



**South Coast
Air Quality Management District**

Contract No. ****
 Proposition 1B: Goods Movement
 Emission Reduction Program
 Marine Shore Power System

This Contract consists of 18 pages.

1. PARTIES - The parties to this Contract are the South Coast Air Quality Management District (referred to here as "AQMD") whose address is 21865 Copley Drive, Diamond Bar, California 91765-4178, and the City of Los Angeles, a municipal corporation acting by and through its Board of Harbor Commissioners (referred to here as "CITY") whose address is 425 S. Palos Verdes Street, San Pedro, CA 90731.

2. RECITALS
 - A. AQMD is the local agency with primary responsibility for regulating stationary source air pollution within the geographical boundaries of the South Coast Air Quality Management District in the State of California. AQMD is authorized to enter into this Contract under California Health and Safety Code Section 40489. Through this Proposition 1B: Goods Movement Emission Reduction Program funded Contract, AQMD, and the California Air Resources Board desire to fund the installation of shore power for ships at berth ("Projects") in order to reduce emissions and improve air quality from goods movement activities in the region. Accordingly, the Parties desire to enter into this Contract for the Projects described in Attachment 1 - Statement of Work, attached hereto and made a part hereof.
 - B. CITY is a municipal corporation.
 - C. All parties to this Contract have had the opportunity to have this Contract reviewed by their attorney.
 - D. CITY agrees that it or its contractors shall obtain and maintain the required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees.
 - E. CITY agrees that, in accordance with the California Air Resources Board's (CARB) Prop. 1B Goods Movement Emission Reduction Program Final 2010 Guidelines for Implementation dated March 25, 2010 ("Guidelines"), incorporated herein by reference, both the AQMD and CARB or their designee may monitor and enforce the terms of this Contract. Accordingly, CITY further agrees that CARB is a Third Party Beneficiary of the work funded hereunder. CITY has agreed to perform under this Contract to generate excess emissions reductions.

3. PERFORMANCE REQUIREMENTS
 - A. CITY warrants that it or its contractors hold all necessary and required licenses and permits to perform these Projects. CITY further agrees to immediately notify AQMD in writing of any change in any licensing status which has a material impact on CITY's performance of the work.
 - B. CITY shall submit reports to AQMD as outlined in Attachment 1 - Statement of Work. All reports shall be submitted in an environmentally friendly format: recycled paper; stapled, not bound; black and white, double-sided print; and no three-ring, spiral, or plastic binders or cardstock covers. AQMD reserves the right to review, comment, and request changes to any report produced as a result of this Contract.
 - C. CITY shall perform all tasks set forth in Attachment 1 - Statement of Work, and shall not engage, during the term of this Contract, in any performance of work that is in direct or indirect conflict with duties and responsibilities set forth in Attachment 1 - Statement of Work.
 - D. CITY shall ensure, through its contracts with any contractor(s) that employees and agents performing under this Contract shall abide by the requirements set forth in this Clause.

4. TERM - The term of this Contract is from the date of execution by the last party to sign, which shall be considered the effective date, to December 31, 2023, unless further extended by amendment of this Contract in writing. Notwithstanding the above end dates, the Contract term shall encompass both the project completion and project implementation/life periods, as referenced in Attachment 1 – Statement of Work, whichever is

longer, to ensure that the AQMD and CARB can fully enforce the Contract terms during the life of this Goods Movement Emission Reduction Program-funded Project.

- A. Project Completion – For each Project, Project completion is the time frame starting with the date of contract execution by the last party to sign to the date of project completion, i.e., the date the Project becomes operational. This is the time period when the installation of the shore power system is completed and becomes operational.
 - B. Project Implementation/Life – For each Project, the project implementation time frame equals the project life. Project life is the number of years that a Goods Movement Emission Reduction Program project obtains or is claimed to obtain surplus emissions reductions while operating in California. Surplus emission reductions are reductions that are early or extra. That is, the reductions occur prior to a rule compliance date or the reductions exceed the requirements of a rule or regulation. The project implementation or project life equals the period of time during which CITY is required to operate and maintain the shore power system according to the terms of this Contract.
5. TIME PERIOD FOR CONTRACT EXECUTION – **This Contract must be fully executed by both parties by January 21, 2012. AQMD must receive this Contract, signed by the CITY, by January 20, 2012, and AQMD must sign and fully execute the Contract by January 21, 2012.** This Contract shall be deemed null and void if these dates are not met, regardless of whether the CITY signs the Contract.
6. TERMINATION
- A. If the CITY fails to comply with any term or condition of this Contract, or fails to perform work in the manner agreed upon by the parties, including, but not limited to, the requirements of Attachment 1 - Statement of Work, this failure shall constitute a breach of this Contract. The AQMD shall notify the CITY that it must timely cure this breach within 30 days, or if the nature of the breach is such that it cannot be cured within 30 days, CITY shall take reasonable steps to initiate the cure within 30 days and complete cure as soon as reasonably possible given the nature of such breach. The AQMD reserves all rights under law and equity to enforce this Contract. Notwithstanding the foregoing, in no event shall a breach related to one or more individual Projects constitute a breach related to the remaining Projects, and the remedies for such breach shall not constitute cause for termination of this Contract as to the remaining Projects.
 - B. Notwithstanding sub-Clause 6A, this Contract may be terminated at CITY's request as to an individual Project prior to completion of the Contract term if the shore power system for that Project becomes inoperable through mechanical failure of components or systems and cannot be repaired or replaced and such failure is not caused by CITY's negligence, misuse or malfeasance. CITY shall submit written documentation supporting any basis for early termination under this sub-Clause for the approval of AQMD, and such approval may require one or more of the remedies discussed in Clause 15 or any mechanism allowed by the Guidelines or CARB's Supplemental Procedures for Ships at Berth and Cargo Handling Equipment Projects dated March 2011 ("Supplemental Procedures"), incorporated herein by reference, for early contract termination.
 - C. Notwithstanding sub-Clause 6A, either party may terminate this Contract at will, and without cause specifying any reason, at any time prior to the CITY incurring any eligible costs as defined in the Program Guidelines and Supplemental Procedures. The notice of termination shall specify the effective date of termination, which shall be no less than thirty days from the date of delivery of such written notice.
 - D. In the event proceedings in bankruptcy are commenced against CITY, and CITY is adjudged bankrupt or a receiver is appointed and qualifies, the AQMD may terminate this Contract and all further rights and obligations hereunder by giving ten (10) days notice, in writing, in the manner specified in this Contract.
 - E. CITY may sell the shore power system prior to the end of the Contract term and transfer its legal obligations under this Contract to a new owner, upon written consent of AQMD. CITY shall inform the party purchasing the shore power system of these Contract requirements and the Contract term prior to completing the

