

AGREEMENT NO. _____

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
THE OXNARD HARBOR DISTRICT - PORT OF HUENEME

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 the OXNARD HARBOR DISTRICT - PORT OF HUENEME, an independent special district and political subdivision of the State of California ("Subrecipient"), whose address is P.O. Box 608, 333 Ponoma Street, Port Hueneme, CA 93044-0608.

WHEREAS, the City of Los Angeles Harbor Department ("Department" or "Port") on October 8, 2018 was awarded a grant by the California Air Resources Board ("CARB"), in the amount of \$41,122,260, to implement the Zero and Near-Zero Emission Freight Facilities "Shore to Store" Project ("S2S Project"), which includes various components including the subject project of this Agreement, described below; and

WHEREAS, to accept the grant award, the Department entered into a S2S Project Grant Agreement No. G17-ZNZE-10 with CARB, as set forth in Exhibit A attached hereto ("Grant Agreement");

WHEREAS, \$3,000,000 of the grant award will fund the Subrecipient's demonstrations of heavy duty hydrogen Fuel Cell Electric Vehicles (FCEVs) and zero emission battery electric yard tractors and infrastructure at the Port of Hueneme (the "Project" hereunder); and

WHEREAS, Subrecipient will be responsible for undertaking (i) demonstration of FCEVs in service between Port of Hueneme and its distribution centers, (ii) demonstration of zero emission battery electric yard tractors and infrastructure and (iii) providing in-kind match funding in the amount of \$200,000 pursuant to the terms of this Agreement; and

WHEREAS, the Department will provide administrative oversight for the Project and act as fiduciary agent for reimbursement to Subrecipient for Project expenditures as set forth in this Agreement in an amount not to exceed \$3,000,000.

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 its portion of the Project as set forth in Grant Agreement, entered into between CARB and City ("Grant Agreement"), attached hereto as Exhibit A and hereby made a part of this Agreement. Subrecipient and City agree to follow the detailed Schedule of Project Milestones and Disbursement attached hereto as Exhibit B and hereby made a part of this Agreement.

B. As provided for in Exhibits A and B, Subrecipient shall furnish the services, materials, equipment, subsistence, transportation or other items necessary to perform its portion of the Project as set forth therein. In completing the Project, Subrecipient shall utilize the cooperative efforts and contributions of the City and other participants in support of the Project.

C. Subrecipient acknowledges and agrees that any services it performs outside this Agreement are performed as a volunteer and shall not be compensable under this Agreement.

D. Subrecipient shall be subject to, and perform the Project in accordance with, the terms and conditions set forth in this Agreement. Obligations under this Agreement, whether undertaken by a Subrecipient or its subconsultants, are and shall be the responsibility of that 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, a Subrecipient shall supply the Department with all agreements between it and its subconsultants related to Subrecipient's services hereunder.

II. SERVICES TO BE PERFORMED BY CITY

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

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 Subrecipient services performed and the manner of performance, the interpretation of instructions to Subrecipient, the acceptable completion of this Agreement, and the amount of reimbursement due to Subrecipient. 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 following 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 after the fifth City Council meeting day after Board action or the date of 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 Agreement is no longer available for any reason. City shall provide written notice to Subrecipient and the amount of reimbursement available and due to Subrecipient shall be determined by the CARB and the terms of the Grant Agreement. Subrecipient shall remain responsible for complying with its 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 the Grant Agreement as of the date the 10-days' notice period ends. City shall determine the amount of reimbursement due to Subrecipient, which shall be determined in accordance with the Grant Agreement. Subrecipient shall remain responsible for complying with its reporting and recordkeeping requirements; or
4. In the event that any 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, the Agreement shall be terminated with respect to that Subrecipient. City and remaining Subrecipients shall meet and confer on whether and to what extent the Project may continue without the terminating Subrecipient's participation. The terminating Subrecipient shall be entitled to reimbursement for expenses incurred in accordance with the Grant Agreement, which amount shall be determined by the CARB. Subrecipient shall remain responsible for complying with its reporting and recordkeeping requirements.

