

AGREEMENT NO. _____
EPA GRANT NO. 97T27601
AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
SUBRECIPIENT

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 **SUBRECIPIENT**, a **Type of Entity**, **Business Address** (hereinafter “Subrecipient”).

WHEREAS, the City of Los Angeles Harbor Department (“Department” or “Port”) applied for and has been awarded a grant (“Grant”), in the amount of \$411,688,296 by the U.S. Environmental Protection Agency (“EPA”) under its 2024 Clean Ports Program (“Program”); and

WHEREAS, the Grant was awarded to fund the Sustainable Equipment Adoption - Community, Harbor, and Neighborhood Growth & Empowerment Project (“SEA-CHANGE Project”), which will deploy zero-emissions (ZE) infrastructure and equipment at six Port of Los Angeles (POLA) terminals to significantly advance the goal of 100% zero-emissions (ZE) terminal operations by 2030, as well as community engagement and workforce development programs; and

WHEREAS, to accept the SEA-CHANGE Project Grant, the Board has approved the EPA Grant Agreement Number 97T27601 attached hereto as Exhibit A (“Grant Agreement”) and all terms and conditions, including match funding contributions; and

WHEREAS, a portion of the Grant Award, in the amount of \$ _____, will fund the _____ at Subrecipient’s terminal at the Port of Los Angeles (“Project”); and

WHEREAS, Subrecipient will be responsible for undertaking all aspects of the Project at its marine terminal pursuant to the terms of the Grant Award and this Agreement, including the contribution of matching funds in the amount of approximately \$ _____; and

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY SUBRECIPIENT

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

Exhibit B, and the Project Payment Schedule attached hereto as Exhibit C 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 Award, and as may be amended 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 any services it performs outside the Grant Award are 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 and the Grant Award. Obligations of the Grant Award, 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 expiration of the fifth 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. 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; or
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 the Grant Award and as required by this Agreement, City shall reimburse Subrecipient in the amounts set forth in Exhibit C - Project Payment Schedule. 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 all funds released by the EPA to the City pursuant to the Grant Award.

TEMPLATE #1 – TERMINAL OPERATOR

B. The maximum amount to be reimbursed to Subrecipient pursuant to this Agreement and the Grant Award shall be _____ Dollars (\$_____).

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. See [Business Tax Registration Certificate | LA Business Portal](#) . 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, City shall provide written instructions after execution of this Agreement.

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 required by the Grant Award 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.

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. Permit No. [REDACTED] Insurance

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section IX, Subrecipient acknowledges and agrees that for the purpose of insurance coverage under this Agreement, the insurance terms and conditions under Subrecipient's Permit No. ____ with the City, including any subsequent amendments and successive agreements or permits, shall in all cases apply to this Agreement.

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 involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if 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. Consultant 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.

XXXVI. EPA SUBAWARD REQUIREMENTS.

This Agreement is subject to the requirements set forth on Exhibit G – EPA Subaward Requirements.

EXHIBITS ATTACHED HERTO AND MADE A PART HEROF:

Exhibit A - EPA Grant Agreement

Exhibit B - Scope Of Work

Exhibit C – Project Funding Schedule

Exhibit D – Affirmative Action

Exhibit E - Small/Very Small Business Enterprise Program

Exhibit F - Equal Benefits Policy

Exhibit G – EPA Subaward Requirements

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TEMPLATE #1 – TERMINAL OPERATOR

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

SUBRECIPIENT, a _____

Dated: _____

By _____

(Print/type name and title)

Attest _____

(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

_____, 202_____
HYDEE FELDSTEIN SOTO, City Attorney
Steven Y. Otera, General Counsel

By _____
JOY M. CROSE, Assistant General Counsel

TEMPLATE #1 – TERMINAL OPERATOR

Date:
Contractor/Vendor Name:

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


For Acct/Budget Div. Use Only

Verified by: _____

Verified Funds Available: _____

Date Approved: _____

DRAFT

	U.S. ENVIRONMENTAL PROTECTION AGENCY Grant Agreement	GRANT NUMBER (FAIN): 97T27601 MODIFICATION NUMBER: 0 PROGRAM CODE: 5Y	DATE OF AWARD 11/26/2024
		TYPE OF ACTION New	MAILING DATE 12/02/2024
		PAYMENT METHOD: ASAP	ACH# 90569
		RECIPIENT TYPE: Municipal	
RECIPIENT: Los Angeles, City of 425 S PALOS VERDES ST SAN PEDRO, CA 90731-3309 EIN: 95-6000735		PAYEE: Los Angeles, City of 425 S PALOS VERDES ST SAN PEDRO, CA 90731-3309	
PROJECT MANAGER Jacob Goldberg 425 S PALOS VERDES ST SAN PEDRO, CA 90731-3309 Email: jgoldberg@portla.org Phone: 310-732-2675		EPA PROJECT OFFICER Andrea Bennett 75 Hawthorne Street, AIR-1 San Francisco, CA 94501 Email: bennett.andrea@epa.gov Phone: 415-972-3849	
EPA GRANT SPECIALIST Eric Tovar Grants Branch, MSD-6 75 Hawthorne Street San Francisco, CA 94105 Email: Tovar.Eric@epa.gov Phone: 415-972-3396			
PROJECT TITLE AND DESCRIPTION Inflation Reduction Act – Clean Ports Program See Attachment 1 for project description.			
BUDGET PERIOD 01/01/2025 - 12/31/2028	PROJECT PERIOD 01/01/2025 - 12/31/2028	TOTAL BUDGET PERIOD COST \$ 644,212,160.00	TOTAL PROJECT PERIOD COST \$ 644,212,160.00
NOTICE OF AWARD			
<p>Based on your Application dated 05/24/2024 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$ 411,688,296.00. EPA agrees to cost-share 63.91% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$ 411,688,296.00. 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.</p>			
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS U.S. EPA, Region 9, U.S. EPA, Region 9 Grants Branch, MSD-6 75 Hawthorne Street San Francisco, CA 94105		ORGANIZATION / ADDRESS U.S. EPA, Region 9, Air and Radiation Division R9 - Region 9 75 Hawthorne Street San Francisco, CA 94105	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official for Carolyn Truong - Grants Management Officer by Angela Mendiola - Award Official Delegate			DATE 11/26/2024

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$ 0	\$ 411,688,296	\$ 411,688,296
EPA In-Kind Amount	\$ 0	\$ 0	\$ 0
Unexpended Prior Year Balance	\$ 0	\$ 0	\$ 0
Other Federal Funds	\$ 0	\$ 0	\$ 0
Recipient Contribution	\$ 0	\$ 128,442,432	\$ 128,442,432
State Contribution	\$ 0	\$ 0	\$ 0
Local Contribution	\$ 0	\$ 0	\$ 0
Other Contribution	\$ 0	\$ 104,081,432	\$ 104,081,432
Allowable Project Cost	\$ 0	\$ 644,212,160	\$ 644,212,160

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.051 - Clean Ports Program	Inflation Reduction Act: Sec. 60102 Clean Air Act: Sec. 133	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
-	2509M9S017	2227	E4SF6	09M2	000AVFXY4	4166	-	-	\$ 411,688,296
									\$ 411,688,296

Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$ 1,270,118
2. Fringe Benefits	\$ 0
3. Travel	\$ 0
4. Equipment	\$ 10,000,000
5. Supplies	\$ 0
6. Contractual	\$ 2,000,000
7. Construction	\$ 5,714,882
8. Other	\$ 625,227,160
9. Total Direct Charges	\$ 644,212,160
10. Indirect Costs: 0.00 % Base	\$ 0
11. Total (Share: Recipient <u>36.09</u> % Federal <u>63.91</u> %)	\$ 644,212,160
12. Total Approved Assistance Amount	\$ 411,688,296
13. Program Income	\$ 0
14. Total EPA Amount Awarded This Action	\$ 411,688,296
15. Total EPA Amount Awarded To Date	\$ 411,688,296

Attachment 1 - Project Description

The purpose of this award is to provide funding under the Inflation Reduction Act (IRA), Clean Ports Program (CPP) Zero-Emission Technology Deployment (ZE TECH) to the City of Los Angeles Harbor Department. Specifically, the recipient will improve air quality and reduce pollution at the Port of Los Angeles and in the surrounding area through the deployment of zero-emission equipment and infrastructure at the port.

