

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

AGREEMENT BETWEEN  
THE CITY OF LOS ANGELES AND  
TRAPAC, INC.

THIS 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 TRAPAC, INC., a California corporation, located at 920 West Harry Bridges Blvd., Wilmington, CA 90744-5239 ("GRANTEE").

WHEREAS, the CITY and GRANTEE (collectively, "the Parties") have entered into Permit No. 881 and pursuant to said permit the parties are obligated to participate in a demonstration project for the purpose of developing, constructing and testing a barge mounted emission control system ("Emissions Technology") for auxiliary engines of ocean going vessels while at-berth ("PROJECT"); and

WHEREAS, the City of Los Angeles Harbor Department ("Department" or "Port") and the City of Long Beach Harbor Department (referred to collectively as "joint ports") created a Technology Advancement Program ("TAP") as part of the joint ports' Clean Air Action Plan ("CAAP") in order to accelerate the verification and/or commercial availability of new, clean technologies that are applicable to the port industry and result in significant reductions of diesel particulate matter, nitrogen oxides, sulfur oxides and other pollutants; and

WHEREAS, Permit No. 881 required that the PROJECT be reviewed and approved by the TAP Advisory Committee and upon review the Committee determined that the PROJECT may result in at least 81% decrease in sulfur oxides (SOx), nitrous oxides (NOx), and diesel particulate matter (DPM) from vessels; and

WHEREAS, the Parties acknowledge that the Emissions Technology is currently unproven and the purpose of the PROJECT is to determine the Emissions Technology's air emissions reduction capabilities, to be evidenced by the California Air Resources Board's verification that the Emissions Technology is effective and its usage qualifies for Emissions Reduction Credits; and

WHEREAS, the Parties acknowledge that Permit No. 881, Section 6.9.1(e) requires the Parties to enter into an agreement wherein GRANTEE shall share with the City five percent (5%) of any profits generated by the use of the Emissions Technology in order to repay City for the funding provided by City for the PROJECT ("Reimbursement Agreement"); and

WHEREAS, the Parties agree to enter into a Reimbursement Agreement pursuant to the terms of Permit No. 881 and as provided for herein; and

WHEREAS, GRANTEE shall demonstrate emission reductions directly resulting from the use of the Emissions Technology that satisfy requirements of mitigation measure MM AQ-6 set forth in Exhibit "K-2" as referenced in Permit No. 881.

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

I. AUTHORIZED REPRESENTATIVES TO RECEIVE NOTICES

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

Scott Axelson  
Vice President Business Development  
TraPac, Inc.  
920 West Harry Bridges Blvd.  
Wilmington, CA 90744-5230  
Tel: (310) 513-7412  
Fax: (310) 513-7410  
[Scott.axelson@trapac.com](mailto:Scott.axelson@trapac.com)

Lisa Wunder  
Assistant Air Quality Supervisor  
Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro, CA 90731  
Tel: (310) 732-7688  
Fax: (310) 547-4643  
[lwunder@portla.org](mailto:lwunder@portla.org)

B. Formal notices, demands, requests and communications given by either party shall be made in writing to the authorized representatives set forth above.

C. If the name or address designated above is changed, written notice shall be given to the other party within five (5) working days of said change.

II. SERVICES TO BE PERFORMED BY GRANTEE

A. GRANTEE shall, to the satisfaction of the City, obtain those professional, expert and technical services, and materials necessary to develop, construct and test a barge mounted emission control system ("Emissions Technology") for auxiliary engines of ocean going vessels while at-berth (hereinafter "PROJECT"). See Exhibit A.

B. To qualify for reimbursement by City, GRANTEE must complete PROJECT within the timeframe provided for in Exhibit A, unless the parties enter into a

written amendment to the Agreement and the same is approved by the Board and City Council in accordance with the City of Los Angeles City Charter.

C. During the term of this Agreement, GRANTEE shall submit a written request to, and obtain written approval from, the Executive Director or his or her designee to change or modify the Scope of Work described in Exhibit A. Changes or modifications to the Scope of Work described in Exhibit A that are not approved and accepted in writing by the Executive Director or his or her designee shall not be eligible for reimbursement and shall be considered a breach of this Agreement.

D. At any time during the term of this Agreement, and upon ten (10) days written request from the City, GRANTEE shall allow the City to conduct site visits to the location(s) where the PROJECT work is being conducted. The site visits shall be for the purposes of, but not limited to, verifying that PROJECT milestones have been completed and that the PROJECT is being conducted in accordance with the terms of this Agreement.