IV. REIMBURSEMENT AND PAYMENT

A. As reimbursement for the Project as set forth in the Grant Agreement and as required by this Agreement, City shall reimburse Subrecipient in the amounts set forth in Exhibit B. Subrecipient agrees that timing requirements of the Project may obligate

Subrecipient 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 any Subrecipient for expenditures made for the Project unless and until payment has been authorized, approved and all funds (minus retention amounts held by the CARB) are released by the CARB to the City pursuant to the Grant Agreement. The parties agree that CARB shall be authorized to withhold a certain amount from the full payment amount in retention pursuant to the terms of the Grant Agreement.

B. The maximum amount to be reimbursed to all Subrecipient pursuant to this Agreement and the Grant Agreement shall be Three Million Dollars (\$3,000,000), which payments shall be made in accordance with Exhibit B.

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

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

”
(Subrecipient’s Signature)

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

Subrecipient shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. The City may require, and a 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 CARB. All invoices are subject to audit.

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

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

V. EMISSION REDUCTION CREDITS

Any emissions reduction credits generated by the work performed pursuant to this Agreement cannot be used or claimed by any 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 services it performs 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 reimbursement 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 Agreement 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 a Subrecipient, subconsultants or any individual or entity acting for or on behalf of a 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 its subconsultants. Subrecipient shall provide City at its 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 and any of its subconsultants are independent contractors and not agents or employees of City in the performance of the work required by this Agreement. No Subrecipient shall represent itself as an agent or employee of the City and no Subrecipient shall have 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 firms that are doing work for the Department. See Exhibit C.

IX. INDEMNIFICATION

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Subrecipient undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including any of 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. Subrecipient Insurance Coverage

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

(1) Commercial General Liability Insurance

Commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Subrecipient's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of a Subrecipient. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of the Subrecipient's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Each policy shall name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds.

(2) Automobile Liability Insurance

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

(3) Workers' Compensation and Employer's Liability

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

C. Insurance Procured by Subrecipient on Behalf of City

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article IX, and where Subrecipient are required to name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds on any insurance policy required by this Agreement, Subrecipient shall cause City to be named as an additional insured on all policies (excluding workers compensation) it procures in connection with this Article X. Subrecipient shall cause such additional insured status to be reflected in the original policy or by additional insured endorsement (CG 2010 or equivalent) substantially as follows:

"Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that City, Board, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all contractual obligations, operations, uses, occupations, acts and activities of the insured under Agreement No. ____, and under any amendments, modifications, extensions or renewals of said Agreement regardless of where such contractual obligations, operations, uses, occupations, acts and activities occur.

"The policy to which this endorsement is attached shall provide a 10-days' notice of cancellation for nonpayment of premium, and a 30-days' notice of cancellation for any other reasons to the Risk Manager.

"The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by City is excess coverage;

"In the event of one of the named insured's incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability; and

"Notice of occurrences or claims under the policy shall be made to the Risk Manager of City's Harbor Department with copies to the City Attorney's Office."

D. Required Features of Coverages

Insurance procured by Subrecipient in connection with this Article X shall include the following features:

(1) Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting insurance documents. Subrecipient's insurance broker or agent shall register with the City's online

insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> and submit the appropriate proof of insurance on said Recipient's behalf.

Upon request by City, a Subrecipient shall furnish full copies of certified policies of any insurance policy required herein. This obligation is intended to, and shall, survive the expiration or earlier termination of this Agreement.

(2) Carrier Requirements

All insurance which Subrecipient are required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

(3) Notice of Cancellation

Each insurance policy described above shall provide that it shall not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given a 10-days' notice of cancellation for nonpayment of premium and a 30-days' notice of cancellation for any other reason by written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

(4) Modification of Coverage

Executive Director, at his or her sole reasonable discretion, based upon recommendation of independent insurance consultants to City, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Subrecipient.

(5) Renewal of Policies

At least thirty (30) days prior to the expiration of any policy required by this Agreement, Subrecipient shall renew or extend such policy in accordance with the requirements of this Agreement and direct its insurance broker or agent to submit to the City's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> a renewal endorsement or renewal certificate or, if new insurance has been obtained, evidence of insurance as specified above. If a Subrecipient neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance shall be deducted from the next payment due to the Subrecipient.