transaction. CITY shall establish contact between the new owner and AQMD to facilitate transfer of this Contract. This Contract is deemed transferred after a fully executed contract between the new owner and AQMD is received by AQMD, which assigns all of the original owner's rights, duties and obligations under Proposition 1B funding to the new owner.

7. INSURANCE

- A. CITY shall furnish evidence to AQMD of workers' compensation insurance for each of its employees, in accordance with California statutory requirements prior to commencement of any work on this Contract. CITY may elect to self-insure this exposure.
- B. CITY shall furnish evidence to AQMD of general liability insurance with a limit of at least \$1,000,000 per occurrence prior to commencement of any work on this Contract. AQMD and CARB shall be named as an additional insured on any such liability policy, and thirty (30) days written notice prior to cancellation of any such insurance shall be given by CONTRACTOR to AQMD. CITY may elect to self-insure this exposure.
- C. CITY shall furnish evidence to AQMD of automobile liability insurance with limits of at least \$1,000,000 combined single limit for bodily injury or property damage, prior to commencement of any work on this Contract. AQMD and CARB shall be named as an additional insured on any such liability policy, and thirty (30) days written notice prior to cancellation of any such insurance shall be given by CITY to AQMD. CITY may elect to self-insure this exposure.
- D. All insurance certificates should be mailed to: AQMD Risk Management, 21865 Copley Drive, Diamond Bar, CA 91765-4182. **The AQMD Contract Number must be included on the face of the certificate.**
- E. CITY shall provide and maintain sufficient insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Contract.

8. INDEMNIFICATION – CITY agrees to hold harmless, defend and indemnify AQMD and the California Air Resources Board (CARB), their officers, employees, agents, representatives, and successors-in-interest against any and all loss, damage, costs, lawsuits, demands, judgments, legal fees, or any other expenses incurred or required to be paid by AQMD, and CARB, their officers, employees, agents, representatives, or successors-in-interest arising from or related to any injury to persons or damage to property caused directly or indirectly, in whole or in part, by any willful or negligent act or omission of CITY, its employees, subcontractors, agents or representatives in the performance of this Contract.

9. COMPLIANCE WITH PROGRAM GUIDELINES AND SUPPLEMENTAL PROCEDURES – CITY warrants that the Projects upon which this Contract is based comply with all applicable provisions of the Guidelines and the Supplemental Procedures, which include, but are not limited to, the following:

- A. The Projects in their entirety, including without limitation the usage levels beyond the requirements of law is not required by any local, state and/or federal rule, regulation or MOU currently in effect.
- B. The low emissions technology has been certified or verified by CARB and meets the current NOx, PM and/or ROG requirements. For some Projects, if the low emissions technology is not certified or verified, CITY may request approval by CARB on a case-by-case evaluation. If approved by a CARB case-by-case evaluation, the method for emissions verification must be incorporated as part of the Contract in Attachment 1 – Statement of Work.
- C. Rights to the emission reductions must not be claimed by any participant as emission reduction credits or in an Averaging Banking and Trading Program. In addition, rights to the emission reductions may not be claimed by the equipment manufacturer in any flexibility or "early introduction" incentive program.
- D. At its own risk, CITY may elect to proceed with certain preliminary activities as identified in the Guidelines and Supplemental Procedures prior to the execution of the contract, without assurance of receiving funding or priority for such funding. All other Project activities may not begin prior to the execution of the Contract.

