Recipient agrees that funds under this award cannot be used to purchase aerodynamic technologies or low rolling resistance tires, unless they are combined on the same vehicle with a new installation of a verified engine retrofit funded under this award. Ineligible costs include aluminum wheels.

D.13. Battery Electric Powered Replacements: Recipient agrees that funds under this award cannot be used to purchase power distribution to the pedestal, electrical panels and their installation, upgrades to existing electrical panels or electrical service, transformers and their installation, wiring/conduit and its installation, electricity, operation and maintenance, stationary energy storage systems that power the equipment (e.g. batteries) and their installation, and on-site power generation systems that power the equipment (e.g., solar and wind power generation equipment) and their installation.

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D.14. Grid Electric Powered Replacements: Recipient agrees that funds under this award cannot be used to purchase power distribution to the property line, electricity, operation and maintenance, stationary energy storage systems that power the equipment (e.g. batteries) and their installation, and on-site power generation systems that power the equipment (e.g., solar and wind power generation equipment) and their installation.

D.15. Engine Replacements: Recipient agrees that funds under this award cannot be used to purchase cabs, tires, wheels, axles, paint, brakes, and mufflers.

D.16. Engine Remanufacture Systems: Recipient agrees that funds under this award cannot be used to purchase the entire cost of an engine rebuild if a certified remanufacture system is applied at the time of rebuild.

D.17. Electrified Parking Spaces: Recipient agrees that funds under this award cannot be used to purchase power distribution to the property line, electricity, operation and maintenance, stationary energy storage systems that power the equipment (e.g. batteries) and their installation, and on-site power generation systems that power the equipment (e.g., solar and wind power generation equipment) and their installation.

D.18. Locomotive Shore Power: Recipient agrees that funds under this award cannot be used to purchase power distribution to the property line, electricity, operation and maintenance, stationary energy storage systems that power the equipment (e.g. batteries) and their installation, and on-site power generation systems that power the equipment (e.g., solar and wind power generation equipment) and their installation.

D.19. Marine Shore Power: Recipient agrees that funds under this award cannot be used to purchase shipside modifications to accept shore-based electrical power, power distribution to the property line, electricity, operation and maintenance, stationary energy storage systems that power the equipment (e.g. batteries) and their installation, and on-site power generation systems that power the equipment (e.g., solar and wind power generation equipment) and their installation.

#### **E. Best Achievable Technology:**

All new nonroad and locomotive engines are now manufactured to meet the EPA Tier 4 standards. All new Category 1 and 2, 804 horsepower and above marine engines are now manufactured to meet the EPA Tier 4 standards. Recipients replacing these nonroad, marine, and locomotive engines are expected to use Tier 4 engines if Tier 4 engines with the appropriate physical and performance characteristics are available. Recipients are required to submit a best achievable technology (BAT) analysis to EPA for approval before Tier 3 or Tier 4i engines can be purchased. Recipients should consult their EPA Project Officer for BAT requirements and approval.

#### **F. Drayage Vehicle Replacement Project Requirements:**

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In addition to the applicable requirements for highway vehicles described in D above, recipients replacing drayage vehicles are required to establish and document guidelines to ensure that the scrapped vehicle has a history of operating on a frequent basis over the prior year as a drayage truck, defined as any Class 8a and 8b in-use on-road vehicle with a gross weight rating (GVWR) of greater than 33,000 pounds operating on or transgressing through port or intermodal rail yard property for the purpose of loading, unloading or transporting cargo, such as containerized, bulk or break-bulk goods.