(6) Limits of Coverage

If a Subrecipient maintains higher limits than the minimums required by this Agreement, City requires and shall be entitled to coverage for the higher limits maintained by said Subrecipient. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

E. Right to Self-Insure

Upon written approval by the Executive Director, a Subrecipient may self-insure if the following conditions are met:

1. Subrecipient has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Subrecipient must have a formal resolution of its board of directors authorizing self-insurance.
2. Subrecipient agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.
3. Subrecipient agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. Subrecipient agrees that any insurance carried by Department is excess of Subrecipient's self-insurance and will not contribute to it.
5. Subrecipient provides the name and address of its claims administrator.
6. Subrecipient submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to Executive Director's consideration of approval of self-insurance and annually thereafter.
7. Subrecipient agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.
8. Subrecipient has complied with all laws pertaining to self-insurance.

F. 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 Subrecipient's premises, or elsewhere within the Port of Los Angeles if a 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 the reporting 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 Subrecipient or perform the services described in this Agreement either during or after the term of this Agreement.

XII. PERSONAL SERVICE AGREEMENT

A. During the term hereof, Subrecipient agrees that it will not enter into other contracts or perform any work without the written permission of the Executive Director where the work may conflict with the Project, this Agreement or the CARB Agreement.

B. 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 a Subrecipient utilizes, however, shall be deemed to be its agents. A subconsultants' performance of the Scope of Work shall not be deemed to release a 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

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.

During the term of this Agreement, Subrecipient shall inform the Department in writing when Subrecipient, or any of its subconsultants, employs or hires in any capacity, and for any length of time, a person who has worked for the Department as a Commissioner, officer or employee. Said notice shall include the individual's name and current position and their prior position and years of employment with the Department.

Written notice shall be provided by a Subrecipient to the Department within thirty (30) days of the employment or hiring of the individual.

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 a 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 a 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 and contemplated by this Agreement. Upon City's request, a Subrecipient, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license reasonably satisfactory to the City. It is expressly understood and agreed that, as between City and a 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 a Subrecipient relative thereto shall be

considered confidential and shall not be reproduced, altered, used or disseminated by any 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 addresses set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

XXII. TAXPAYER IDENTIFICATION NUMBER (TIN)

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

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

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 5771 on January 13, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Subrecipient shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this Agreement and otherwise pursue legal remedies that may be available.

XXIV. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

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

Subrecipient and any subconsultants 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. Subrecipient and any subconsultants 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. Subrecipient and any subconsultants 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)

Subrecipient, all 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, its subconsultants, and its Principal 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. Subrecipient 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.

/////

LIST OF EXHIBITS

A – CARB Grant Agreement

B - Schedule of Project Milestones and Disbursement

C – Business Tax Registration Certificate

D – Affirmative Action

E – Small Business Enterprises (SBE)/ Very Small Business Enterprises (VSBE)

F - Equal Benefits Policy

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: _____
AMBER M. KLESGES
Board Secretary

OXNARD HARBOR DISTRICT - PORT OF HUENEME, an independent special district and political subdivision of the State of California

Dated: 6/19/19

By 
KRISTIN DECAS
CEO and Port Director

Attest _____

(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

_____, 2018
MICHAEL N. FEUER, City Attorney
Janna B. Sidley, General Counsel

By _____
Joy M. Crose, Assistant General Counsel

EXHIBIT A
GRANT AGREEMENT

March 9 2019

MICHAEL N. FEUER, City Attorney

By Joy Malone
Assistant City Attorney

GRANT AGREEMENT COVER SHEET

GRANT NUMBER
G17-ZNZE-10

NAME OF GRANT PROGRAM Zero- and Near Zero-Emission Freight Facilities Project	
GRANTEE NAME City of Los Angeles Harbor Department (Port of Los Angeles)	
TAXPAYER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER 95-6000735	TOTAL GRANT AMOUNT NOT TO EXCEED \$41,122,260.00
FISCAL GRANT TERM FROM: March 1, 2019	TO: March 31, 2021
PROJECT PERFORMANCE PERIOD OF GRANT AGREEMENT FROM: March 1, 2019	TO: June 30, 2021

This legally binding Grant Agreement, including this cover sheet and Exhibits attached hereto and incorporated by reference herein, is made and executed between the State of California, California Air Resources Board (CARB) and City of Los Angeles Harbor Department (Port of Los Angeles or the "Grantee").