This assistance agreement provides Federal funding in the amount of \$411,688,296.

The activities include the deployment of zero emission cargo handling equipment and vehicles, technologies, and related infrastructure, as well as community engagement and workforce development.

The anticipated deliverables include estimated deployment of 337 battery electric yard tractors, 250 zero-emission trucks, 56 battery electric top handlers, and 32 battery electric heavy lifts, as well as the installation of a vessel shore power system. Electrical infrastructure will be deployed, including estimated 143 MWh of battery capacity, 307 chargers, and 10 battery energy solar systems. Other deliverables include workforce development and capacity building training programs and the creation high-quality jobs. The expected outcomes include reduced CO₂, PM_{2.5} and NO_x emissions; increased renewable power output and distributed energy storage capacity; the delivery of new skills and workforce capabilities; and increased access to high-quality job opportunities for near-port communities. The intended beneficiaries include the Port of Los Angeles (grantee), Terminals APMT, Everport, Fenix, TraPac, and YTI (partners), which will support project development and implementation. The Harbor Community Benefit Foundation (partner) will support community outreach and workforce development projects. The Los Angeles Department of Water and Power (utility partner) will consult on energy capacity and infrastructure and support renewable energy integration. Indirect beneficiaries include near-port communities which will experience improved ambient air quality. There will be subawards to the 5 terminals (YTI, APMT, Everport, Fenix and TRAPAC), as well as the Port of Los Angeles, to ensure all new ZE Tech equipment purchased with EPA funding can be powered throughout the project period. The Short-Haul Battery Electric Drayage Trucks subaward will provide incentives through a subaward for licensed motor carriers operating short-haul trips to deploy ZE trucks into drayage service and develop the program. The Harbor Community Benefit Foundation (HCBF) subaward, proposes a multifaceted approach to reduce air pollution in a severe non-attainment area and advance the Port toward 100% ZE TTECH operations while fostering high-quality jobs and community-centered engagement.

Administrative Conditions

Administrative Conditions "A" thru "F" below apply. In addition please refer to the paragraph below for General Terms and Conditions.

General Terms and Conditions

The recipient agrees to comply with the current Environmental Protection Agency (EPA) general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2024-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 rtpfc-grants@epa.gov no later than **December 30** of the same calendar year. Find additional information at <https://www.epa.gov/financial/grants>. (Per 2 CFR § 200.344(b), the recipient must submit the Final FFR to rtpfc-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 § 200.319. In accordance with 2 CFR § 200.324, the recipient and subawardee(s) must perform a cost or price analysis in connection with applicable procurement actions, including contract modifications. *State and Tribal government entities must follow procurement standards as outlined in 2 CFR § 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 is located at <https://www.epa.gov/grants/epa-grantee-forms>

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. All procurement actions are reportable when reporting is required, 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 4A 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 "Final Report (project completed)" in section 1B of the form.

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 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. Subaward(s)

The recipient's approved budget includes subaward(s). As applicable, the recipient will comply with the General Term and Condition on reporting of first tier subawards to www.fsr.gov per "Reporting Subawards and Executive Compensation" requirement.

F. Cost-Share Requirement

The required minimum recipient cost share for this assistance agreement is 20% of total project costs. The assistance agreement may reflect a percentage shown under the "Notice of Award" section which is based on estimated costs requested in the recipient's application.

Programmatic Conditions

Clean Ports Zero-Emission Technology Deployment Competition Programmatic Terms and Conditions

a. Final Approved Workplan and Modifications

1. Recipient agrees to carry out the project in accordance with the final approved workplan.
2. Recipients are required to report deviations from budget or project scope or objective, and must request prior written approval from the EPA for:
 - a. any change in the scope or objective of the project (even if there is no associated budget revision requiring prior written approval);
 - b. any change in a key personnel (including employees and contractors) that are identified by name or position in the Federal award specified in the application or workplan; the disengagement from the project for more than three months, or a 25% reduction in time and effort devoted to the Federal award over the course of the period of performance, by the approved project director or project manager;
 - c. 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;
 - d. the transfer of funds budgeted for participant support costs to other budget categories as defined in 2 CFR Section 200.1 Definitions to other categories of expense;
 - e. unless described in the final approved workplan and budget, the subawarding, transferring or contracting out of any work under the award;
 - f. changes in the total approved cost-sharing provided by the recipient; or the need arises for additional Federal funds to complete the project.

Requests for proposed modifications to the approved workplan or budget, including additions, deletions, or changes in the schedule, must be submitted in a timely manner to the EPA Project Officer for approval, to minimize project delays. 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 partners and equipment, or to the approved project partners and location(s) may not be allowed.

b. Performance Reporting and Final Performance Report

b1. Performance Reports – Content

In accordance with 2 CFR 200.329, the recipient agrees to complete and submit electronic performance reports using reporting template(s), including the approved Clean Ports Project Reporting Template ([EPA Form Number: 5900-690](#) or future revisions, as applicable), which will be provided by the project officer. The purpose of performance reports is to provide updates on implementation of each project, including information on each of the following areas:

1. A comparison of accomplishments to the outputs/outcomes established in the assistance agreement work plan for the reporting period, including detailed technical information on new mobile equipment and electric charging and hydrogen fueling infrastructure deployed, and the retirement of older equipment, as appropriate;
2. The reasons why any established outputs/outcomes were not met;
3. Additional information, analysis and explanation of cost overruns or higher than-expected-unit costs; and
4. As applicable, information related to good jobs metrics and workforce training outcomes in accordance with information collection instrument through General Performance Reporting for Assistance Programs (EPA ICR Number 2802.01, OMB Control Number 2090-NEW).

Additionally, the recipient agrees to notify the EPA when a significant development occurs that could impact the award. Examples of significant developments can include:

- events that enable meeting milestones and objectives sooner or at less cost than anticipated;
- events that produce different beneficial results than originally planned; or
- problems, delays, or adverse conditions which will impact the ability to meet the milestones or objectives of the award, including outputs/outcomes specified in the assistance agreement work plan.

If a significant development negatively impacts the award, the recipient must include information on their plan for corrective action and any assistance needed to resolve the situation.

The final project report will include all categories of information required for semi-annual reporting, including a final, detailed description of all zero-emission technology deployment activities completed at each project location. The final project report will also include a narrative summary of the project and the successes and lessons learned for the entire project.

b2. Performance Reports - Frequency

Throughout the 4-year performance period, the recipient agrees to submit **semi-annual** performance reports electronically to the EPA Project Officer by the due date following the conclusion of each semi-annual reporting period. The semi-annual reporting periods are:

January 1 – June 30: Report due date July 30.

July 1 – December 31: Report due date January 30

Additional reporting may be required if the grant is extended or at the discretion of the EPA Project Officer. The recipient must submit the final performance report no later than 120 calendar days after the end date of the period of performance.

b3. Subaward Performance Reporting

The recipient must report on its subaward monitoring activities under 2 CFR 200.332(e). Examples of

items that must be reported are:

1. Summaries of results of reviews of financial and programmatic reports.
2. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
3. Environmental results the subrecipient achieved.
4. Summaries of audit findings and related pass-through entity management decisions.
5. Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.332(f), 2 CFR 200.208, and the 2 CFR Part 200.339 Remedies for Noncompliance.

If the recipient is unable to obtain this information, the recipient must report to EPA why the information is not available.

c. Cybersecurity Condition

Cybersecurity Grant Condition for Other Recipients, Including Intertribal Consortia

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 or Tribal law cybersecurity requirements.

2.a. The 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 the 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 the EPA's regulatory programs for the submission of reporting and/or compliance data.

b. The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in 2.a 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 the 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(e), 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 the EPA.

d. Project Transparency

The recipient agrees to engage with near-port communities about the project during the performance period. Examples of appropriate community engagement during the project period are outlined on pg. 45 of the Notice of Funding Opportunity. Community engagement activities conducted as part of the final approved workplan should be reported in performance reporting described in Programmatic Term and Condition B (Performance Reporting and Final Performance Report).