- E. Project activities prohibited prior to execution of this contract, as identified in this Contract, the Guidelines and Supplemental Procedures have not started at any vessel berth described in Attachment 1 or Attachment 1A. CITY to initial here acknowledging compliance _____.
 - F. The Projects are not listed as a mitigation measure as part of a final, certified California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA) document. CITY to initial here acknowledging compliance _____.
 - G. CITY agrees to actively cooperate with AQMD, CARB, or their designees during any ongoing evaluation or audit of the project site, schedule, or records. This cooperation includes, but is not limited to, providing contact information and open access (if requested) to communicate directly with key project personnel, contractors, subcontractors, public utilities, material suppliers, or equipment suppliers. CITY to initial here acknowledging compliance _____.
 - H. CITY will design and implement a targeted outreach program to encourage the participation of Small Business Enterprises (SBE) in the construction, alteration, demolition, repair, or improvement of equipment project infrastructure funded by the Goods Movement Emission Reduction Program.
 - I. The shore power system funded under this Contract must remain in service for the Project life and operate within the geographical boundaries of the State of California for the minimum usage specified in this Contract.
10. INCORPORATION OF GOODS MOVEMENT EMISSION REDUCTION PROGRAM APPLICATION – CITY's Goods Movement Emission Reduction Program application in response to Solicitation #PA2011-06 issued by AQMD on January 7, 2011 is hereby incorporated by reference and made part of this Contract.
11. MAINTENANCE OF EQUIPMENT - CITY shall maintain or cause others to maintain the shore power systems, including all related materials and equipment, in good operating condition and in accordance with the manufacturer's specifications for the life of the Projects. CITY acknowledges that no tampering with the shore power system is permitted. CITY shall be responsible for purchasing, installing and maintaining (or causing others to maintain) working electrical meters or other approved measuring devices or methods to track grid-based electricity usage specific to the shore power systems at each berth. If the electrical meter/usage device fails or if CITY despite reasonable steps is unable to access such device, the CITY remains responsible for validating any electrical usage not recorded by the electrical meters/usage devices or not available to CITY. The CITY must either repair or replace the non-operating meters/devices or provide other documentation of operation acceptable to AQMD.
12. SITE PRE-INSPECTION – CITY shall give AQMD or its designee's access to the Project locations where the shore power systems will be installed ("Site") so that AQMD may conduct a Site pre-inspection no more than 30 days prior to contract execution. AQMD or its designee(s) will verify that all requirements of the Guidelines and the Supplemental Procedures regarding eligibility are met and that no work has started that would cause one or more berths to become ineligible for Program funds. The inspection includes but is not limited to, taking photographs of the Site(s) and of the materials and equipment that have already been installed or are currently awaiting installation. CITY will be disqualified from receiving grant funds if the pre-inspection by AQMD or its designee(s) reveals a discrepancy with the application submitted by CITY that would affect the Project's ranking or eligibility status under the Guidelines and Supplemental Procedures.
13. POST-INSPECTION – For each Project, a post-inspection shall be conducted by the AQMD within 10 days of CITY's notice to AQMD of a Project's readiness and availability for post-inspection. Final payment for a Project will not be made until the AQMD verifies that the shore power system(s) for that Project as described in this Contract has/have been installed, and that the system(s) are operational as stated in the Contract and AQMD has received invoices from CITY in an amount of eligible expenses required for the amount of requested reimbursement.

14. AUDIT RIGHTS - AQMD, CARB, or their designee(s) shall have the right to inspect the shore power system(s) and/or records relating to the system(s) during the term of the Contract. AQMD, CARB or a third party designee shall have the right to conduct a fiscal audit of the project and perform ongoing evaluations of the shore power system during the life of the Project provided they comply with terminal security regulations and obtain Transportation Worker Identification Credentials.
15. REMEDIES AND ENFORCEMENT OF CONTRACT TERMS
 - A. CITY agrees that AQMD and CARB have the authority, jointly and severally, to enforce the terms of this Contract at any time during the project life to ensure that emission reductions under this Contract are obtained. AQMD and CARB will seek whatever legal, equitable and other remedies are available for the CITY's failure to comply with the terms of this Contract, the Guidelines, or the Supplemental Procedures, as modified and clarified in all applicable CARB Resolutions and Executive Orders, which are incorporated here by reference.
 - B. Nonperformance under this Contract includes, but is not limited to: failure to meet contract terms and conditions; non-operational or malfunctioning equipment; failure to operate or maintain equipment in accordance with manufacturer's recommendations, intentional destruction of equipment, failure to meet completion deadlines; failure to allow electronic monitoring device, or tampering with device or its data; misuse of vendor's payments; insufficient, incomplete, or faulty documentation; failure to complete a satisfactory pre-inspection; and failure to provide documentation or reports in a timely manner.
 - C. Notwithstanding the foregoing, in no event shall a breach or nonperformance related to one or more individual Projects constitute a breach or nonperformance related to the remaining Projects, and the remedies for such breach or nonperformance shall not create a right to any remedies as to the remaining Projects, and in no event shall CITY be liable to AQMD or CARB under this Contract for an amount greater than the corresponding "AQMD Award" listed in Table 4: Estimated Costs for Projects in Attachment 2 – Payment Schedule.
16. RECORDS AND RECORDS RETENTION – CITY shall maintain records related to these Projects and retain these records for at least two years after the Project life ends or three years after final payment, whichever is later.
17. REPORTING REQUIREMENTS – CITY shall submit reports in accordance with Attachments 1, 1A and 1B. Non-compliance with the reporting requirements of this Contract shall result in the implementation of on-site monitoring by the AQMD.
18. SUCCESSORS-IN-INTEREST – This Contract shall be binding on and inure to the benefit of each party's heirs, executors, administrators, successors, and assigns.
19. GOODS MOVEMENT EMISSION REDUCTION PROGRAM DISCLOSURE STATEMENT - CONTRACTOR hereby certifies that, after execution of this Contract, CONTRACTOR shall not submit an application to, or execute another contract, for any additional grant of state funds for the same shore power system subject to this Contract. CONTRACTOR acknowledges that violation of this certification shall, at a minimum, result in CONTRACTOR being disqualified from receiving funding for such system from all sources and may further result in CONTRACTOR being banned from submitting any future applications to any and all Goods Movement Emission Reduction Program solicitations. In addition, as a violation of law, CARB and the AQMD may levy fines and/or seek criminal charges. CONTRACTOR to initial here acknowledging compliance
_____.

