

MEMORANDUM OF AGREEMENT
Between
THE MARINE EXCHANGE OF LOS ANGELES-LONG BEACH HARBOR,
And
THE CITY OF LOS ANGELES

This MEMORANDUM OF AGREEMENT (MOA) is made and entered into by and between the MARINE EXCHANGE OF LOS ANGELES-LONG BEACH HARBOR, a California corporation, acting by and through its Executive Director of the Marine Exchange of Southern California (Marine Exchange) in conjunction with its Program Manager and the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners (Sub-Recipient).

WHEREAS, the Marine Exchange has been nominated by the Area Maritime Security Committee (AMSC), and appointed by the Federal Emergency Management Agency (FEMA) on behalf of the Department of Homeland Security (DHS), to act as the Fiduciary Agent (FA) for FY 2009, per DHS Award No: 2009-PU-T9-K020 (Award), which requires the Marine Exchange to monitor the progress of projects funded by FEMA under the Port Security Grants Program (PSGP) and submit supporting documentation to FEMA for reimbursement, and

WHEREAS, the Sub-Recipient will be planning, developing and executing their Projects as defined by their Investment Justifications (IJs): "Perimeter Monitoring, Access Control System Upgrades and Maintenance" and "Multi-Agency Maritime Facility Phase II", submitted to the FA and approved by FEMA, for sub-grants, which are not to exceed an amount of U.S. \$4,000,000 and \$1,668,165, respectively; and

WHEREAS, the Marine Exchange, as FA, will act as the intermediary between FEMA and the City of Los Angeles, the Sub-Recipient, in obtaining reimbursement of funds expended by the Sub-Recipient in implementing their Project; and

WHEREAS, the purpose of this MOA is to define the relationship between the FA and the Sub-Recipient with respect to the Sub-Recipient's activities implementing the Project and the FA obtaining reimbursement of expenditures for same;

ACCORDINGLY, the parties agree as follows:

1. Sub-Recipient shall promptly submit to the FA all invoices for expenditures incurred relating to the two Projects as defined by the IJs, attached as Exhibit A. The invoices shall be signed by authorized personnel within the Sub-Recipients organization, submitted in duplicate and should contain the following certification:

"I certify under penalty of perjury that the above invoice is just and correct according to the terms of Award No. 2009-PU-T9-K020 and this Memorandum of Agreement and that payment has already been made."

(Signature of authorized personnel)

2(a) Each invoice submitted by the Sub-Recipient shall contain any and all information as may be needed by the federal government to review and approve the expenditures, including any supplemental documentation that may be necessary. The Sub-

Recipient shall be solely responsible to correct and supplement any invoice the federal government determines to be insufficient for reimbursement.

2(b) Sub-Recipient shall strictly adhere to the requirements set forth in 44 CFR Part 13 and 2 CFR as it pertains to Port Security Grants Program.

2(c) Sub-Recipient agrees to make, be bound by and otherwise comply with Federal Standard Assurances and certifications required by FEMA as part of the Sub-Recipient's PSGP application. These include, but are not limited to Forms SF 424B, 424D as applicable (Assurances – Non-Construction Programs), Certifications Regarding Lobbying (Standard Form), and Drug-Free Workplace Requirements.

2(d) Sub-Recipient shall be additionally guided by and will strictly adhere to all the requirements set forth in the Cooperative Agreement attached as Exhibit B.

3. Upon receiving the invoices, the FA's Executive Director or Program Manager shall be authorized to review the Sub-Recipient's request for reimbursement. The Executive Director or Program Manager will also be authorized to request additional information or clarification from the Sub-Recipient. Such a response shall not be un-reasonably withheld by the Sub-Recipient.

4. After receiving and reviewing the invoices from the Sub-Recipient, the FA shall submit a request to FEMA for reimbursement in accordance with Award No. 2009-PU-T9-K020. It is expressly understood by the Sub-Recipient, that the Sub-Recipient shall be entitled to reimbursement only upon approval of the request by FEMA and subsequent reimbursement of the funds from FEMA to the FA.

4(a) The Sub-Recipient agrees to comply with requirements of OMB Circulars A-133 for States, Local Governments and Non-Profits. Unless a lower threshold is established by any applicable rule, regulation or standard, if the Sub-Recipient expends \$500,000 or more of federal funds during its fiscal year, the Sub-Recipient must submit to the FA an organization-wide financial and compliance audit report. In addition, the Sub-Recipient agrees to submit a copy of the Project's Annual Audit to the FA.