1. The recipient agrees to publicly share, such as on a webpage, a detailed written summary of the results of the emissions inventory and/or emission reduction plan included in the final workplan.

e. Automated Standard Application Payments (ASAP) and Proper Payment Draw Down

The recipient is subject to the Automated Standard Application Payments (ASAP) and Proper Payment Draw Down General Term and Condition. See the “Financial Information” section of the [General Terms and Conditions](#).

The recipient is required to notify the EPA Project Officer of draws from ASAP in excess of 50% of the award within a 24-hour period. The recipient is required to provide such notification within 3 business days of the draw amount being surpassed.

The recipient is subject to the Management Fees General Term and Condition, which includes the following requirements that prohibit profit on the part of the recipient:

1. Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable.
2. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work. [See the “Selected Items of Cost” section of the General Terms and Conditions.](#)

f. Public or Media Events

The recipient agrees to notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction projects as a result of this agreement and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

g. Program Beneficiary

Program beneficiaries must abide by requirements to ensure that the funds are used only for authorized purposes.

h. Procurement Procedures

As provided in 2 CFR 200.317, with limited exceptions, states and Indian Tribes must follow the same policies and procedures they follow for procurements financed with non-Federal funds. If such policies and procedures do not exist, States and Indian Tribes must follow the procurement standards in [§§ 200.318](#) through [200.327](#). In addition to its own policies and procedures, a State or Indian Tribe must

also comply with the following procurement standards: [§§ 200.321](#), [200.322](#), [200.323](#), and [200.327](#). All other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow the procurement standards in [§§ 200.318](#) through [200.327](#).

The recipient must follow applicable procurement procedures. The EPA will not be a party to these transactions. If the 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 §§200.318 – 327. Approval of a funding application does not relieve recipients of their obligations to compete service contracts and conduct cost and price analyses.

i. Quality Assurance

Authority: Quality Assurance applies to all assistance agreements involving environmentally related data operations, including environmental data collection, production, or use as defined in [2 CFR. 1500.12](#) Quality Assurance.

The recipient shall ensure that tasks or subawards involving environmental information that are issued under this agreement include appropriate quality requirements for the work. The recipient shall ensure they or sub-award recipients develop and implement a Quality Assurance (QA) planning document in accordance with this term and condition; and/or ensure they or sub-award recipients implement all applicable approved QA planning documents.

1. Quality Management Plan (QMP)

a. Prior to beginning environmental information operations, the recipient must:

- i. Develop a QMP,
- ii. Prepare the QMP in accordance with the current version of the EPA's [Quality Management Plan \(QMP\) Standard](#). Submit the document for EPA review, and
- iii. Obtain the EPA Quality Assurance Manager or designee (hereafter referred to as QAM) approval.

OR

- i. Submit a previously EPA-approved and current QMP,
- ii. The EPA Quality Assurance Manager or designee (hereafter referred to as QAM) will notify the recipient and the EPA Project Officer (PO) in writing if the QMP is acceptable for this agreement.
- c. The recipient must review their approved QMP at least annually. These documented reviews shall be made available to the sponsoring EPA organization if requested. When necessary, the recipient shall revise its QMP to incorporate minor changes and notify the EPA PO and QAM of the changes. If significant changes have been made to the Quality Program that affect the performance of environmental information operations, it may be necessary to re-submit the entire QMP for re-approval. In general, a copy of any QMP revision(s) made during the year should be submitted to the EPA PO and QAM in writing when such changes occur. Conditions requiring the revision and resubmittal of an approved QMP can be found in section 6 of the EPA's [Quality Management Plan \(QMP\) Standard](#).

2. Quality Assurance Project Plan (QAPP)

a. Prior to beginning environmental information operations, the recipient must:

- i. Develop a QAPP,
- ii. Prepare QAPP in accordance with the current version of the EPA's [Quality Assurance Project Plan \(QAPP\) Standard](#),
- iii. Submit the document for EPA review, and
- iv. Obtain the EPA Quality Assurance Manager or designee (hereafter referred to as QAM) approval.

OR

- i. Submit a previously EPA-approved QAPP proposed to ensure the collected, produced, evaluated, or used environmental information is of known and documented quality for the intended use(s).
- ii. The EPA Quality Assurance Manager or designee (hereafter referred to as QAM) will notify the recipient and the EPA Project Officer (PO) in writing if the previously EPA-approved QAPP is acceptable for this agreement.

OR

- i. Provide the EPA a copy of the recipient-approved QAPP if the recipient has an EPA-approved Quality Management Plan and (b) holds a current EPA delegation to review and approve QAPPs.
 - a. The recipient shall notify the PO and QAM when substantive changes are needed to the QAPP. The EPA may require the QAPP be updated and re-submitted for approval.
 - b. The recipient must review their approved QAPP at least annually. The results of the QAPP review and any revisions must be submitted to the PO and the QAM at least annually and may also be submitted when changes occur.

For Reference:

- [Quality Management Plan \(QMP\) Standard and EPA's Quality Assurance Project Plan \(QAPP\) Standard](#); contain quality specifications for the EPA and non-EPA organizations and definitions applicable to these terms and conditions.
- [EPA QA/G-5: Guidance for Quality Assurance Project Plans](#): <https://www.epa.gov/sites/default/files/2015-06/documents/g5-final.pdf>
- (QAM and/or PO may insert QA references that inform or assist the recipient here).
- The [EPA's Quality Program](#) website has a [list of QA managers](#), and [specifications for EPA and Non-EPA Organizations](#).
- The Office of Grants and Debarment [Implementation of Quality Assurance Requirements for](#)

[Organizations Receiving EPA Financial Assistance.](#)

j. Climate Resilience

To the extent practicable, the recipient agrees to incorporate current and future climate change risk in planning, siting, design, and operation of the project. Approaches for incorporating climate change risk may make use of climate change data and information (e.g., projections and emission scenarios) that are reflective of the project's anticipated lifespan. This includes consideration of the climate change risks posed to the individuals, communities, local governments, organizations, or other entities served by the project over its anticipated lifespan.

k. Use of Logos

If the EPA logo is appearing along with logos from other participating entities on websites, outreach materials, or reports, the EPA logo must **not** be prominently displayed in a way that may imply that any of the recipient or subrecipient's activities are being conducted by the EPA. Instead, the EPA logo should be accompanied with a statement indicating that the City of Los Angeles Port Department received financial support from the EPA under an Assistance Agreement. More information is available at: <https://www.epa.gov/stylebook/using-epa-seal-and-logo#policy>

l. Build America, Buy America (BABA) Requirements

All projects under this competition are subject to the domestic sourcing requirements under the Build America, Buy America (BABA) provisions of the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58, §§ 70911-70917) when using federal funds for the purchase of goods, products, and materials on any form of construction, alteration, maintenance, or repair of infrastructure in the United States. The Buy America preference requirement applies to all of the iron and steel, manufactured products, and construction materials used for the infrastructure project under an award for identified EPA financial assistance funding programs.

These sourcing requirements require that all iron, steel, manufactured products, and construction materials used in Federally funded infrastructure projects must be produced in the United States, as defined in P.L. 117-58 § 70912(6). The recipient must implement these requirements in its procurements, and this article must flow down to all subawards and contracts. For legal definitions and sourcing requirements, the recipient must consult EPA's Build America, Buy America website.

Clean Ports Program grants are subject to the requirements of BABA, which requires applicants to comply with Buy America preference requirements or apply for a waiver for each infrastructure project. The following potentially eligible projects under this competition meet the definition of "infrastructure" and are subject to Buy America preference requirements under BABA:

- Structures, facilities, and equipment that generate, transport, and distribute energy - including electric vehicle (EV) charging equipment.
- Any other permanent public structure that meets the qualifies as "infrastructure" as addressed in [OMB Memorandum M-24-02](#) and 2 C.F.R. section 184.4(c).