20. PAYMENT

- A. AQMD shall reimburse CITY an amount not to exceed \$**** as provided in Attachment 2, Payment Schedule, attached here and made a part of this Contract. CITY shall be entitled to such reimbursement for purchase of the equipment, materials and services specified in Attachment 1 - SOW. "Reimbursement" means payment of money actually spent by CITY for the purchase and/or installation of eligible services, materials and equipment for the shore power systems. Payment shall be based upon itemized invoices for actual costs and successful completion of the post-inspection by AQMD.
- B. Reimbursement under this Contract shall occur within thirty (30) business days upon submission and AQMD approval (which approval AQMD will not unreasonably withhold) of an itemized invoice, and completion of the post-inspection audit for a Project required under Clause 13. Invoices must itemize all charges for equipment, materials, supplies, contractors and other charges, as applicable. Reimbursement for equipment, materials, supplies, contractors and other charges will be made in accordance with Attachment 2 – Payment Schedule. Supporting documentation and proof of payment must be provided for all individual charges (with the exception of direct labor charges provided by the CITY). Each invoice must be prepared in duplicate, on company letterhead, and list AQMD's Contract number, period covered by invoice, and CITY's Employer Identification Number and submitted to: South Coast Air Quality Management District, Attn: Goods Movement Emission Reduction Contract Administrator, Technology Advancement, 21865 Copley Drive, Diamond Bar, CA 91765-4178.
- C. Any payments required under this Contract are contingent upon AQMD's receipt of funds from CARB in the amount of the required payments.
- D. Any funds not expended as contracted for or committed during the term of the Contract, as described in Attachment 1 - Statement of Work must be returned to AQMD. CITY agrees that it is not entitled to the remaining funds and that AQMD will de-obligate the Contract of the balance of funds after the final invoice has been paid. CITY shall include the notation "Final Invoice" upon its submittal to AQMD. CITY to initial here acknowledging consent to de-obligation of non-expended funding. _____

21. MOBILE SOURCE EMISSION REDUCTION CREDITS (MSERCs) - No MSERCs resulting from Goods Movement Emission Reduction Program funded projects may be generated and/or sold. All emission reductions, created as a result, in whole or in part, from the expenditure of Goods Movement Emission Reduction Program funds shall not be converted into tradable credits.

22. NOTICES - Any notices from either party to the other shall be given in writing to the attention of the persons listed below, or to other such addresses or addressees as may hereafter be designated in writing for notices by either party to the other. Notice shall be given by certified, express, or registered mail, return receipt requested, and shall be effective as of the date of receipt indicated on the return receipt card.

AQMD: South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178
Attn: Goods Movement Contract Administrator, Technology Advancement

CITY: City of Los Angeles Harbor Department
425 S. Palos Verdes St.
San Pedro, CA 90731
Attn: Executive Director

23. EMPLOYEES OF CITY

- A. CITY shall be responsible for the cost of regular pay to its employees, as well as cost of vacation, vacation replacements, sick leave, severance pay and pay for legal holidays.
- B. CITY, its officers, employees, agents, representatives or contractors shall in no sense be considered employees or agents of AQMD or CARB, nor shall CITY its officers, employees, agents, representatives or contractors be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by AQMD to its employees.
- C. AQMD requires CITY to be in compliance with all state and federal laws and regulations with respect to CITY's employees throughout the term of this Contract, including state minimum wage laws and OSHA requirements.

24. PUBLICATION

- A. Information, data, documents, photographs or reports developed by CITY for AQMD, pursuant to this Contract, shall be part of AQMD'S public record unless otherwise indicated. CITY may use or publish, at its own expense, such information provided to AQMD. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.
 - 1. "This report was prepared as a result of work sponsored, paid for, in whole or in part, by the South Coast Air Quality Management AQMD (AQMD). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of AQMD. AQMD, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report. AQMD has not approved or disapproved this report, nor has AQMD passed upon the accuracy or adequacy of the information contained herein."
- B. CITY shall inform its officers, employees, and contractors involved in the performance of this Contract of the restrictions contained herein and require compliance with the above.
- C. CITY shall ensure that the Goods Movement Emission Reduction Program is clearly identified as a sponsor or source of funding in all of its documents, reports, brochures, advertising and other material relating to this project.

25. NON-DISCRIMINATION - In the performance of this Contract, CITY shall not discriminate in recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order. CITY shall likewise require each contractor to comply with this Clause and shall include in each such subcontract language similar to this Clause.

26. NON-EFFECT OF WAIVER - The failure of CITY or AQMD to insist upon the performance of any or all of the terms, covenants, or conditions of this Contract, or failure to exercise any rights or remedies hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, or conditions, or of the future exercise of such rights or remedies, unless otherwise provided for herein.

27. ATTORNEYS' FEES - In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys' fees and costs.

28. FORCE MAJEURE - AQMD, CARB or CITY shall not be liable or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of

God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of AQMD, CARB or CITY.

29. SEVERABILITY - In the event that any one or more of the provisions contained in this Contract shall for any reason be held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any other provisions of this Contract, and the Contract shall then be construed as if such unenforceable provisions are not a part hereof.
30. HEADINGS - Headings on the Clauses of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.
31. DUPLICATE EXECUTION - This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.
32. GOVERNING LAW - This Contract shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California. Venue for resolution of any disputes under this Contract shall be Los Angeles County, California.
33. PREVAILING WAGES - CITY is alerted to the prevailing wage requirements of California Labor Code section 1770 et seq. Copies of the prevailing rate of per diem wages are on file at the AQMD's headquarters, of which shall be made available to any interested party on request. Notwithstanding the preceding sentence, CITY shall be responsible for determining the applicability of the provisions of California Labor Code and complying with the same, including, without limitation, obtaining from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, making the same available to any interested party upon request, paying any applicable prevailing rates, posting copies thereof at the job site and imposing all applicable prevailing wage rate requirements upon its contractors. CITY shall indemnify, defend and hold harmless the South Coast Air Quality Management District against any and all claims, demands, damages, defense costs or liabilities based on failure to adhere to the above referenced statutes.
34. CITIZENSHIP AND ALIEN STATUS
 - A. CITY warrants that it fully complies with all laws regarding the employment of aliens and others, and that its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). CITY shall obtain from all covered employees performing services hereunder all verification and other documentation of employees' eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. CITY shall have a continuing obligation to verify and document the continuing employment authorization and authorized alien status of employees performing services under this Contract to insure continued compliance with all federal statutes and regulations.
 - B. Notwithstanding Clause A above, CITY, in the performance of this Contract, shall not discriminate against any person in violation of 8 USC Section 1324b.
 - C. CITY shall retain such documentation for all covered employees for the period described by law. CITY shall indemnify, defend, and hold harmless AQMD and CARB, its officers and employees from employer sanctions and other liability which may be assessed against CITY or AQMD, or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Contract.