#### G. Emissions Control Technologies:

Emissions Reduction Projects funded by the recipient pursuant to this assistance agreement must use verified technologies and/or must use engines and engine configurations certified by EPA and, if applicable, CARB. Technologies are verified under EPA or California's Retrofit Technology Verification Programs. See the following lists for eligible technologies:

G.1. EPA verified engine retrofit technologies and engine upgrade technologies: [www.epa.gov/verified-diesel-tech/verified-technologies-list-clean-diesel](http://www.epa.gov/verified-diesel-tech/verified-technologies-list-clean-diesel)

G.2. California Air Resources Board (CARB) verified engine retrofit technologies: [www.arb.ca.gov/diesel/verdev/vt/cvt.htm](http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm)

G.3. EPA verified idle reduction technologies: [www.epa.gov/verified-diesel-tech/idling-reduction-technologies-irts-trucks-and-school-buses](http://www.epa.gov/verified-diesel-tech/idling-reduction-technologies-irts-trucks-and-school-buses)

G.4. EPA verified aerodynamic technologies: [www.epa.gov/verified-diesel-tech/aerodynamic-devices](http://www.epa.gov/verified-diesel-tech/aerodynamic-devices)

G.5. EPA verified low rolling resistance tires: [www.epa.gov/verified-diesel-tech/low-rolling-resistance-lrr-new-and-retread-tires](http://www.epa.gov/verified-diesel-tech/low-rolling-resistance-lrr-new-and-retread-tires)

G.6. EPA certified engines and certified remanufacture systems for locomotives and marine engines: [www.epa.gov/compliance-and-fuel-economy-data/engine-certification-data](http://www.epa.gov/compliance-and-fuel-economy-data/engine-certification-data)

G.7. EPA Certified Conversion Systems for New Vehicles and Engines and compliant Conversion Systems for Intermediate-Age Vehicles and Engines: [www.epa.gov/vehicle-and-engine-certification/lists-epa-compliant-alternative-fuel-conversion-systems](http://www.epa.gov/vehicle-and-engine-certification/lists-epa-compliant-alternative-fuel-conversion-systems)

G.8. CARB Approved Alternate Fuel Retrofit Systems: [www.arb.ca.gov/msprog/aftermkt/altfuel/altfuel.htm](http://www.arb.ca.gov/msprog/aftermkt/altfuel/altfuel.htm)

Any question as to the eligibility or preference of a retrofit technology, including vehicle/engine/equipment replacements, should be directed to the EPA Project Officer.

#### H. Program Income:

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Program income as defined at 2 CFR §200.1 means gross income received by the grantee or subrecipient that is directly generated by a grant supported activity or earned as a result of the Federal award during the period of performance. Under DERA grants, program income is generally limited to the sale of scrapped or remanufactured engines/chassis or salvaged engine/vehicle/equipment components and does not include revenue generated by recipients or subrecipients through the commercial use of vehicles and equipment purchased with grant funds. "Period of performance" is the time between the start and end dates of the period of performance as included in the Federal award.

Program income earned during the project period shall be retained by the recipient and, in accordance with 2 CFR §200.307 recipient is authorized to use program income to meet the cost-sharing or matching requirement of the Federal award, including any mandatory or voluntary cost-share. The amount of the Federal award remains the same. The recipient will maintain records adequate to document the extent to which transactions generate program income and the disposition of program income. The recipient must provide as part of its final performance report, a description of how program income is being used. Further, a report on the amount of program income earned during the award period must be submitted with the final Federal Financial Report, Standard Form 425.

#### **I. 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 a Federal award 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 2 CFR §200.313.

Equipment is defined as tangible personal property having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of \$5,000, or the capitalization level established by the non-Federal entity for financial statement purposes (see Capital assets at 2 CFR §200.1 Definitions). Certified or verified technologies, vehicles, engines and nonroad equipment are considered to be equipment to the extent they fall within this definition.

Recipient agrees that at the end of the project period the recipient will continue to use the equipment purchased under this assistance agreement in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award. When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property. Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.

#### **J. Procurement Procedures:**

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The recipient must follow applicable procurement 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 2 CFR §§200.317 – .327. Approval of a funding application does not relieve recipients of their obligations to compete service contracts and conduct cost and price analyses.