Questions regarding BABA applicability to specific Clean Ports Program projects should be submitted to BABA-OTAQ@epa.gov.

When necessary and supported by rationale provided in P.L 117-58 § 70914, the recipient may submit a project-specific waiver request to EPA or notify EPA when using an existing waiver. The recipient should request guidance on submitting a BABA waiver request from the EPA Project Officer. A list of existing approved EPA waivers is available on the EPA Build America, Buy America website. Please continue to monitor this website for further BABA guidance or any future EPA waivers that may impact the Clean Ports grants program.

See EPA's "Build America, Buy America" general term and condition for additional requirements: <https://www.epa.gov/grants/grant-terms-and-conditions>.

m. Eligible and Ineligible Project Costs

1. Project Implementation Costs: Eligible project costs include those costs directly related to the implementation, management, and oversight of the project, including the proportion of recipient and subrecipient personnel and benefit costs expended in relation to the award, equipment, contractual, travel, supplies, subgrants and rebates, and indirect costs. See 2 C.F.R. Part 200, Sections 200.412-200.415.

2. Zero-Emissions (ZE) Mobile Equipment Costs.

a. Recipient shall only use assistance funding to purchase ZE mobile equipment that will directly serve at least one port for a minimum of three years.

b. For purposes of this assistance program, a port is either a water port or a dry port, as defined below:

i. Water port: places on land alongside navigable water (e.g., oceans, rivers, or lakes) with one or more facilities in close proximity for the loading and unloading of passengers or cargo from ships, ferries, and other commercial vessels. This includes facilities that support non-commercial Tribal fishing operations.

ii. Dry port: an intermodal truck-rail facility that is included in the 2024 Federal Highway Administration's (FHWA) Intermodal Connector Database based on meeting the criteria set in 23 C.F.R. Part 470. These criteria include having more than 50,000 TEUs (20-foot equivalent units) per year or other units measured that would convert to more than 100 trucks per day, or comprising more than 20 percent of freight volumes handled by any mode within a State.

c. For purposes of this assistance program, zero emission mobile equipment is that which can move to a different location by means of an onboard powertrain as part of normal operations and produces zero tailpipe emissions of any criteria pollutant, air toxics, or greenhouse gas other than water vapor. Eligible zero emission mobile equipment is limited to electric and hydrogen fuel cell technologies.

d. Eligible project costs include the purchase and deployment of new eligible battery-electric or hydrogen fuel cell vehicles, vessels, powertrains, and other mobile equipment that directly serve at least one port for a minimum of three years according to the following minimum parameters for each mobile equipment category.

i. Cargo handling equipment (terminal tractors, forklifts, top handlers, side picks, straddle carriers, etc.): at least 90% of annual usage (hours) will take place at the port(s) identified in the award.

ii. Drayage Trucks: at least 100 visits/year will take place at the port(s) identified in the award.

iii. Locomotives (switchers, railcar movers): (1) at least 75% of its annual usage (hours) will take place at the port(s) identified in the application, (2) shall visit the port(s) identified in the award on a minimum of 200 days per year, and (3) must exclusively perform short-haul runs between the port(s) identified in the award and a second point of rest, e.g., a terminal, interchange, or yard.

iv. Harbor craft and other vessels (commercial and Tribal fishing vessels, tugs, ferries, patrol boats, workboats, dredges, pilot boats, barges, etc.): at least 60% of its annual usage (hours and port visits) will take place at the port(s) identified in the award.

v. Other eligible mobile source equipment: at least 90% of annual usage (hours and operating days) must take place at the port(s) identified in the award.

e. Mobile equipment must be human-operated and human-maintained.

f. Recipient shall not use assistance funding for any of the following types of equipment or activities.

i. Equipment which uses a non-ZE powertrain, including hybrid technologies powered in part by internal combustion engines, unless the non-ZE power source is mandated by safety regulations, and functions solely as a source of emergency backup power.

ii. First-of-a-kind demonstration and pilot projects designed to determine the technical feasibility and economic potential of technologies at either a pilot or prototype stage.

iii. Research and development projects. Research is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. Development is defined as the systematic use of knowledge and understanding gained from research, and directed toward the production of technologies, devices, systems, or methods, including design and development of prototypes and processes.

iv. Ship modifications to allow vessels to accept shore-based electrical power, unless the modification is part of a project to replace the internal combustion engine(s) of a marine vessel with a ZE powertrain.

v. Light-duty vehicles.

vi. Expenses related to repowering and/or replacing engines for existing onroad vehicles.

vii. Expenses related to replacing internal combustion engines in existing nonroad equipment, locomotives, and marine vessels with ZE powertrains where the updated nonroad equipment, locomotive, or marine vessel includes a non-ZE powertrain, unless the non-ZE power source is mandated by safety regulations, and functions solely as a source of emergency backup power.

viii. Expenses related to replacing cabs, axles, paint, brakes, mufflers, or any other parts or materials that are not required to ensure the effective installation and functioning of the replacement of an internal combustion engine in existing nonroad equipment, locomotives, or marine vessels with a ZE powertrain.

3. Fueling Infrastructure Costs:

a. Recipient agrees that any infrastructure purchased or installed using EPA assistance funding may only be used to purchase or install infrastructure which will directly serve at least one port, as defined above in M.2.b. for a minimum of three years and according to the following parameters:

- i. All infrastructure (except for vessel shore power) must directly serve eligible ZE mobile equipment purchased as part of the award. However, equipment not purchased as part of the grant may also utilize the fueling infrastructure.
- ii. Infrastructure serving any mobile equipment (besides drayage trucks and locomotives) must be located on-site or in close proximity to port facilities identified in the award.
- iii. Infrastructure serving drayage trucks or locomotives must be located on-site or in close proximity to port facilities identified in the applications, or at the first point of rest from the port facilities identified in the award (i.e., a terminal, depot, interchange, or yard where an eligible ZE mobile equipment purchased as part of the grant will fuel).

b. Infrastructure must be human-operated and human maintained.

c. For shore power projects, shore power-capable vessels docked at a berth where shore power is available must be required to turn off the vessel's engines and use the shore power system, with limited exceptions for extreme circumstances.

d. Electric charging infrastructure must be located at or behind the meter (on the customer side) except for minor grid upgrades in front of the meter (utility side) if the work is necessary to connect an eligible charging station to the electric distribution network.

e. Alternating Current (AC) Level 2 charging infrastructure must be EPA ENERGY STAR certified at the time of purchase.

f. Electric charging infrastructure must meet the following installation requirements: Electricians installing, operating, or maintaining electric charging infrastructure purchased through this program are required to be certified under the Electric Vehicle Infrastructure Training Program or another program approved by the EPA in consultation with the Department of Labor and Department of Transportation, as will be reflected in the terms of this grant award. For projects requiring more than one electrician, at least one of the electricians performing each phase of the infrastructure work should meet the requirements above.

g. Recipient agrees not to use EPA assistance funding for any of the following ineligible infrastructure costs:

- i. Front of the meter costs related to purchase or installation of electric infrastructure. This includes but is not limited to: major grid upgrades to utility-owned power distribution equipment (such as longer power line extensions, improvements to offsite power generation, bulk power transmission, or substations); transformers located on the utility side of the meter and their installation; and operation and maintenance performed on utility systems.
- ii. Infrastructure which relies on air polluting components (e.g., backup generators or auxiliary power units), unless the non-ZE component is mandated by safety regulations, and functions

solely as an emergency backup power source.

iii. Power generation systems (including non-renewable powered backup generators), except for solar and wind power generation systems that primarily power mobile equipment and which are located on land.

iv. Hydrogen production systems (e.g., electrolyzers, conversion facilities), associated infrastructure, and their installation.

v. Transmission (e.g., piping and pipelines) and/or transportation of hydrogen outside of the port.

h. Marine shore power projects must meet applicable international shore power design standards (IEC/ISO/IEEE 80005-1:2019/AMD 2:2023 High Voltage Shore Connection Systems or the IEC/PAS 80005-3:2014 Low Voltage Shore Connection Systems).

i. Solar or wind power generation systems must be located on land in close proximity to the port facilities identified in the award; or at the first point of rest from the port facilities for infrastructure serving drayage trucks or locomotives. Offshore wind and floating solar/wind infrastructure purchases and installation are not permitted.