35. TAX IMPLICATIONS FROM RECEIPT OF GOODS MOVEMENT EMISSION REDUCTION PROGRAM FUNDS
– CITY is advised to consult a tax attorney regarding potential tax implications from receipt of funds under the Goods Movement Emission Reduction Program, which may include receipt of a "1099G" form.

36. AMENDMENTS TO CONTRACT – This Contract shall only be amended by mutual agreement, in writing and signed by all parties.

37. ENTIRE CONTRACT

- A. This Contract represents the entire agreement between the Parties. A Spanish-translated version of this Contract and its Attachments may be provided to CITY for information purposes only. The English-language Contract and Attachments shall govern at all times, and shall be the only documents which constitute the agreement between the Parties.
- B. By executing this Contract, CITY understands and agrees to operate the Proposition 1B funded equipment according to the terms of the Contract and to cooperate with the AQMD and CARB implementation, monitoring, enforcement and other efforts to assure the emissions benefits are real, quantifiable, excess and enforceable. There are no understandings, representations, or warranties of any kind except as expressly set forth herein. No waiver, alteration, or modification of any of the provisions herein shall be binding on any party unless in writing and signed by all the parties.

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

CITY OF LOS ANGELES, a municipal corporation
acting by and through its Board of Harbor
Commissioners

By: _____
Barry R. Wallerstein, D.Env., Executive Officer

By: _____
Executive Director

Date: _____

Date: _____

Attest: _____
Board Secretary

APPROVED AS TO FORM:
Kurt R. Wiese, General Counsel

APPROVED AS TO FORM:
Carmen A Trutanich, City Attorney
Thomas A. Russell, General Counsel

By: _____

By: _____

ATTACHMENT 1

STATEMENT OF WORK THE PORT OF LOS ANGELES

This Contract is for the installation of grid-based, shore power systems at ten (10) berths at the Port of Los Angeles. CITY agrees to install all necessary electrical equipment and infrastructure, to allow ships at these 10 berths to shutdown their auxiliary engines and plug into grid-based electricity. Each berth shall be equipped with a shore power outlet capable of supplying electrical power to a ship. The Projects are expected to result in significant reductions of nitrogen oxides (NOx) and particulate matter (PM) emissions during the life of the project. The Project life is defined by this contract in accordance with the Proposition 1B – Goods Movement Emission Reduction Program as ten (10) years.

CITY shall adhere to all applicable requirements of the Proposition 1B – Goods Movement Emission Reduction Program Guidelines (“Guidelines”), including the Supplemental Procedures for Ships at Berth and Cargo Handling Equipment Projects dated March 2011 (“Supplemental Procedures”) throughout the Project life, as well as comply with all applicable local, state and federal laws relating to the installation and construction of the shore power system(s).

Unless otherwise noted, each “berth” listed in the Contract is considered a separate, discrete Project for purposes of eligibility, scheduling, performance, tracking, non-performance, recovered funds, costs, expenditures and disbursement. Two or more Program-funded berths may not be combined into one project unless specified within this Contract.

CITY agrees to perform the following tasks:

Task 1: Project Design, Approvals and Schedule

- 1.1 CITY shall provide a copy of the final design, including engineering drawings and specifications, to AQMD.
- 1.2 CITY shall provide a copy to AQMD of all permits and/or approvals required to construct and install the shore power systems.
- 1.3 CITY shall provide a copy to AQMD within 10 days of execution of all of its agreements and amendments pertaining to the materials/equipment acquisition, construction and installation of the shore power systems.
- 1.4 CITY shall adhere to the Project Schedule provided in Attachment 1A, attached here and incorporated here by reference.
- 1.5 CITY may update the Project Schedule in Attachment 1A after Contract execution provided the schedule updates are submitted to AQMD by no later than August 31, 2012. Any changes to the Project Schedule after this update must support the timely

- completion of the Project(s) and receive approval from the AQMD and CARB, which will not be unreasonably withheld. Any such further revisions which change key milestones dates and/or Project Completion Date shall require amendment(s) to the Contract, and authority to execute such amendment(s) is hereby delegated to the Executive Director of the Harbor Department of CITY.
- 1.6 CITY shall submit a Schedule Recovery Plan to AQMD within 15 working days if one of the following occurs: (A) one or more berths fail to meet a key milestone date listed in Attachment 1A – Project Schedule (as revised), or (B) CITY or AQMD becomes aware of a change that will cause one or more of the berths to miss the Project Completion Date listed in the Project Schedule (as revised).
 - 1.7 CITY shall include the following items in the Schedule Recovery Plan:
 - A. A narrative description of the cause(s) of adverse schedule impacts, including a list of all schedule activities and milestone dates affected,
 - B. A narrative description of schedule recovery actions that have been and/or will be implemented to minimize or eliminate future schedule impacts, and
 - C. An updated, comprehensive schedule with milestone dates that support timely project completion.
 - 1.8 CITY shall submit the Schedule Recovery Plan for review and approval by AQMD and provide a copy to CARB. If the updated Project Completion Date would delay the year of completion, the plan must also be approved by CARB. To maintain eligibility for Program funds, the project must be on schedule or operating under an approved Schedule Recovery Plan. If the CITY fails to meet the commitments in the approved Schedule Recovery Plan, the AQMD may immediately terminate the commitment to fund the affected berth(s).
 - 1.9 CITY shall install, and shall demonstrate that the shore power system at each berth is fully operational, by no later than the Project Completion Date listed in Attachment 1A – Project Schedule, unless an extension has been requested by CITY and approved by AQMD and CARB in accordance with the Supplemental Procedures. Each berth project shall be considered fully operational after completing and passing the post-inspection by AQMD, and after submittal to AQMD of all the required documentation.
 - 1.10 CITY shall design and implement a targeted outreach program to encourage California small businesses to participate in the construction, alteration, demolition, repair, or improvement of the project(s) funded under this Contract. CITY shall submit to the AQMD as part of CITY's first annual report a summary of its small business outreach activities under this Contract.