#### **K. Quarterly Reporting and Environmental Results**

Quarterly progress reports will be required. Quarterly reports will address the progress made achieving the work plan activities and objectives, including:

- procurements, installations and scrappage;
- milestones;
- outputs and outcomes including any project sustainability commitments;
- summary of quarterly and cumulative expenditures;
- up to date fleet description and efforts should be made to track, measure and report the actual vehicle miles traveled, hours of use/operation, and fuel use for all vehicles and equipment involved in the project;
- signed eligibility statements, signed scrappage statements, and BAT analysis submitted to EPA for approval;
- accounting of personnel hours billed to the grant;

A template for the quarterly report is available at: [www.epa.gov/dera/national](http://www.epa.gov/dera/national). Quarterly reports are due according to the following schedule. If a due date falls on a weekend or holiday, the report will be due on the next business day.

April 1 – June 30 Reporting Period: report due date July 30

July 1 – September 30 Reporting Period: report due date October 30

October 1 – December 31 Reporting Period: report due date January 30

January 1 – March 31 Reporting Period: report due date April 30

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

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#### K.1. Subaward Reporting Requirement:

If the recipient chooses to pass funds from this assistance agreement to other entities, the recipient must comply with applicable provisions of 2 CFR Part 200 and the EPA Subaward Policy, which may be found at: <https://epa.gov/grants/epa-subaward-policy>. If applicable, the recipient must report on its subaward monitoring activities under 2 CFR 200.332(d). Examples of items that must be reported if the pass-through entity has the information available are:

K.1.1. Summaries of results of reviews of financial and programmatic reports.

K.1.2. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.

K.1.3. Environmental results the subrecipient achieved.

K.1.4. Summaries of audit findings and related pass-through entity management decisions.

K.1.5. Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.332(e), 2 CFR 200.208 and the 2 CFR 200.339 Remedies for Noncompliance.

#### L. 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, the successes and lessons learned for the entire project. project results including specific outputs and outcomes detailed in the project workplan (including any sustainability commitments), and final emissions benefit calculations. To the extent possible, final emission benefit calculations should be based on the actual number and type of technologies, vehicles, equipment and engines implemented under the award and actual vehicle miles traveled, idling and/or operating hours, and fuel use. If actual vehicle miles traveled, idling and/or operating hours, and fuel use are not available, the final report will include a detailed explanation of how these values are derived, as well as any assumptions or default values used, for the purposes of emissions benefit calculations. The final report will also detail the methodologies used for the emission benefit calculation.

The recipient must provide in the final report signed eligibility statements from participating fleet owners in which fleet owners attest to the criterion in term and condition D.6., and which include each vehicle make, model, year, vehicle identification number, odometer/usage meter reading, engine make, model, year, horsepower, engine ID or serial number, and vehicle/equipment registration/licensing number and state. A sample eligibility statement may be found at <https://www.epa.gov/dera/national>.

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For projects involving vehicle/engine/equipment replacements the recipient must provide in the final report evidence of appropriate scrappage. Participating fleet owners must attest to the appropriate disposal in a signed scrappage statement. A sample scrappage statement may be found at <https://www.epa.gov/dera/national>. The scrappage statement must include: Vehicle owner's name and address; Vehicle make, vehicle model, vehicle model year, VIN, odometer reading or usage meter reading, engine make, engine model, engine model year, engine horsepower, engine ID or serial number, as applicable; Name, address, and signature of dismantler; Date engine and/or vehicle/equipment was scrapped; Statement attesting to scrappage of vehicle/engine as defined above; Signature of participating fleet owner. Digital photos as follows: Side profile of the vehicle, prior to disabling; VIN tag or equipment serial number; Engine label (showing serial number, engine family number, and engine model year); Engine block, prior to hole; Engine block, after hole; Cut frame rails or other cut structural components, as applicable; Others, as needed.