4. Ineligible Technology Deployment Support Costs: The recipient may not use EPA assistance funding for the following purposes:

a. Feasibility assessment of ZE technology. Technology feasibility assessment is a preliminary exploration of a candidate technology to determine its merits and viability for successful deployment in regular service. A feasibility assessment can include the evaluation of key technical, operational, labor, economic, legal/regulatory, and deployment (timeline/schedule) issues. Feasibility assessment results are used to create a realistic project plan, schedule, and budget. [These activities are eligible for funding in the separate NOFO for Climate and Air Quality Planning projects under Funding Opportunity Number EPA-R-OAR-CPP-24-05. However, please note that applicants requesting funding for technology deployment under this ZE Technology Deployment Competition are expected to have conducted necessary feasibility assessments prior to applying and should not be planning to conduct further feasibility assessments prior to deployment.]

b. Costs for resiliency measures not directly related to protecting equipment purchased as part of the grant award from extreme weather events.

c. Leasing vehicles or equipment. If financing is necessary, the purchase should be financed with a conventional purchase loan.

d. Fuel and electricity expenses.

5. Other Ineligible Costs: As proscribed in Section 825 of the National Defense Authorization Act, no funds may be awarded to an entity that uses in part or in whole: the national transportation logistics public information platform (commonly referred to as 'LOGINK'); any national transportation logistics information platform provided by or sponsored by the People's Republic of China, or a controlled commercial entity; or a similar system provided by Chinese state-affiliated entities.

n. Program Audit

In addition to the provisions of [EPA's General Terms and Conditions](#) which relate to audits and access to records, the recipient agrees to comply with random EPA reviews of the recipient to protect against waste, fraud, and abuse. As part of this process, EPA, or its authorized representatives, may request copies of grant documents from prior recipients who have received grants, or may request documentation from current recipients and sub-awardees, to verify statements made on the application and reporting documents. Recipients may be selected for advanced monitoring, including a potential site visit to confirm project details. EPA, or its authorized representatives, may also conduct site visits to confirm documentation is on hand and that purchased equipment and infrastructure is in service at the ports named in the award, as well as confirm applicable infrastructure adheres to Build America, Buy America (BABA) requirements (see BABA Programmatic Term and Condition for more details). Recipients are expected to comply with site visit requests and recordkeeping requirements and must supply EPA with any requested documents for as long as the records are retained, or risk cancellation of an active grant application or other enforcement action.

o. Record Retention

Recipients must keep all financial records, supporting documents, accounting books and other evidence of Grant Program activities for three years from the date of submission of the final financial report. If any litigation, claim, or audit is started before the expiration of the three-year period, the recipient must maintain all appropriate records until these actions are completed and all issues resolved.

p. Operation and Maintenance

The recipient will ensure the continued proper operation and maintenance of equipment and devices funded under this agreement. Such equipment and infrastructure shall be operated and maintained for the expected lifespan of the specific measure and in accordance with commonly accepted design standards and specifications. The recipient shall include a provision in every applicable sub-agreement (subgrant or contract) awarded under this grant requiring that the equipment and devices funded under this agreement be properly operated and maintained. Likewise, the sub-agreement will assure that similar provisions are included in any sub-agreements that are awarded by the sub-recipient.

q. Foreign Entity of Concern

1. As part of carrying out this award, recipient agrees that they are not:

- a. an entity owned by, controlled by, or subject to the direction of a government of a "covered nation" as defined at 10 U.S.C. § 4872(d);
- b. an entity headquartered in a "covered nation" as defined at 10 U.S.C. § 4872(d); or
- c. a subsidiary of an entity described in (A) or (B).

Note: Paragraph 1 applies to the recipient of this award only and not subrecipients.

2. Additionally, awarded funds may not be used by the recipient or subrecipients for the purchase of a crane manufactured by (A) any entity owned by, controlled by, or subject to the direction of a government of a covered nation "covered nation" as defined at 10 U.S.C. § 4872(d); or (B) any entity headquartered in a covered nation "covered nation" as defined at 10 U.S.C. § 4872(d).

As of the date these terms and conditions become effective, covered nations under 10 U.S.C. § 4872(d) are the Democratic People's Republic of North Korea; the People's Republic of China; the Russian Federation; and the Islamic Republic of Iran.

r. Competency Policy

Competency of Organizations Generating Environmental Measurement Data

In accordance with Agency Policy Directive Number FEM-2012-02, [Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements](#), Recipient agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, Recipient agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. Recipient shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the policy is available online at https://www.epa.gov/sites/default/files/2017-05/documents/policy_to_assure_the_competency_of_organizations.pdf or a copy may also be requested by contacting the EPA Project Officer for this award.

Reference: https://www.epa.gov/sites/default/files/2017-05/documents/policy_to_assure_the_competency_of_organizations.pdf

s. Geospatial Data Standards

All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at <https://www.fgdc.gov/>.

t. 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 Zero-Emission (ZE) Technology Deployment Grant Competition costs. The 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 requirement is as follows:

Tier A (Water Ports Only): EPA Share of Total Project Cost (Maximum) = 80%, Mandatory Cost Share of Total Project Costs = 20%

Total Project cost refers to total allowable costs incurred under a Federal award and all required cost sharing and voluntary committed cost sharing, including third-party contributions.

u. Voluntary Cost Share

This award and the resulting federal funding of \$411,688,296 is based on estimated costs requested in the recipient's application at the later of (a) the time this funding opportunity closed on May 28, 2024, or (b) when negotiations concluded. Included in these costs is a voluntary cost-share contribution

of 150,186,205 by the recipient in the form of a voluntary cost-share or overmatch (providing more than any minimum mandatory cost-share) that the recipient included in its proposal dated 5/24/2024. The recipient must provide this voluntary cost-share contribution during performance of this award unless the EPA agrees otherwise in a modification to this agreement. While actual total costs may differ from the estimates in the recipient's application, the EPA's participation shall not exceed the total amount of federal funds awarded.

If the recipient fails to provide the voluntary cost-share contribution during the period of award performance, and the EPA does not agree to modify the agreement to reduce the cost share, the recipient is in violation of the terms of the agreement. In addition to other remedies available under 2 CFR Part 200, the Agency may consider this factor in evaluating future proposals from the recipient. In addition, if the voluntary cost-share contribution does not materialize during the period of award performance then the EPA may reconsider the legitimacy of the award; if the EPA determines that the recipient knowingly or recklessly provided inaccurate information regarding the voluntary cost-share or overmatch the recipient described in its proposal dated 5/24/2024. The EPA may take action as authorized by 2 CFR Part 200 and/or 2 CFR Part 180 as applicable.

v. Equipment Disposition

In accordance with 2 CFR 200.313, when original or replacement equipment acquired under this agreement is no longer needed for the original project or program or for other activities currently or previously supported by the EPA, the recipient must request disposition instructions from the EPA Project Officer. Disposition instructions will be one of the following:

1. Equipment with a current fair market value of \$10,000 or less (per unit) may be retained, sold, or otherwise disposed of with no further obligation to the EPA or pass-through entity.
2. Except as provided in 2 CFR 200.312(b), or if EPA or the pass-through entity fails to provide requested disposition instructions within 120 days, items of equipment with a current fair market value in excess of \$10,000 (per unit) may be retained or sold by the recipient or subrecipient. EPA is entitled to an amount calculated by multiplying the percentage of the EPA's contribution towards the original purchase by the current market value or proceeds from the sale. If the equipment is sold, EPA or the pass-through entity may permit the recipient or subrecipient to retain, from the Federal share \$1,000 of the proceeds, to cover expenses associated with the selling and handling of the equipment.
3. The recipient or subrecipient may transfer title to the property to the Federal Government or to an eligible third party provided that the recipient or subrecipient must be entitled to compensation for its attributable percentage of the current fair market value of the property.
4. In cases where a recipient or subrecipient fails to take appropriate disposition actions, EPA or the pass-through entity may direct the recipient to take disposition actions.

w. Signage Required

1. Investing in America Emblem: The recipient will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America emblem and must identify the project as a "project funded by President Biden's Inflation Reduction Act" as applicable. The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The recipient will ensure compliance with the guidelines and design specifications provided by the EPA for using the official Investing in America emblem available at: <https://www.epa.gov/invest/investing-america-signage>.