Task 2: Equipment & Services

- 2.1 CITY is responsible for maintaining (or causing to maintain) Program-funded materials/equipment in good operating condition and according to manufacturer's recommendations.
- 2.2 CITY shall demonstrate proof of equipment warranty and insurance (including self-insurance) on all materials/equipment associated with the shore power system, as applicable.

Task 3: Inspections

- 3.1 CITY shall ensure that the Site is available for AQMD to complete a Site pre-inspection in accordance with Clause 12 of this Contract.
- 3.2 CITY shall make a timely request to AQMD to conduct a post-inspection, which must be conducted by the Project Completion Date. CITY shall ensure the shore power system at each berth is available for AQMD to complete a post-inspection in accordance with Clause 13 of this Contract. During the post-inspection, CITY shall demonstrate to the AQMD inspector that the system is fully operational and in proper working order by connecting a ship to the shore power system at the designated berth and enabling the ship to draw power from grid-based electricity while the on-board engines are turned off. This demonstration must be witnessed by AQMD at the time of the post-inspection.
- 3.3 In accordance with Section II of the Supplemental Procedures, CITY may request a Post-2013 extension of one year in exchange for a 10% reduction in Program funding for any affected Project. The initial request must be submitted to AQMD by October 31, 2013. A final written request along with additional documentation as requested by AQMD must be submitted by January 31, 2014. AQMD and CARB will evaluate the final written request and documentation based on criteria including but not limited to the CITY's current progress toward completing Project tasks and the CITY's proposal to complete all remaining Project tasks by December 31, 2014.
- 3.4 In addition, if alternative methods of demonstrating full operation and proper working order to satisfy post-inspection requirements are at any time, approved by AQMD or CARB, then separately for each Project, CITY shall have the right to elect any such alternate methods.

Task 4: Operation of the Shore Power Projects

- 4.1 CITY shall commit to operating the shore power system at each berth for a minimum of ten (10) years. The 10-year project life begins at the time the system completes and passes the post-inspection by AQMD.

- 4.2 CITY shall commit to using the shore power system at each berth for a minimum period of 10 years at the following Required Usage Levels or greater:

Table 1: Required Usage Levels

Averaging Period	Required Usage Levels
2014-2016	60%
2017-2019	80%
2020-end of project life	90%

- 4.3 Compliance with the Required Usage Levels in Table 1 will be determined by taking the actual number of ship visits connected to the shore power system at each berth as a percentage of the total ship visits to that berth during the applicable averaging period. Total ship visits shall be defined in accordance with Task 4.4 below. If the percentage of ship visits connected to the grid-based shore power at the funded berth does not meet or exceed the Required Usage Levels starting with the averaging period of 2014-2016, CITY must return a portion of the Program funds to AQMD, in the amount calculated pursuant to Section V.C. of the Supplemental Procedures. CITY shall return the calculated amount to AQMD within 60 days of the date of the written notice from AQMD.
- 4.4 CITY has selected Performance Option 2 to demonstrate compliance with the Required Usage Levels in Table 1. Under this option **total ship visits** are defined as the number of visits to the berth by all U.S. or foreign-flagged vessels, regardless of vessel type. The total ship visits shall exclude the number of ship visits from vessels that did not plug into grid-based power AND met one of the following criteria:
- i. The vessel was part of a fleet complying with CCR Section 93118.3 under the “Equivalent Emissions Reduction Option.”
 - ii. The vessel was prevented from plugging into grid-based power for the duration of the visit due to a qualifying “emergency event” as defined in CCR Section 93118.3.

The CITY may elect to use the optional berth averaging and banking provisions described in the Supplemental Procedures to comply with the Required Usage Levels identified in Task 4.2, upon the written approval of AQMD and CARB.

- 4.5 The expected number of ship visits to utilize the shore power system at each berth and the associated emission reductions are identified in Table 2 below.

Table 2: Expected Shore Power Ship Visits and Associated Emission Reductions

	Averaging Period	Berth 401	Berth 402	Berth 403	Berth 404	Berth 405	West Basin B-121	West Basin B-126	YTI B- 212	YTI B-216	Evergreen B-227
Estimated Ship Visits Using Shore Power Per Year*	2014-2016	6	10	40	25	72	36	36	60	24	45
	2017-2019	8	14	50	35	100	45	49	80	31	60
	2020 & Beyond	9	16	60	40	110	54	54	90	35	68
NOx reductions (lbs)		63,218	78,077	360,403	367,421	2,647,323	960,167	634,088	3,133,142	773,415	926,642
PM reductions (lbs)		1,079	1,333	6,151	6,271	45,184	16,388	10,823	53,476	13,201	15,816

* The ship visits identified in Table 2 represent the expected level of shore power usage at each berth. These numbers will not be used to assess performance under this Contract. Performance under this Contract will be based on the “actual” percentage of ship visits that connected to the shore power system during the applicable averaging period described under Task 4.3.