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

The final report shall be submitted to the EPA Project Officer within 120 days after the project period end date or termination of the assistance agreement. A template for the final report is available at <https://www.epa.gov/dera/national>.

#### L.1. Subaward Reporting Requirement:

If the recipient chooses to pass funds from this assistance agreement to other entities, the recipient must comply with applicable provisions of 2 CFR Part 200 and the EPA Subaward Policy, which may be found at: <https://epa.gov/grants/epa-subaward-policy>. If applicable, the recipient must report on its subaward monitoring activities under 2 CFR 200.332(d). Examples of items that must be reported if the pass-through entity has the information available are:

- L.1.1. Summaries of results of reviews of financial and programmatic reports.
- L.1.2. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
- L.1.3. Environmental results the subrecipient achieved.
- L.1.4. Summaries of audit findings and related pass-through entity management decisions.

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L.1.5. Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.332(e), 2 CFR 200.208 and the 2 CFR 200.339 Remedies for Noncompliance.

#### **M. Employee and/or Contractor Selection:**

EPA will not help select employees or contractors hired by the recipient.

#### **N. Cybersecurity Condition**

N.1. The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State cybersecurity requirements.

N.2. EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition. If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) no later than 90 days after the date of this award and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

N.3. The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in N.2. if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.332(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

#### **O. For-Profit Sub-Recipients:**

In addition to the EPA General Term and Condition "Establishing and Managing Subawards", the recipient (i.e. "pass-through entity") agrees to require that for-profit subrecipients comply with Subparts A through F of the Uniform Grant Guidance (2 CFR Part 200) and the Federal cost

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principles applicable to for-profit entities located at 48 CFR Part 31, with the exception of the method of payment to for-profit subrecipients must be “reimbursement” rather than “advance”. Pass-through entities must obtain documentation that the for-profit subrecipient has incurred eligible and allowable costs prior to releasing EPA funds to the subrecipient.

#### **P. Mandatory Cost-Share Requirement:**

This award and the resulting federal funding share (as shown under "Notice of Award" in the award document) is based on estimated costs requested in the recipient's final approved workplan. While actual total costs may differ than those estimates, the recipient is required to provide no less than the cost-share percentages outlined below, as applicable, of the final equipment costs. EPA's participation shall not exceed the total amount of federal funds awarded or the maximum federal cost-share percentages outlined below, as applicable, of the final equipment costs. Recipients must satisfy any applicable cost share requirements with allowable costs as set forth in 2 CFR §200.306. The cost share requirements are as follows:

Eligible Technologies	EPA Funding Limit	Mandatory Cost Share
Drayage Truck Replacement	50%	50%
Vehicle or Equipment Replacement with EPA Certified Engine	25%	75%
Vehicle or Equipment Replacement with CARB Certified Low NOx Engine	35%	65%
Vehicle or Equipment Replacement with Zero-tailpipe Emission Power Source	45%	55%
Engine Replacement with EPA Certified Engine	40%	60%
Engine Replacement with CARB Certified Low NOx Engine	50%	50%
Engine Replacement with Zero-tailpipe Emission Power Source	60%	40%
EPA Certified Remanufacture Systems	100%	0%
EPA Verified Highway Idle Reduction Technologies when combined with new or previously installed exhaust after-treatment retrofit	100%	0%
EPA Verified Highway Idle Reduction Technologies without new exhaust after-treatment retrofit	25%	75%
EPA Verified Locomotive Idle Reduction Technologies	40%	60%
EPA Verified Marine Shore Connection Systems	25%	75%
EPA Verified Electrified Parking Space Technologies	30%	70%
EPA Verified Exhaust After-treatment Retrofits	100%	0%
EPA Verified Engine Upgrade Retrofits	100%	0%
EPA Verified Hybrid Retrofit Systems	60%	40%
EPA Verified Fuel and Additive Retrofits when combined with new retrofit, upgrade, or replacement	Cost differential between	Cost of conventional diesel fuel

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	conventional diesel fuel	
EPA Verified Aerodynamics and Low Rolling Resistance Tires when combined with new exhaust after-treatment retrofit	100%	0%
Alternative Fuel Conversion	40%	60%

The eligible acquisition cost for equipment means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance and freight may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices.