2. **Procuring Signs:** Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America emblem or the EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

x. National Programmatic Term and Condition for Fellowship, Internship Programs and Similar Programs Supported by EPA Financial Assistance

1. The EPA funds for this program may only be used for participant support cost payments, scholarships, tuition remission and other forms of student aid for citizens of the United States, its territories, or possessions, or for individuals lawfully admitted to the United States for permanent residence.

2. The recipient and program participants are responsible for taxes, if any, on payments made to or on behalf of individuals participating in this program that are allowable as participant support costs under 2 CFR 200.1 or [2 CFR 200.456](#) and scholarships and other forms of student aid such as tuition remission under [2 CFR 200.466](#). The EPA encourages recipients and program participants to consult their tax advisers, the U.S. Internal Revenue Service, or state and local tax authorities regarding the taxability of stipends, tuition remission and other payments. However, the EPA does not provide advice on tax issues relating to these payments.

3. Participant support cost payments, scholarships, and other forms of student aid such as tuition remission are lower tiered covered Nonprocurement transactions for the purposes of [2 CFR 180.300](#) and the EPA's Suspension and Debarment Term and Condition. Recipients, therefore, may not make participant support cost payments to individuals who are excluded from participation in Federal Nonprocurement programs under [2 CFR Part 180](#). Recipients are responsible for checking the eligibility of program participants in the System for Award Management (SAM) or obtaining eligibility certifications from the program participants.

See the [EPA Guidance on Participant Support Costs](#).

y. Davis-Bacon and Related Acts (DBRA) Term and Condition

1. Program Applicability

a. Program Name – Clean Ports Program

b. Statute requiring compliance with Davis-Bacon – Clean Air Act Section 314

c. Activities subject to Davis-Bacon – any construction activities funded by this grant.

d. The recipient must work with the appropriate authorities to determine wage classifications for the specific project(s) or activities subject to Davis Bacon under this grant (or cooperative agreement).

2. Davis-Bacon and Related Acts

Davis-Bacon and Related Acts (DBRA) (<https://www.dol.gov/agencies/whd/government-contracts/construction>) is a collection of labor standards provisions administered by the Department of Labor, that are applicable to grants involving construction. These labor standards include the:

- Davis-Bacon Act, which requires payment of prevailing wage rates for laborers and mechanics on construction contracts of \$2,000 or more
- Copeland “Anti-Kickback” Act, which prohibits a contractor or subcontractor from inducing an employee into giving up any part of the compensation to which he or she is entitled; and
- Contract Work Hours and Safety Standards Act, which requires overtime wages to be paid for over 40 hours of work per week, under contracts in excess of \$100,000.

3. Recipient Responsibilities When Entering Into and Managing Contracts:

a. Solicitation and Contract Requirements:

i. Include the Correct Wage Determinations in Bid Solicitations and Contracts: Recipients are responsible for complying with the procedures provided in [29 CFR 1.6](#) when soliciting bids and awarding contracts.

ii. Include DBRA Requirements in All Contracts: Include the following text on all contracts under this grant:

“By accepting this contract, the contractor acknowledges and agrees to the terms provided in the [DBRA Requirements for Contractors and Subcontractors Under EPA Grants](#).”

b. After Award of Contract:

i. Approve and Submit Requests for Additional Wages Rates: Work with contractors to request additional wage rates if required for contracts under this grant, as provided in [29 CFR 5.5\(a\)\(1\)\(iii\)](#).

ii. Provide Oversight of Contractors to Ensure Compliance with DBRA Provisions: Ensure contractor compliance with the terms of the contract, as required by [29 CFR 5.6](#).

4. Recipient Responsibilities When Establishing and Managing Additional Subawards: a. Include DBRA Requirements in All Subawards (including Loans):

Include the following text on all subawards under this grant:

“By accepting this award, the EPA subrecipient acknowledges and agrees to the terms and conditions provided in the DBRA Requirements for EPA Subrecipients.”

Provide Oversight to Ensure Compliance with DBRA Provisions: Recipients are responsible for oversight of subrecipients and must ensure subrecipients comply with the requirements in [29 CFR 5.6](#).

5. Consideration as Part of Every Prime Contract Covered by DBRA

The contract clauses set forth in this Term & Condition, along with the correct wage determinations, will be considered to be a part of every prime contract covered by Davis-Bacon and Related Acts (see [29 CFR 5.1](#)), and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Department of Labor grants a variance, tolerance, or exemption. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

z. Subawards to For-Profit Entities

1. 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 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.
2. The recipient is authorized to provide subawards to for-profit entities as included in the EPA-approved Workplan. The recipient agrees to require that for-profit entities that receive such subawards:
 - a. Can only recover their eligible and allowable direct and indirect costs from EPA-funded activities, including recovering the portion of their overhead costs attributable to the activities by applying either a Federally approved indirect cost rate, as authorized by 2 CFR 200.414(f), or the de-minimis rate if the subrecipient does not have a Federally approved rate;
 - b. Comply with the Management Fees [General Term and Condition](#), which is incorporated by reference into the Establishing and Managing Subawards General Term and Condition;
 - c. Account for and use program income under the rules for program income pursuant to 2 CFR § 300.307 and 2 CFR § 1500.8(b) and the terms and conditions of the award agreement;
 - d. Be subject to the same requirements as non-profit subrecipients under 2 CFR Part 200 Subparts A through E; and
 - e. Select an independent auditor consistent with the criteria set forth in 2 CFR 200.509 and obtain an independent audit substantially similar in scope and quality to that of the Single Audit (see 2 CFR 200.500 et. seq.); the subrecipient must submit the audit to the recipient within 9 months of the end of the recipient's fiscal year or 30 days after receiving the report from an independent auditor, whichever is earlier; as provided in 2 CFR 200.337(a) the recipient must provide EPA, the EPA Office of Inspector General, and the Comptroller General with access to the subrecipient's independent auditor reports.

aa. Voluntary Scrappage

1. Recipient must provide, in the semi-annual and final reports, evidence of appropriate scrappage and evidence of appropriate disposal for all internal combustion engine equipment or vehicles identified for

scrappage in the final workplan, and in accordance with scrappage plans described in the proposal dated May 28, 2024.

2. Participating fleet owners must attest to the appropriate disposal in a signed scrappage statement. A sample scrappage statement (EPA Form 5900-684) may be found at <https://www.epa.gov/system/files/documents/2024-02/2024-clean-ports-sample-scrappage-stmt-2024-02.pdf>. The scrappage statement must include: vehicle owner's name and address; vehicle make, vehicle model, vehicle model year, VIN, odometer/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. Recipients must include or attach the following photos with the scrappage statement according to guidance provided by Project Officer, to demonstrate compliance with scrappage requirements: 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; and Cut frame rails.

a. If the recipient for any reason does not scrap the vehicle/piece of equipment described in the application project narrative dated May 28, 2024, or listed on the Supplemental Application Template ("4b. Scrappage Information" tab), an equivalent vehicle/piece of equipment or must be scrapped instead, with approval of the project officer.

b. Equipment identified for scrappage may not be resold or donated instead of being scrapped.

3. The existing vehicle/equipment must be scrapped or rendered permanently disabled within two years of delivery of the equivalent new zero-emissions vehicle/equipment, or before the end of the project performance period, whichever comes first.

a. Cutting a three-inch-by-three-inch hole in the engine block (the part of the engine containing the cylinders) is the preferred method for scrappage. Other acceptable scrappage methods may be considered and will require prior EPA approval.

b. Disabling the chassis may be completed by cutting through the frame or frame rails on each side at a point located between the front and rear axles.

c. Recipients seeking approval for alternate scrappage methods must submit an alternative scrappage plan to the EPA project officer detailing how the method will destroy and/or disable the engine and must, if approved, comply with the evidence requirements listed below, including digital photographs.