Head of Department
Mark Blewett 19-31639
City of Los Angeles

Exhibit A – Grant Provisions
Exhibit B – Work Statement:

- Attachment I – Budget Summary
- Attachment II – Project Milestones and Disbursement Schedule
- Attachment III – Key Project Personnel

Exhibit C – Fiscal Year 2017-2018 Grant Solicitation Zero- and Near Zero-Emission Freight Facilities Project
Exhibit D –Grantee Application Package

This Agreement is of no force or effect until signed by both parties. Grantee shall not commence performance until it receives written approval from CARB.

The undersigned certify under penalty of perjury that they are duly authorized to bind the parties to this Grant Agreement.

California Air Resources Board	GRANTEE'S NAME (PRINT OR TYPE) City of Los Angeles Harbor Department (Port of Los Angeles)
SIGNATURE OF CARB'S AUTHORIZED SIGNATORY <u>Beaudy Hunt</u>	SIGNATURE OF GRANTEE (AS AUTHORIZED IN RESOLUTION, LETTER OF COMMITMENT, OR LETTER OF DESIGNATION) Eugene S. Seroka <u>Mark Blewett For</u>
TITLE Administrative Services Branch Chief, CARB	TITLE Executive Director
DATE <u>4/9/19</u>	DATE <u>3/27/19</u>
	GRANTEE'S ADDRESS (INCLUDE STREET, CITY, STATE AND ZIP CODE) 425 South Palos Verdes Street, San Pedro, California 90731

CERTIFICATION OF FUNDING

AMOUNT ENCUMBERED BY THIS AGREEMENT \$41,122,260.00	FISCAL YEAR/PROGRAM 2017/18 / 3510 2018/19 / 3510	FUND TITLE Greenhouse Gas Reduction Fund
PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT \$0.00	(OPTIONAL USE)	
TOTAL AMOUNT ENCUMBERED TO DATE \$41,122,260.00	ITEM 3900-101-3228 (\$31,122,260.00) 3900-101-3228 (\$10,000,000.00)	CHAPTER 254 30
	STATUTE 2017 2018	FISCAL YEAR 2017/18 2018/19
	OBJECT OF EXPENDITURE 6100-702-57207	

I hereby certify that the California Air Resources Board Budget Office acknowledges that budgeted funds are available for the period and purpose of the expenditure stated above.

SIGNATURE OF CALIFORNIA AIR RESOURCES BOARD BUDGET OFFICE: <u>[Signature]</u>	DATE <u>2/20/19</u>
--	------------------------

I hereby certify that the California Air Resources Board Legal Office has reviewed this Grant Agreement.

SIGNATURE OF CALIFORNIA AIR RESOURCES BOARD LEGAL OFFICE: <u>[Signature]</u>	DATE <u>2/21/19</u>
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EXHIBIT A

GRANT PROVISIONS

- I. The parties agree to comply with the requirements and conditions contained herein, as well as all commitments identified in the Grant Solicitation for Zero- and Near Zero-Emission Freight Facilities Project (Exhibit C) and Grantee Application Package (Exhibit D).

- II. The California Climate Investments logo and name serves to bring under a single brand the many investments whose funding comes from the Greenhouse Gas Reduction Fund (GGRF). The logo represents a consolidated and coordinated initiative by the State to address climate change by reducing greenhouse gases, while also investing in disadvantaged communities and achieving many other co-benefits. The Grantee agrees to acknowledge the California Climate Investments program as a funding source from CARB's Low Carbon Transportation program whenever projects funded, in whole or in part by this Agreement, are publicized in any news media, websites, brochures, publications, audiovisuals, or other types of promotional material. The acknowledgement must read as follows: "This publication (or project) was supported by the "California Climate Investments" (CCI) program. Guidelines for the usage of the CCI logo can be found at www.arb.ca.gov/ccifundingguidelines



III. GRANT SUMMARY AND AMENDMENTS (IF APPLICABLE)

Project Title: Zero-Emission Freight "Shore to Store" Project

Funding Amount:¹ \$ 41,122,260

Match Amount: \$ 41,426,612

IV. GRANT PARTIES AND CONTACT INFORMATION

- A. This grant is from the California Air Resources Board (hereinafter referred to as CARB) to the City of Los Angeles Harbor Department (Port of Los Angeles) (hereinafter referred to as Grantee).
- B. The CARB Project Liaison is Ryan Murano. Correspondence regarding this project must be directed to:

Ryan Murano
California Air Resources Board
Mobile Source Control Division
1001 I Street
Sacramento, California 95814
Phone: (916) 322-2383
E-mail: Ryan.Murano@arb.ca.gov

- C. The Grantee Liaison is Jacob Goldberg. Correspondence regarding this project must be directed to:

Grantee Liaison: Jacob Goldberg
Title: Project Manager/Grant Administrator
Address: 425 South Palos Verdes Street
San Pedro, California 90731
Phone: 310-732-2675
Email: jgoldberg@portla.org

V. TIME PERIOD

- A. CARB retains full discretion to consider all available information relating to California Environmental Quality Act (CEQA) compliance before determining whether to proceed forward with this grant agreement. **No work may be done by the grantee, nor will any funding be disbursed by CARB until CARB has affirmatively notified the grantee in writing that this provision has been satisfied.** If CARB decides not to proceed forward with this grant

¹ Budget Act of 2017, as amended by Assembly Bill 134 (for projects using FY17/18 LCT) OR Budget Act of 2017, as amended by Senate Bill 132 (for projects using Warehouse funds); and Budget Act of 2018, as amended by Senate Bill 856.

agreement under this provision, the agreement will be terminated immediately by CARB upon written notice to the grantee.

- B. Performance of work or other expenses billable to CARB under this grant may commence after meeting conditions specified in Section V.A., signing and awarding of this grant. Performance on this grant ends once the Grantee has submitted the CARB approved final report or if the grant is terminated, whichever is earlier.
- C. Upon completion of the project, the Grantee must submit a draft final report to the Project Liaison no later than **February 14, 2021** (see Section IX.D).
- D. Final report and final request for payment must be received by CARB no later than **April 1, 2021** (see Section IX).

VI. SCOPE OF WORK

Description

- A. This project will demonstrate ten Kenworth zero-emission Class 8 hydrogen fuel cell electric trucks, integrated with Toyota's fuel cell drive technology, along with the two hydrogen fueling stations that will be built by Equilon Enterprises LLC (d/b/a Shell Oil Products USA) (Shell) in Ontario and Wilmington. The hydrogen fuel cell electric trucks will be operated by the United Parcel Services, Total Transportation Services Inc., Southern Counties Express, and Toyota Logistics Services (TLS) throughout the Los Angeles basin ports, inland locations such as Riverside County, and the Port of Hueneme (POH). Additionally, POH will demonstrate two electric yard tractors, and TLS will demonstrate two zero-emission forklifts at their facility.
- B. Additional Scope of Work detail is in Exhibit B Work Statement and Exhibit D Grantee Application Package Attachment B.

General Responsibilities

- C. CARB is responsible for the following:
 - 1. Participation in regular meetings with Grantee to discuss project refinements and guide the administration of the project.
 - 2. Reviewing and approving project elements provided by Grantee, such as general vehicle and equipment design criteria, data collection and analysis.
 - 3. Review and approve all grant disbursement requests (Form MSCD/ISB-90).

4. Provide project oversight in conjunction with Grantee.
 5. Ensure compliance with applicable requirements of:
 - a. Fiscal Year 2017-2018 Funding Plan for Clean Transportation Incentives (FY 2017-18 Funding Plan)
 - b. Fiscal Year 2017-18 Clean Transportation Incentives Zero- and Near Zero-Emission Freight Facilities Project (Solicitation).
 - c. Fiscal Year 2018-2019 Funding Plan for Clean Transportation Incentives (FY 2018-19 Funding Plan)
 - d. Air Quality Improvement Program Guidelines
 6. Maintaining adherence to the project timeline.
- D. Grantee's responsibilities include all project development, press events, project administration, and project reporting, including the following tasks:
1. Grantee's key project personnel will participate in an initial Project Kick-Off meeting with CARB staff before work on the project begins. The purpose of the initial meeting will be to discuss the overall plan, details for performing the tasks, the project schedule, and any issues that may need to be addressed. Grantee's key personnel and data collector will also participate in review meetings to discuss progress to be held at least quarterly beginning three months after the initial Project Kick-Off meeting. Grantee may be asked to schedule additional meetings at the sole discretion of the CARB Project Liaison.
 2. Regular project update meetings, to be held at least quarterly, more frequent meetings may be scheduled at the sole discretion of the CARB Project Liaison.
 - a. Regular Project Meetings will have an Agenda with call-in information for all participants.
 - b. Agenda will detail all the issues to be discussed during the Regular Project Update Meeting.
 - c. Agenda will detail items that may cause the project to slip on the time schedule.
 - d. The Regular Project Update Meetings will cover the project timeline and steps needed to maintain the project timeline.