Task 5: Reporting

- 5.1 CITY shall submit annual reports as specified in Attachment 1B, attached here and incorporated here by reference.
- 5.2 CITY shall submit schedule updates to AQMD on a quarterly basis until the shore power systems have been demonstrated to be fully operational to AQMD at the time of the post-inspection. The schedule updates shall include, but are not limited to: actual start and finish dates for any applicable activities, estimated completion dates for any activities that are in progress, estimated start and finish dates for any activities that have not started, and actual or estimated start and finish dates for any additional activities known to CITY that may jeopardize the Project Completion Date.

ATTACHMENT 1A

PROJECT SCHEDULE
 PORT OF LOS ANGELES
 FY 2008-09
 PROPOSITION 1B: GOODS MOVEMENT EMISSION REDUCTION PROGRAM
 CONTRACT NUMBER

CITY shall complete and make fully operational the shore power systems at each berth **by December 31, 2013 (“Project Completion Date”)**.

CITY shall adhere to the milestone completion dates for each berth project identified in Table 3 below, and shall ensure that all subcontractors, including those responsible for ordering, receiving and accepting the materials/equipment for the projects, also adhere to the milestone dates in Table 3 below:

Table 3: Milestone Completion Dates

Task	Berth 401	Berth 402	Berth 403	Berth 404	Berth 405	West Basin B-121	West Basin B-126	YTI B- 212	YTI B-216*	Evergreen B-227
Issue Notice to Proceed	Sep-12	Sep-12	Sep-12	Sep-12	Sep-12	Oct-12	Oct-12	Aug-12	Aug-12	Sep-12
Preliminary Design	10/03/2011 ACTUAL	10/03/2011 ACTUAL	10/03/2011 ACTUAL	10/03/2011 ACTUAL	10/03/2011 ACTUAL	10/31/2011 ACTUAL	10/31/2011 ACTUAL	Aug-10 ACTUAL	Aug-10 ACTUAL	Aug-11 ACTUAL
Environmental Clearance (if applicable)**	07/20/2011 ACTUAL	07/20/2011 ACTUAL	07/20/2011 ACTUAL	07/20/2011 ACTUAL	07/20/2011 ACTUAL	04/06/2011 ACTUAL	04/06/2011 ACTUAL	08/02/2011 ACTUAL	08/02/2011 ACTUAL	07/20/2011 ACTUAL
Final design	Mar-12	Mar-12	Mar-12	Mar-12	Mar-12	Apr-12	Apr-12	Feb-12	Feb-12	Mar-12
Equipment ordering	Nov-12	Nov-12	Nov-12	Nov-12	Nov-12	Dec-12	Dec-12	Oct-12	Oct-12	Nov-12
Receipt of delivery date confirmations from manufacturers	Dec-12	Dec-12	Dec-12	Dec-12	Dec-12	Jan-13	Jan-13	Nov-12	Nov-12	Dec-12
Projected Equipment Delivery** (estimated)	Aug-13	Aug-13	Aug-13	Aug-13	Aug-13	Sep-13	Sep-13	Jul-13	Jul-13	Aug-13
Power Upgrade project	Oct-13	Oct-13	Oct-13	Oct-13	Oct-13	Oct-13	Oct-13	Sep-13	Sep-13	Oct-13

Execution of purchase orders and/or construction contracts**	Aug-12	Aug-12	Aug-12	Aug-12	Aug-12	Sep-12	Sep-12	Jul-13	Jul-13	Aug-12
Permits	Mar-12	Mar-12	Mar-12	Mar-12	Mar-12	Apr-12	Apr-12	Feb-12	Feb-12	Mar-12
Start construction**	Sep-12	Sep-12	Sep-12	Sep-12	Sep-12	Oct-12	Oct-12	Aug-12	Aug-12	Sep-12
Finish Construction	Nov-13	Nov-13	Nov-13	Nov-13	Nov-13	Nov-13	Nov-13	Oct-13	Oct-13	Nov-13
Commissioning/Testing	Dec-13	Dec-13	Dec-13	Dec-13	Dec-13	Dec-13	Dec-13	Nov-13	Nov-13	Dec-13
Demonstration of fully operational system (w/ ship plugged in)	12/31/13	12/31/13	12/31/13	12/31/13	12/31/13	12/31/13	12/31/13	12/31/13	12/31/13	12/31/13
Project Completion Date	12/31/13	12/31/13	12/31/13	12/31/13	12/31/13	12/31/13	12/31/13	12/31/13	12/31/13	12/31/13
Sufficient required invoices & required documentation for payment received by AQMD	12/10/13	12/10/13	12/10/13	12/10/13	12/10/13	12/10/13	12/10/13	12/10/13	12/10/13	12/10/13

* As previously approved, Berth 216 replaces what was identified as Berth 214 in City's original application.
Key milestone dates are denoted with a double asterisk (**)

ATTACHMENT 1B

DELIVERABLES
PORT OF LOS ANGELES
FY 2008-09

PROPOSITION 1B: GOODS MOVEMENT EMISSION REDUCTION PROGRAM
CONTRACT NUMBER

In addition to the deliverables set forth in the above-referenced statement of work, CITY shall supply the following reports to the AQMD under this Contract. Each submitted report shall be stapled, not bound, printed in black ink, double-sided type, on an 8-1/2 by 11 inch page, and shall include camera ready originals.