4. Equipment and vehicle components that are not part of the engine or chassis may be salvaged from the unit being scrapped (e.g., seats, tires, etc.).

a. If disabled engines, disabled vehicles, disabled equipment, or parts are to be sold, program income requirements apply.

5. Equipment to be scrapped must meet ownership, usage, and remaining life criteria defined in 5.a. through 5.f.:

a. The existing equipment being scrapped must be fully operational. Operational equipment must be able to start, move, and have all necessary parts to perform its function.

b. The participating fleet owner must currently own and operate the existing equipment and have owned and operated it during the two years prior to upgrade.

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

d. Equivalent Replacement: The existing engine/equipment being scrapped must have similar horsepower as the new engine/equipment being purchased (within 40%).

e. Highway Usage:

i. To be eligible, the existing certified highway vehicle must have accumulated at least 7,000 miles/year during the two years prior to scrapping.

ii. Exception: If an applicant can demonstrate that a certified highway vehicle is being used in a predominately nonroad application (e.g., those that idle for long periods to power an auxiliary apparatus), the definition below under "Nonroad Usage" of engine operating hours may be used if approved by the project officer. The EPA will review and approve this exception on a case-by-case basis.

iii. The mileage of two or more units may be combined to reach the thresholds above, where two or more units will be scrapped and replaced with a single unit.

f. Nonroad Usage:

i. To be eligible, nonroad engines should operate at least 500 hours/year during the two years prior to scrapping.

ii. The engine operating hours of two or more units may be combined to reach the thresholds above where two or more units will be scrapped and replaced with a single unit.

6. Locomotive and Marine Usage:

a. Existing locomotive and marine engines to be scrapped must operate at least 1,000 hours/year during the two years prior to scrapping.

b. The engine operating hours of two or more units may be combined to reach the thresholds above where two or more units will be scrapped and replaced with a single unit.

c. Participating fleet owners must attest to each of the above criterion in a signed eligibility statement which includes each equipment make, model, year, vehicle or other unique identification number, odometer/usage meter reading, engine make, model, year, horsepower, engine ID or serial number, and vehicle/equipment/vessel registration/licensing number and state.

7. This documentation must be submitted as part of the grantee's programmatic reporting to the EPA.

bb. Program Income

In accordance with 2 CFR Part 200.307 and 2 CFR 1500.8(b), the recipient is hereby authorized to retain program income earned during the project period, subject to the following. Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds.

Any program income shall be used to finance the non-Federal share of the project or program eligible project activities.

The recipient must provide as part of its semi-annual and final performance reports, 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 annual Federal Financial Report, Standard Form SF-425.

In accordance with 2 CFR 200.307(d) costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the EPA award. The recipient must retain adequate accounting records to document that any costs deducted from program income comply with regulatory requirements.

cc. Historic Preservation

National Historic Preservation Act (NHPA)

Section 106 of the NHPA requires all federal agencies to consider the effects of their undertakings, including the act of awarding a grant or cooperative agreement, on historic properties, and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. The recipient must assist the EPA Project Officer in complying with NHPA if any activities funded under this grant impact a historic property. Historic properties include: (a) land or buildings listed in or eligible for listing on the National Register of Historic Places; (b) archaeologically sensitive areas or in an area where traditional cultural properties are located; and (c) properties that are associated with significant historic events, are associated with significant people, embody distinctive characteristics, and contain important precontact information.

The recipient should work with their Project Officer to ensure that subrecipients are available to work with EPA on any required consultation process with the State or Tribal Historic Preservation Office prior to commencing the project to ensure compliance with Section 106 of the NHPA.

If NHPA compliance is required, necessary Section 106 consultation activities, such as historic or architectural surveys, structural engineering analysis of buildings, public meetings, and archival photographs, can be considered allowable and allocable grant costs.

Archeological and Historic Preservation Act (AHPA)

This law applies if archeologically significant artifacts or similar items are discovered after an EPA-funded construction project has begun, and compliance may be coordinated with the NHPA, discussed above. The AHPA requires federal agencies to identify relics, specimens, and other forms of scientific,

prehistorical, historical, or archaeological data that may be lost during the construction of federally-sponsored projects to ensure that these resources are not inadvertently transferred, sold, demolished or substantially altered, or allowed to deteriorate significantly. The recipient must ensure that subrecipients performing construction projects are aware of this requirement, and the recipient must notify EPA if the AHPA is triggered.

dd. Other Federal Requirements

In addition to other statutes outlined in these programmatic terms and conditions, the recipient must comply with all federal cross-cutting requirements. These requirements include, but are not limited to:

- **Endangered Species Act, as specified in 50 CFR Part 402:** Non-Federal entities must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance awards and conduct the reviews required under the Endangered Species Act, as applicable.
- **Federal Funding Accountability and Transparency Act:** Recipients of financial assistance awards must comply with the requirements outlined in 2 CFR Part 170, *Reporting Subaward and Executive Compensation* and in the General Term and Condition "Reporting Subawards and Executive Compensation."
- **Farmland Protection Policy Act:** This statute requires EPA to use criteria developed by the Natural Resources Conservation Service (NRCS) to identify the potential adverse effects of Federal programs on farmland and its conversion to nonagricultural uses, to mitigate these effects, and to ensure that programs are carried out in a manner that is compatible with the farmland preservation policies of state and local governments, and private organizations. Recipients may need to work with EPA or NRCS, as appropriate, to ensure compliance.
- **Coastal Zone Management Act:** Projects funded under federal financial assistance agreements must be consistent with a coastal State's approved management program for the coastal zone.

**** END OF ASSISTANCE AGREEMENT ****

EXHIBIT B

DETAILED SCOPE OF WORK

POLA SEA-CHANGE Project – Component No. ___ [Terminal Name]

This detailed Scope of Work describes the responsibilities of [Terminal Name] (Subrecipient) under the City of Los Angeles Harbor Department's (Harbor Department) Sustainable Equipment Adoption: Community, Harbor, and Neighborhood Growth & Empowerment Project (SEA-CHANGE Project). The SEA-CHANGE Project is funded through the US Environmental Protection Agency (EPA) Clean Ports Program Grant Agreement, as set forth in Exhibit A. Below is a description of the whole project and detailed scope of work tasks and deliverables specific to Subrecipient.

Project Overview

The Harbor Department has contracted with EPA to receive \$411,688,296 in funding to implement the SEA-CHANGE Project. The SEA-CHANGE Project integrates a comprehensive set of activities designed to accelerate the transformation of Port operations toward ZE technologies while laying the foundation for long-lasting community and workforce change, aligning with the EPA Clean Ports Program Goals and Objectives. The communities that live and work in and near the Port will benefit through an improved long-term relationship with the Port in the implementation of ZE projects and from significant reductions in NOx (55.1 tons annually) and PM2.5 (1.5 tons annually), reducing air pollution and health impacts on near-port communities. SEA-CHANGE will deploy an estimated 424 ZE cargo-handling equipment (CHE) at the nation's busiest port, replacing approximately 40% of the existing equipment. SEA-CHANGE will also install on-site solar arrays, battery energy storage systems (BESS), and provide 3,600 MWh of shore power capacity at an auto terminal which will comply with international shore power standards. The CHE deployment will reduce 24,000 tonnes of GHG emissions annually, or about 15% of port CHE-related emissions. The Port's proposed electric drayage truck program will deploy approximately 250 ZE trucks, further reducing GHG emissions by an estimated 16,875 tonnes. Overall, SEA-CHANGE will reduce emissions by 41,577 tonnes of CO2e annually, or 220,500 tonnes over the lifetime of all deployed equipment. The SEA-CHANGE project will also reduce an estimated 55 tons of nitrogen oxides (NOx) and 1.5 tons of fine particulate matter (PM2.5) annually, and approximately 474 tons of NOx and 7.59 tons of PM2.5. The Los Angeles Department of Water and Power (LADWP) has committed to providing 100% renewable energy feedstock by 2035, which will further reduce emissions. The Port communities and workforce will also benefit from improved access to high-paying and union-supported jobs through transformative community and workforce initiatives spearheaded by a community-based organization with substantial input from near-port communities.