#### **P. Leveraging:**

The recipient agrees to provide the proposed leveraged funding, including any voluntary cost-share contribution that is described in its final approved workplan. If the proposed leveraging does not materialize during the period of award performance, and the recipient does not provide a satisfactory explanation, the Agency may consider this factor in evaluating future applications from the recipient. In addition, if the proposed leveraging does not materialize during the period of award performance then EPA may reconsider the legitimacy of the award; if EPA determines that the recipient knowingly or recklessly provided inaccurate information regarding the leveraged funding the recipient described in its final approved workplan. EPA may take action as authorized by 2 CFR Part 200 and/or 2 CFR Part 180 as applicable.

## Exhibit B

### Project Scope of Work, Compensation, and Schedule

Union Pacific Railroad Company (Subrecipient or Union Pacific) will replace one existing diesel Tier 0+ switch locomotive with one switch locomotive that utilizes battery electric technology as set forth in the table below and consistent with the U.S. Environmental Protection Agency (EPA) Cooperative Agreement, Grant Number 98T27801 (Grant Award, See Exhibit A), awarded pursuant to the EPA's 2021 National Clean Diesel Funding Assistance Program.

Equipment Identification	Engine Year, Manufacturer, and Model	Baseline Engine Horsepower	Grant Amount (Not to Exceed)
UP1609	1973, EMD, SD40N	3000	\$2,020,000

Union Pacific shall obtain cost estimates and bids, purchase the new equipment, and scrap the replaced locomotive, in accordance with the Grant Award requirements.

Subrecipient is responsible for a mandatory cost share of 55% of the final locomotive cost as set forth in the Grant Award. Subrecipient will be reimbursed when the new switch locomotive is placed in service and funding is received by the Harbor Department from the EPA (See Section IV of the Agreement).

Subrecipient shall operate the new switch locomotive at yards located in the South Coast Air Basin from procurement through the remaining term of the Agreement, with at least a work demonstration at the Intermodal Container Transfer Facility.

Any modifications to the Project scope, compensation, or schedule shall be in writing as an amendment to the Agreement and are subject to approval by the City in accordance with the City's Charter and Administrative Code.

#### EPA Quarterly Reports

Subrecipient shall submit all information necessary for the Harbor Department to complete quarterly project status reports as required by the EPA and the Grant Award. These reports will address the progress made in completing the Project. In general, quarterly reports shall include summary information on technical progress, planned activities for the next quarter, and expenditures.

**EPA Final Report**

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

**Project Schedule**

The Project will begin upon the effective date of the Agreement and shall be implemented according to the following schedule:

	<b>Milestone Task Descriptions</b>	<b>Milestone Task Schedule</b>
1	Obtain competitive bids	January 2022 – March 2022
2	Equipment procurement	April 2022 – October 2022
3	Place equipment in service	November 2022 – June 2024
4	Quarterly Progress Reports	Quarterly
5	Submit Final Report	Within 90 days of Project completion

## EXHIBIT C

### 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 <http://finance.lacity.org/business-tax-information-faq> to download the business tax registration application.

#### MAIN OFFICE

LA City Hall

201 N. Main Street, Rm. 101

(844) 663-4411

## EXHIBIT D - AFFIRMATIVE ACTION PROGRAM PROVISIONS

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

Every non-construction and construction Contract with, or on behalf of, the City of Los Angeles for which the consideration is \$25,000 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 a 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, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

1. This section 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 shall, 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, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

C. At the request of the Awarding Authority or the DAA, 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, color, religion, national origin, ancestry, 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 DAA for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City Contracts and, upon request, to provide evidence that it has or will comply therewith.