- e. The Regular Project Update Meetings will have discussion on what milestones and work plan tasks are expected to be completed before the next Regular Project Update Meeting.
 - f. Regular Project Update Meetings must include at a minimum the Grantee Liaison, representative from the data collection team and key project partners for any milestone that is behind schedule.
3. The Grantee must submit numbered status reports accompanying grant disbursement requests to CARB at least quarterly, but may submit on a monthly basis if necessary for more frequent disbursements with prior approval from CARB. These reports must be approved by CARB and must contain the following information, at a minimum, in either Microsoft Word or PDF, as a single electronic file:
- a. Project Status Report number, title of project, name of Grantee, date of submission, and project grant number.
 - b. Summary of work completed since the last progress report, noting progress toward completion of tasks and milestones identified in the work plan.
 - c. Statement of work expected to be completed by the next progress report.
 - d. Notification of problems encountered and an assessment of their effects on the project's outcome.
 - e. Data collected from vehicles, equipment and facilities since the last data reporting.
 - f. Grantee must ensure that trucking fleets, equipment operators, freight facilities and technology manufacturers are flexible for the scheduling of the data logging installation, and data retrieval as needed.
 - g. Itemized invoice showing all costs for which reimbursement is being requested.
 - h. Discussion of the project's adherence to the project timeline.
4. A draft final report shall be provided to CARB for comments at least one month before the due date of the final report.
5. Ensure that project end-users are working with data collection provider.

VII. FISCAL ADMINISTRATION

Budget

- A. The maximum amount of this grant is \$41,122,260. Under no circumstance will CARB reimburse the Grantee for more than this amount. The budget for the project is shown in Exhibit B, Attachment I.
- B. The project will include a cash-match and an in-kind match from private, eligible state, and local funding to leverage this grant, for a total project budget of \$82,548,872.
- C. Project implementation funding may be reallocated to project funds with prior written approval by CARB.
- D. The Grantee Application package is incorporated by reference as part of the Grant Agreement. The Grantee application submitted will be the actual costs for the project and will not be amended due to faulty estimations, increases in costs due to inflation or other reasons that have not been covered in the budget.
- E. Subject to prior written approval from CARB, line item shifts of up to ten percent of each milestone may be made over the life of the grant. Grantee can continue to work upon approval of line item shifts by CARB, and CARB will follow up with a formal amendment to the grant. Line item shifts may be proposed by either the State or the Grantee and must not increase the total grant amount.

Earned Interest

- F. Earned interest means any interest earnings generated from grant funds held by Grantee in interest-bearing accounts.
 - 1. Project funds are not required to be held in an interest bearing account. However, if interest is earned by Grantee on the project the earnings must be reported to CARB. All interest income on the Project funds must be reinvested in and used by the Project or returned to CARB. Grantee is responsible for reporting to CARB all project expenditures funded with interest earned on the Project funds.
 - 2. Grantee must maintain accounting records (e.g., general ledger) that track interest earned, expended, or returned on the Project funds, as follows:

- a. The calculation of interest must be based on an average daily balance or some other reasonable and demonstrable method.
- b. Interest earned must ensure that it is separately identifiable from interest earned on non-Project funds.
- c. The methodology for calculating earned interest must be consistent with how it is calculated for Grantee's other fiscal programs.
- d. Earned interest must be fully expended or returned to CARB by completion of the project, submittal of the Final Report, or by **January 31, 2021**, whichever comes first.
- e. Documentation of interest earned on the Project funds and expenditures made on those funds or returned to CARB must be:
 - i. Retained for a minimum of three years after it is generated.
 - ii. Provided to CARB in Status Reports and a Final Report.