1. Two stapled copies of each annual progress report due by the ***** day of each month following the reporting period for the entirety of the project life. CITY shall submit two copies of each progress report to AQMD's Contract Administrator-Technology Advancement, in conjunction with any applicable invoice for the same period. Annual progress reports are required after the shore power system is placed into regular operating service. Each progress report shall include, but is not limited to, the following:
 - a. Reference to the AQMD contract number and title of project
 - b. Reporting time period (month, year)
 - c. Contact information (owner name, company, address, phone)
 - d. Equipment description and type providing electrical power
 - e. Port and berth name(s)/identifier(s)
 - f. Date and installation of equipment
 - g. Vessel type (e.g., container or other), name, and Lloyd's number of vessels utilizing each berth
 - h. Documentation of shore power electricity usage for each Project and any episodes of electrical service interruption by the local utility company
 - i. Total ship visits utilizing each berth, including identification of any ship visits that are excluded from the Total Ship Visits count and the reason for excluding these vessels (e.g., Equivalent Emission Reduction Option, "qualifying" emergency event, etc.)
 - j. Total number of ship visits that connected to shore power
 - k. Summary of non-routine maintenance, repairs and inspections conducted for which CITY is aware
 - l. A signed certification statement that the bond-funded project was operated in accordance with the signed contract and that all information submitted is true and accurate
 - m. Proof of insurance coverage (including self-insurance) on Program-funded equipment and materials
 - n. Other information as requested by AQMD

ATTACHMENT 2
PAYMENT SCHEDULE
PORT OF LOS ANGELES

CITY shall be reimbursed for 50% of the eligible project costs, not exceeding the total grant funds awarded to each berth as identified in Table 4. CITY shall be reimbursed upon submission of itemized invoices and supporting documentation identified below, and after the shore power system(s) complete and pass the post-inspection by AQMD.

Eligible Costs

Table 4 identifies the pre-construction estimates of the expected eligible costs and the total AQMD award for each berth project. The AQMD will evaluate all invoiced costs to determine final eligibility and payment amount under this Contract.

Table 4: Estimated Project Costs *

Description	Berth 401	Berth 402	Berth 403	Berth 404	Berth 405	West Basin B-121	West Basin B-126	YTI B- 212	YTI B-216	Evergreen B-227
Design & Engineering	\$600,000	\$600,000	\$600,000	\$600,000	\$600,000	\$500,000	\$500,000	\$1,000,000	\$1,000,000	\$500,000
Construction Cost										
Electrical Power Distribution Equipment*	\$4,800,000	\$4,800,000	\$4,800,000	\$4,800,000	\$4,800,000	\$4,000,000	\$4,000,000	\$5,500,000	\$5,500,000	\$4,000,000
Lump Sum Construction	\$1,600,000	\$1,600,000	\$1,600,000	\$1,600,000	\$1,600,000	\$3,000,000	\$3,000,000	\$3,500,000	\$3,500,000	\$2,500,000
Total Berth Cost	\$7,000,000	\$7,000,000	\$7,000,000	\$7,000,000	\$7,000,000	\$7,500,000	\$7,500,000	\$5,825,000	\$5,825,000	\$7,000,000
AQMD Award	\$2,425,000	\$2,425,000	\$2,425,000	\$1,977,500	\$1,977,500	\$2,500,000	\$2,500,000	\$2,500,000	\$2,500,000	\$2,500,000
Non-State Match Funds**	\$4,575,000	\$4,575,000	\$4,575,000	\$5,022,500	\$5,022,500	\$5,000,000	\$5,000,000	\$3,325,000	\$3,325,000	\$4,500,000

* Includes but is not limited to incoming utility lines and substation, 34.5 kV customer side switchgear and substation, 34.5 feeder conduits and cables, transformer, 6.6 kV or 11 kV switchgear and substation, 6.6kV or 11 kV feeder conduits and cables, shore-to-ship power outlet vaults including power receptacle assemblies

** Source of Funding: Los Angeles Harbor Department

* By no later than September 30, 2012, CITY agrees to submit a detailed cost breakdown for each Project to AQMD. The detailed cost breakdown shall include updated project cost information and a cost breakdown for the major equipment categories either listed in Section V.D. of the Supplemental Procedures or similar line items as approved by AQMD and CARB.

Payments made by AQMD shall only be used for non-administrative (direct) costs to design, engineer, purchase and install the shore power systems as described in this Contract. Eligible costs include design, engineering, equipment, materials, construction and labor necessary to purchase, install, test and commission infrastructure to supply electrical power to vessels at berth, and, if applicable, a prorated share of the costs associated with increasing the capacity of electrical power (power upgrade project) to the CITY. Eligible project costs that are applicable to multiple berths (e.g., a power upgrade project) must be prorated amongst all eligible and ineligible berths and other equipment served by that upgrade project.

Ineligible costs under this Contract include: shipside modifications to accept shore-based electrical power, consulting, environmental review, legal fees, permits, licenses and associated fees, taxes, metered costs, insurance, operation, maintenance and repair.

Financing or progress payments are not allowed under this Contract.

Documentation

To be reimbursed, CITY must submit the following with the invoice(s): a copy of the original invoice from the equipment supplier and/or contractor performing the work, evidence of payment by CITY, and a written certification by the CITY stating that the equipment and services delivered meet the approved design criteria and specifications for the projects, and a separate cost breakdown for each Project. The separate cost breakdown for each Project shall identify the Project, the work performed, and include a summary of project costs broken down by the following categories: labor costs (including total labor man-hours expended), material costs, equipment costs and other category costs (as applicable with a detailed description of the other costs) The AQMD may allow alternative invoicing breakdowns if requested by CITY. CITY shall also provide all calculations and backup material to support prorated costs.