The Harbor Department, in collaboration with five major container terminal partners (APM Terminals Pacific, Ltd. [APMT], Everport Terminal Services, Inc. [Everport], Fenix Marine Services, Ltd. [Fenix], TraPac LLC [TraPac], and Yusen Terminals LLC [YTI]) and its community partner, the Harbor Community Benefit Foundation (HCBF), will undertake a

multifaceted approach to reduce air pollution in a severe non-attainment area¹ and advance the Port toward 100% ZE operations while fostering high-quality jobs and community-centered engagement. The SEA-CHANGE Project involves acquiring and deploying ZE cargo handling equipment, installing charging and electrical infrastructure, workforce training, expanding a ZE truck incentive program, and a robust community-led engagement strategy to ensure broad-based support and awareness. As the grant recipient and project administrator, the Harbor Department will be responsible for managing and overseeing all SEA-CHANGE Project activities, such as organizing project meetings, coordinating between subrecipients, submitting project reports, invoices, and other required documentation to EPA.

Subrecipient Project Scope of Work Details

Subrecipient agrees to perform its Component of the SEA-CHANGE Project described in this Scope of Work in accordance with the EPA Grant Agreement at Exhibit A.

Subrecipient is responsible for completing the following detailed tasks and deliverables.

Task 1: Zero Emissions Equipment Procurement

Subrecipient will finalize selection of equipment models, conduct any relevant procurement searches and/or Requests for Proposal processes, places orders, and pay the required down payments. All equipment must meet the EPA grant terms and conditions. Requirements are detailed in Exhibit A.

[Description of Terminal-Specific Equipment]

Deliverables:

Task 2: Infrastructure Design and Permitting

Subrecipient will complete design of on-terminal infrastructure and secure all necessary permits to begin construction. Subrecipient will coordinate with Harbor Department staff in preparing and submitting a complete Application for Port Permit package and work with LADWP for required utility support.

[Description of Terminal-Specific Infrastructure]

Deliverables:

Task 3: Infrastructure Construction

Construct on-terminal infrastructure and install EV chargers, as designed in Task 2. Subrecipient will be responsible for managing the construction project, including selecting any/all contractors, component suppliers, and all required parts and

¹ The Port of Los Angeles is located in the South Coast Air Basin, which is in severe non-attainment of the National Ambient Air Quality Standards (NAAQS).

labor. Subrecipient will ensure that all work complies with EPA's Grant terms and conditions as detailed in Exhibit A.

Deliverables:

Task 4: ZE Equipment Deployment and Operation

Receive and deploy ZE CHE. Subrecipient commits to utilizing the deployed equipment actively within terminal service for 3 years from the initial deployment date. Subrecipient shall be responsible for all operation and maintenance costs. Costs incurred within the term of this agreement can be included in invoices as Subrecipient match-share but will not be reimbursed directly. Upon successful deployment of ZE CHE, Subrecipient shall scrap [Terminal-Specific Scrappage Commitment].

Deliverables:

Task 5: Ongoing Project Management Support

Subrecipient will support the Harbor Department in administering the overall SEA-CHANGE project by attending regular project meetings organized by Harbor Department staff and providing materials and information as required. Subrecipient will, within reasonable expectations, participate in community engagement meetings and events organized by the Harbor Department or contracted partners in support of this project.

Deliverables:

Invoices Submission for Reimbursement

Submitted invoices must comply with the requirements outlined in this Agreement, Section IV. Documentation required for reimbursement for completed tasks and deliverables are described above and in Exhibit C, Project Payment Schedule. Subrecipient may invoice on a monthly basis for partial completion of ongoing tasks, with all required deliverables. Subrecipient commits to provide a minimum 20% of the total costs incurred under each invoice period as direct match-share. Reimbursement from the Harbor Department will be issued after EPA has released the grant funding, for a total not-to-exceed (NTE) 80% of the costs incurred for that invoice.

EXHIBIT C

PROJECT PAYMENT SCHEDULE

SEA-CHANGE Project Component No. ___ - [Subrecipient Name]

The below table lists the Tasks and Deliverables, including a corresponding not-to-exceed (NTE) Payment Amount and Estimated Completion Schedule. The detailed description of the Tasks and Deliverables is set forth in the Exhibit B Scope of Work.

Payment	Brief Description	Estimated Schedule
Task #1	ZE Cargo Handling Equipment Procurement	
NTE Payment #1 \$X,XXX,000	Deliverables: Executed Purchase Orders and/or contracts, Down Payment documentation/proof of payment	June 2025
Task #2	Infrastructure Design and Permitting	
NTE Payment #2 \$X,XXX,000	Deliverables: Application for Port Permit package, completed design drawings, obtained permits	December 2025
Task #3	Infrastructure Construction	
NTE Payment #3 \$X,XXX,000	Deliverables: Construction Contract, proof of payment	April 2027
Task #4	Zero Emissions Equipment Delivery and Operation	
NTE Payment #4 \$X,XXX,000	Deliverables: Photos of Deployed Equipment, proof of payment	December 2028

Task #5	Ongoing Operation and Reporting	
NTE Payment #9 \$X,XXX,000	Deliverables: Activity report on deployed equipment and infrastructure, staff costs to support project reports	December 2028

DRAFT

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 Regional Alliance Marketplace for Procurement (RAMP), at <http://www.RAMPLA.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 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 \$5,000,000 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 __%, including __% VSBE participation.** The North American Industry Classification System (NAICS) Code for the scope of services is _____. This NAICS Code is the industry code that corresponds to at least 51% of the scope of services and will be used to determine the size standard for SBE participation of the Prime Consultant. The maximum SBE size standard for this NAICS Code is \$_ million.

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 RAMP 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 \$5,000,000 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: _____

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: _____

Consultant Description Form

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: _____

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: _____

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: _____

EXHIBIT F – EQUAL BENEFITS

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.

Exhibit G – EPA Subaward Requirements

1. Compliance with the EPA Grant Agreement and Federal Regulations. The EPA award shall be used in accordance with Federal statutes, regulations, and the terms of the EPA Grant Agreement. These requirements include, among others:
 - a. Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.
 - b. Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Term and Condition of the pass-through entity's agreement with EPA entitled "Reporting Subawards and Executive Compensation."
 - b. Other statutes, regulations, and Executive Orders that may apply to subawards are described at Information on Requirements that Pass-Through Entities must "Flow Down" to Subrecipients.
 - c. Limitations on individual consultant fees as set forth in [2 CFR 1500.10](#) and the General Term and Condition of the pass-through entity's agreement with EPA entitled "Consultant Fee Cap"
 - c. EPA's prohibition on paying management fees as set forth in the General Term and Condition of the pass-through entity's agreement with EPA entitled "Management Fees."
 - d. The Procurement Standards in [2 CFR Part 200](#) including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants) and Domestic preferences for procurements at [2 CFR 200.322](#).
 - e. Subrecipient's Indirect Cost Rate. Since there are no indirect costs included in the Grant budget, they are not allowable under this Assistance Agreement.
 - f. Requirements for the subrecipient to provide access to subaward records so that the pass-through entity and Federal auditors may verify compliance with [2 CFR 200.332](#) as well as [2 CFR Part 200, Subpart D, Post Federal Award Requirements](#) for Financial and Program Management, and [2 CFR Part 200, Subpart F, Audit Requirements](#). Examples of records include:
 - Subrecipient financial statements and reports;
 - Performance reports including information on environmental results
 - Audit findings
 - g. Examples of additional requirements authorized by 2 CFR 200.208 include:
 - Requiring payments as reimbursements rather than advance payments;
 - Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
 - Requiring additional, more detailed financial reports;
 - Requiring additional project monitoring;

- Requiring the subrecipient to obtain technical or management assistance, and;
 - Establishing additional prior approvals.
- j. Terms and conditions concerning the close out of the subaward.