E. To qualify for reimbursement by City, GRANTEE must complete written reports pursuant to the PROJECT timeline milestones in Exhibit A which shall provide sufficient evidence, as determined by the Executive Director or his or her designee, to indicate completion of each milestone which is designated for payment in accordance with Section V below.

### III. SERVICES TO BE PERFORMED BY CITY

A. City shall reimburse GRANTEE for the PROJECT in accordance with the terms of this Agreement.

B. At any time during the term of this Agreement, and upon ten (10) days written notice to GRANTEE, City shall have the right to review PROJECT documentation or conduct site visits in accordance with the provisions set forth in Section II.D and Section II.E of this Agreement.

C. Unless set forth herein, City shall not be obligated to provide assistance to GRANTEE to assure completion of PROJECT as required herein.

### IV. EFFECTIVE DATE AND TERM OF THE AGREEMENT

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

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

1. Three (3) years have lapsed from the effective date of this Agreement; or
2. The Board of Harbor Commissioners, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Consultant ten (10) days' notice in writing of its election to cancel and terminate this Agreement; or
3. GRANTEE has completed all services listed in the Scope of Work and the City has made final payment pursuant to the requirements of the Agreement.

V. COMPENSATION

A. The TAP grant award is calculated based upon the estimated expenses of the PROJECT as reported by GRANTEE in its application submitted to the TAP Committee. For the satisfactory completion of the PROJECT, City shall reimburse GRANTEE an amount not-to-exceed One Million Five Hundred Thousand Dollars (\$1,500,000) and in accordance with the payment schedule set forth in the Scope of Work. Expenses incurred above the amount stated in the Scope of Work shall not be reimbursed, unless the parties enter into a written amendment to this Agreement and the same is approved by the Board and City Council in accordance with the Los Angeles City Charter.

B. GRANTEE shall submit itemized invoices in quadruplicate to City following the effective date of the Agreement and in accordance with the payment schedule in the Scope of Work. Each such invoice shall be signed by GRANTEE and shall include the following certification:

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

\_\_\_\_\_  
(GRANTEE's Signature)

C. GRANTEE must include on the face of each itemized invoice submitted for payment its Los Angeles Business Tax Registration Certificate number, as required in Section XVI 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.

D. GRANTEE shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, receipts, payrolls, and time

sheets. The City may require, and GRANTEE shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement. GRANTEE is not required to submit support for direct costs items of \$25 or less.

E. Reimbursement is contingent upon GRANTEE complying with the Scope of Work and submission of reports, and the approval of same by the Executive Director, or his or her designee, in accordance with the requirements of this Agreement.

F. 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

## VI. TERMINATION

A. City in its sole discretion may terminate and cancel all or any part of this Agreement for any reason upon giving to GRANTEE ten (10) days notice in writing of its election to cancel and terminate this Agreement. If such termination and cancellation occurs, GRANTEE shall only be entitled to reimbursement for expenses incurred up to the date of termination and for which reports and invoices are submitted in accordance with Section V of this Agreement.

B. In the event that GRANTEE seeks early termination of this Agreement prior to the termination date for any reason, or no reason whatsoever, GRANTEE shall submit a written request to the City. Department staff shall submit GRANTEE's written request for early termination to the Board for acceptance and approval. In the event that City accepts GRANTEE's request for early termination, GRANTEE shall, within thirty (30) days of such acceptance, reimburse the City any and all monies paid under the Agreement.

C. In the event that facts available to the Department indicate that GRANTEE may have breached any term of this Agreement prior to the end of the Agreement term, the Executive Director shall submit the reasons for the breach to the Board for its determination and concurrence that GRANTEE has breached the Agreement. In the event of a breach of the Agreement, GRANTEE shall cease all work and shall, within thirty (30) days after the Board determines GRANTEE has breached the Agreement, reimburse the City any and all monies paid under the Agreement.

D. This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes the City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

The City, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefore. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the Consultant agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60 day period. The Consultant is responsible for maintaining all insurance and bonds during this 60 day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

#### VII. ACCEPTABILITY OF WORK

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

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

#### VIII. REIMBURSEMENT AGREEMENT

In the event that the Emissions Technology is shown to be effective in air emission reductions, the parties shall comply with Permit No. 881 Section 6.9.1(e) and enter into a Reimbursement Agreement wherein the City is reimbursed for all monies expended pursuant to this Agreement and any subsequent agreements or amendments involving the PROJECT.