4(b) The Sub-Recipient agrees to submit, at such times and in such form as the FA may prescribe, reports on the Sub-award and the Project. Without limiting the generality of the foregoing, Sub-recipient shall submit quarterly financial reports not later than the 15th day of January, April, July and October; and the Semi-Annual Progress Reports by the 15th of January and July during each year this MOA is effective, as well as final financial reports and evaluation reports. The final progress report must be filed with the FA within thirty (30) days after the termination of the last year of the Federal Award. The FA must receive the final progress report prior to the final cost report being paid.

4(c) No contract or agreement may be entered into by the Sub-Recipient for execution of Project activities or provision of services to the Project that are not incorporated in the approved application other than purchase of supplies or standard commercial or maintenance services. All contracts and agreements shall provide that the Sub-Recipient shall retain ultimate control and responsibility for the Project and that these conditions shall bind the contractor. In any case, where the Sub-Recipient enters into a contract with third parties, the Marine Exchange is not a party to such a contract and shall not be obligated or liable for any breach of contract or other action in law to any party other than the original Sub-Recipient under the specific terms of this MOA.

4(d) It is agreed that the failure of the FA to insist upon strict performance of any provision of this agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such a breach, shall not constitute a waiver of any rights assigned to the FA under this MOA.

5. The FA agrees to reimburse the Sub-Recipient for actual expenditures made relating to the Project within thirty (30) days of the FA receiving reimbursement from DHS, which in no case may exceed the amount awarded to the Sub-Recipient at the time of approval of the Sub-Recipient's IJs by FEMA.

6. In entering into this MOA, it is implicitly agreed between both signatories of this MOA that the FA shall not be under any obligation to reimburse the Sub-Recipient for any amounts not received by the FA from FEMA.

7. Sub-Recipient shall indemnify, defend and hold harmless the FA and its officers, directors, employees and agents, from and against all liability, loss, cost or expense (including attorney's fees) by reason of liability imposed upon the FA, arising out of or related to Sub-Recipient's performance under this MOA, whether caused by or contributed to by the FA or any other party indemnified herein, including but not limited to any malfeasance, negligent or intentional acts of the Sub-Recipient, its officers, agents or employees or its subcontractors or their agents and employees, unless such a loss is caused solely by the malfeasance or negligence of the FA, its officers, directors, employees or agents.

8. It is understood by both signatories to this MOA, that this MOA shall remain in effect in accordance with the terms and conditions of the Award, but in no event longer than 3 years after execution by both parties.

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

MARINE EXCHANGE OF LOS ANGELES-
LONG BEACH HARBOR

Dated: 11/9/11

By *G. Tikari*
G. Tikari, Program Manager.
(Print/type name and title)

Attest *L. Williamson*
L. Williamson, Account Manager
(Print/type name and title)

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

Dated: _____

By _____
Executive Director

Attest: _____
Secretary

APPROVED AS TO FORM AND LEGALITY

Nov. 10, 2011
CARMEN A. TRUTANICH, City Attorney

By *Heather M. McCloskey*
for HEATHER M. McCLOSKEY, Deputy

Account #	<u>54510</u>	W.O. #	<u>25040</u>
Ctr/Div #	<u>1179</u>	Job Fac. #	<u>635-00</u>
Proj/Prog #	<u>640</u>		

Budget FY:	Amount:
11-12	\$1,777,777.78
12-13	\$1,777,777.77
13-14	\$1,777,777.77
TOTAL	\$5,333,333.32

For Acct/Budget Div. Use Only:

Verified by: *Janet Ferran*
Verified Funds Available: *Shyn C. Day*
Date Approved: 11/10/2011

Account #	<u>54510</u>	W.O. #	<u>24989</u>
Ctr/Div #	<u>1179</u>	Job Fac. #	<u>635-00</u>
Proj/Prog #	<u>640</u>		

Budget FY:	Amount:
11-12	\$741,406.66
12-13	\$741,406.67
13-14	\$741,406.67
TOTAL	\$2,224,220.00

For Acct/Budget Div. Use Only:

Verified by: *Janet Ferran*
Verified Funds Available: *Shyn C. Day*
Date Approved: 11/10/2011

For grant funded portion only.
For cost share, see Resolution 4

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