E. The failure of any Contractor to comply with the Affirmative Action Program provisions of City Contracts may be deemed to be a material breach of a City Contract. The 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 DAA. No 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, the breach may be the basis for a determination by the Awarding Authority or the Board of Public Works that the Contractor is a non-responsible bidder or proposer pursuant to the provisions of Section 10.40 of this Code. In the event of such determination, the 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 for each person for each calendar day on which the 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 DAA 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. By affixing its signature to a Contract that is subject to this article, the Contractor shall agree to adhere to the provisions in this article for the duration 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 Program.

1. The Contractor certifies and agrees to immediately implement good faith effort measures to recruit and employ minority, women and other potential employees in

a non-discriminatory manner including, but not limited to, the following actions as appropriate and available to the Contractor's field of work. The Contractor shall:

- (a) Recruit and make efforts to obtain employees through:
  - (i) Advertising employment opportunities in minority and other community news media or other publications.
  - (ii) Notifying minority, women and other community organizations of employment opportunities.
  - (iii) Maintaining contact with schools with diverse populations of students to notify them of employment opportunities.
  - (iv) Encouraging existing employees, including minorities and women, to refer their friends and relatives.
  - (v) Promoting after school and vacation employment opportunities for minority, women and other youth.
  - (vi) Validating all job specifications, selection requirements, tests, etc.
  - (vii) Maintaining a file of the names and addresses of each worker referred to the Contractor and what action was taken concerning the worker.
  - (viii) Notifying the appropriate Awarding Authority and the DAA in writing when a union, with whom the Contractor has a collective bargaining agreement, has failed to refer a minority, woman or other worker.
- (b) Continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfers, demotions and layoffs are made in a non-discriminatory manner so as to achieve and maintain a diverse work force.
- (c) Utilize training programs and assist minority, women and other employees in locating, qualifying for and engaging in the training programs to enhance their skills and advancement.
- (d) Secure cooperation or compliance from the labor referral agency to the Contractor's contractual Affirmative Action Program obligations.
- (e) Establish a person at the management level of the Contractor to be the Equal Employment Practices officer. Such individual shall have the authority to disseminate and enforce the Contractor's Equal Employment and Affirmative Action Program policies.
- (f) Maintain records as are necessary to determine compliance with Equal Employment Practices and Affirmative Action Program obligations and make the records available to City, State and Federal authorities upon request.

(g) Establish written company policies, rules and procedures which shall be encompassed in a company-wide Affirmative Action Program for all its operations and Contracts. The policies shall be provided to all employees, Subcontractors, vendors, unions and all others with whom the Contractor may become involved in fulfilling any of its Contracts.

(h) Document its good faith efforts to correct any deficiencies when problems are experienced by the Contractor in complying with its obligations pursuant to this article. The Contractor shall state:

- (i) What steps were taken, how and on what date.
- (ii) To whom those efforts were directed.
- (iii) The responses received, from whom and when.
- (iv) What other steps were taken or will be taken to comply and when.
- (v) Why the Contractor has been or will be unable to comply.

2. Every contract of \$25,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall also comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

L. The Affirmative Action Program required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Awarding Authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading training and opportunities;
5. Encouraging the use of Contractors, Subcontractors and suppliers of all racial and ethnic groups; provided, however, that any contract subject to this ordinance shall require the Contractor, Subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the Contractor's, Subcontractor's or supplier's geographical area for such work;
6. The entry of qualified women, minority and all other journeymen into the industry; and

7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.

M. Any adjustments which may be made in the Contractor's work force to achieve the requirements of the City's Affirmative Action Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.