If the Emissions Technology is determined to be not effective, the parties shall enter into a Reimbursement Agreement in the event that the Emissions Technology

subsequently becomes effective in air emission reductions where the success of the Emissions Technology is a result of the PROJECT.

This Section VIII and the obligations herein shall survive the expiration or early termination of this Agreement and shall be enforceable pursuant to this Agreement and Permit No. 881.

IX. ASSIGNMENT

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

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

X. INDEMNIFICATION AND INSURANCE

A. Indemnity for General Liability

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

B. Indemnity for Professional Liability

Except for the sole negligence or willful misconduct of City, Consultant shall at all times indemnify, protect, defend, and hold harmless City and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the City, its boards, officers, agents, and/or employees by reason of any damage to property, injury to persons, or any action that may arise out of the performance of this Agreement that is caused by any act, omission, or negligence of Consultant, its boards, officers, agents, employees, or subconsultants.

C. Insurance

The parties acknowledge and agree that the terms and conditions for insurance under Permit No. 881, including any subsequent amendments and successive permits, shall apply this Agreement,

XI. COMPLIANCE WITH APPLICABLE LAWS

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

XII. INDEPENDENT CONTRACTOR

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

XIII. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of the City and Department. The parties agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

XIV. TRADEMARKS, COPYRIGHTS AND PATENTS



GRANTEE agrees to save, keep, hold harmless, protect and indemnify the City and any of its officers or agents from any damages, costs, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by City of any materials supplied by GRANTEE in the performance of this Agreement.

XV. USE OF DOCUMENTS

All data, documents, reports or other materials, copies of working papers which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement shall become the property of the GRANTEE. The City reserves the right to use, duplicate, disclose in whole or in part in any manner for any purpose whatsoever all said data, documents, reports or other materials transmitted to it by GRANTEE pursuant to the Agreement, and to authorize others to do so. Further, GRANTEE agrees to furnish a copy of any document submitted to any other government agency relating to this Agreement.

XVI. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. GRANTEE declares that its authorized Taxpayer Identification Number (TIN) is 33-0119198. No payments will be made under this Agreement without a valid TIN.

XVII. BUSINESS TAX REGISTRATION CERTIFICATE

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

XVIII. AFFIRMATIVE ACTION

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

XIX. PROPRIETARY INFORMATION

The Department shall have the right to disclose any information transmitted to it by GRANTEE, or on GRANTEE's behalf, pursuant to this Agreement as it determines appropriate considering the nature of the information, its use and the laws applicable to the Department.

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

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 5771 on January 3, 1999, agreeing to adopt the provisions of the Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. GRANTEE shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate the Agreement and otherwise pursue legal remedies that may be available.

XXI. WAGE AND EARNING ASSIGNMENT ORDERS/NOTICES OF ASSIGNMENTS

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

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

XXII. EQUAL BENEFITS POLICY

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

XXIII. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tideland Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act

Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City,” approved June 3, 1929, (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. GRANTEE agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

**XXIV. GOVERNING LAW AND VENUE**

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

**XXV. INTEGRATION**

This document constitutes the entire Agreement between the parties to this Agreement with respect to the subject matter set forth and supersedes any and all prior Agreements or contracts on this subject matter between the parties, either oral or written. This Agreement may not be amended, waived, or extended, in whole or in part, except in writing signed by both parties.

**XXVI. SEVERABILITY**

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

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

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

Date: \_\_\_\_\_, 2012

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

Attest \_\_\_\_\_  
Board Secretary

TRAPAC, INC.

Date: \_\_\_\_\_, 2012

By \_\_\_\_\_

\_\_\_\_\_  
(Type/print Name and Title)

Attest \_\_\_\_\_

\_\_\_\_\_  
(Type/print Name and Title)

APPROVED AS TO FORM

\_\_\_\_\_, 2012  
CARMEN A. TRUTANICH, City Attorney  
THOMAS A. RUSSELL, General Counsel

By \_\_\_\_\_  
JUSTIN HOUTERMAN, Deputy

JH:jpr  
043012  
Attachments

Account#	W.O. #
Ctr/Div#	Job Fac.#
Proj/Prog#	
TOTAL	

Budget FY:      Amount:

For Acct/Budget Div. Use Only

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

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

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