N. 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 engaged in the performance of City Contracts.

O. All Contractors subject to the provisions of this article shall include a similar 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 E**  
**SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM**  
**LOCAL BUSINESS PREFERENCE PROGRAM**

(1) **SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM:**

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

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

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

The SBE Program is a results-oriented program, requiring consultants who receive contracts from the Harbor Department to perform outreach and utilize certified small businesses. **Based on the work to be performed, it has been determined that the percentage of small business participation will be 0%.**

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

Consultant shall complete, sign, and submit as part of the executed agreement the attached Affidavit and Consultant Description Form. The Affidavit and Consultant Description Form, when

signed, will signify the Consultant's intent to comply with the SBE requirement. All SBE/VSBE firms must be certified by the time proposals are due to receive credit. In addition all consultants and subconsultants must be registered on the LABAVN by the time proposals are due.

(2) LOCAL BUSINESS PREFERENCE PROGRAM:

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

Consultants who qualify as a Local Business Enterprise (LBE) will receive an 8% preference on any proposal for services valued in excess of \$150,000. The preference will be applied by adding 8% of the total possible evaluation points to the Consultant's score. Consultants who do not qualify as a LBE may receive a maximum 5% preference for identifying and utilizing LBE subconsultants. Consultants may receive 1% preference, up to a maximum of 5%, for every 10% of or portion thereof, of work that is subcontracted to a LBE. LBE subconsultant preferences will be determined by the percentage of the total amount of compensation proposed under the Agreement.

The Harbor Department defines a LBE as:

- (a) A business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties. Headquartered shall mean that the business physically conducts and manages all of its operations from a location in the above-named counties; or
- (b) A business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties.

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

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

## AFFIDAVIT OF COMPANY STATUS

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

---

Name of Firm

as well as the ownership and location thereof. Further, the undersigned agrees to provide complete and accurate information regarding ownership in the named firm, and all of its domestic and foreign affiliates, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents, and the ownership documents of all of its domestic and foreign affiliates, in association with this agreement."

(1) **Small/Very Small Business Enterprise Program:** Please indicate the ownership of your company.

Please check all that apply. At least one box must be checked:

SBE     VSBE     MBE     WBE     DVBE     OBE

- A Small Business Enterprise (SBE) is an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121.
- A Very Small Business Enterprise (VSBE) is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.
- A Minority Business Enterprise (MBE) is defined as a business in which a minority owns and controls at least 51% of the business. A Woman Business (WBE) is defined as a business in which a woman owns and controls at least 51% of the business. For the purpose of this project, a minority includes:
  - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands); and
  - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of

North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

- A Disabled Veteran Business Enterprise (DVBE) is defined as a business in which a disabled veteran owns at least 51% of the business, and the daily business operations are managed and controlled by one or more disabled veterans.
- An OBE (Other Business Enterprise) is any enterprise that is neither an SBE, VSBE, MBE, WBE, or DVBE.

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

LBE     Non-LBE

- A Local Business Enterprise (LBE) is: (a) a business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties; or (b) a business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties. "Headquartered" shall mean that the business physically conducts and manages all of its operations from a location in the above-named counties.
- A Non-LBE is any business that does not meet the definition of a LBE.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## Consultant Description Form

### PRIME CONSULTANT:

Contract Title: \_\_\_\_\_

Business Name: \_\_\_\_\_ LABAVN ID#: \_\_\_\_\_

Award Total: \$ \_\_\_\_\_

Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES \_\_\_\_\_ NO \_\_\_\_\_ (Check only one)

Primary NAICS Code: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

County: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

### SUBCONSULTANT:

Business Name: \_\_\_\_\_ LABAVN ID#: \_\_\_\_\_

Award Total: (% or \$): \_\_\_\_\_

Services to be provided: \_\_\_\_\_

Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES \_\_\_\_\_ NO \_\_\_\_\_ (Check only one)

Primary NAICS Code: \_\_\_\_\_ Average Three Year Gross Revenue: \$ \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

County: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

Email address: \_\_\_\_\_

## EXHIBIT F

### 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.