Grant Disbursements

- G. Requests for payment shall be made with the Grant Disbursement Request Form (Form MSCD/ISB-90) and conform to the instructions identified in the Fiscal Year 2017-18 Clean Transportation Incentives Zero- and Near Zero-Emission Freight Facilities Project Solicitation (Solicitation). Grant payments shall be made on a reimbursement basis and only for actual costs incurred by the Grantee for recurring milestones. Grant Payments shall be made upon achievement of discrete payable milestone as defined in Project Milestones and Disbursement Schedule (EXHIBIT B, Attachment II) and only when the Grantee has submitted a Grant Disbursement Request Form, milestones stipulated in Exhibit B, Attachment II and the instructions found in the Solicitation have been accomplished, documentation of accomplishment has been provided to CARB in the form of the Status Report, and any associated deliverables (if applicable) have been provided to CARB. CARB will have sole discretion to accelerate the timeline for allowable disbursements of administration and project funds identified in Exhibit B, Attachment II (with the exception of the final project administration disbursement), necessary to assure the goals of the project are met.
- H. Grant payments are subject to CARB's approval of Status Reports and any accompanying deliverables (see Section IX Reporting). A payment will not be made if the CARB Project Liaison deems that a milestone has not been accomplished or documented, a deliverable meeting specifications has not been provided, claimed expenses are not documented, not valid per the

budget, or not reasonable, or the Grantee has not met other terms of the grant.

The Chief of the Mobile Source Control Division or designee of CARB may review the Project Liaison's approval or disapproval of a Grant Disbursement Request. No reimbursement will be made for expenses that, in the judgment of the Division Chief of the Mobile Source Control Division, are not reasonable or do not comply with the Grant Agreement.

- I. The Grantee shall mail completed and signed Grant Disbursement Requests to the Project Liaison.
- J. CARB retains the right to withhold payment of ten percent of administrative funds until completion of all work and submission of a Final Report to CARB. It is the Grantee's responsibility to submit a Grant Disbursement Request for this final disbursement of funds.
- K. CARB shall disburse funds in accordance with the California Prompt Payment Act, Government Code, Section 927, et seq.

Oversight and Accountability

- L. The Grantee shall comply with all oversight responsibilities identified in the Solicitation, Grantee Application Package, and this Grant Agreement.
- M. CARB, or its designee, reserves the right to audit at any time during the duration of this grant the Grantee's costs of performing the grant and to refuse payment of any reimbursable costs or expenses that in the opinion of CARB or its designee are unsubstantiated or unverified. The Grantee shall cooperate with CARB or its designee including, but not limited to, promptly providing all information and documents requested, such as all financial records, documents, and other information pertaining to reimbursable costs, and any matching costs and expenses.
- N. CARB or its designee may recoup funds which were received based upon misinformation or fraud, or for which a Grantee, manufacturer (including vehicle and equipment manufacturers), technology provider, or vehicle/equipment purchaser is in significant or continual non-compliance with the terms of this grant or State law. CARB also reserves the right to prohibit any entity from participating in the Zero- and Near Zero-Emission Freight Facilities Project due to non-compliance with project requirements or other CARB regulations.

VIII. PROJECT MONITORING

Meetings

- A. Kick-Off meeting: A meeting will be held between key project personnel as defined in Exhibit B Attachment III Key Project Personnel and CARB staff before work on the project begins. The purpose of the first meeting will be to discuss the overall plan, details of performing the tasks, the project schedule, and any issues that may need to be resolved.
- B. Review meetings: Meetings to discuss progress must be held at least quarterly beginning three months after the initial Project Kickoff Meeting. Additional meetings may be scheduled at the sole discretion of the CARB Project Liaison. Such meetings may be conducted by phone, if deemed appropriate by the CARB Project Liaison.

Technical Monitoring

- C. Any changes in the scope or schedule for the project shall require the prior written approval of the CARB Project Liaison and may require an amendment to the Grant.
- D. The Grantee shall notify the CARB Project Liaison in writing, immediately if any circumstances arise (technical, economic, or otherwise), which might place completion of the project in jeopardy. In addition, the Grantee shall also make such notification if there is a change in key project personnel (see Exhibit B, Attachment III).
- E. The Grantee shall notify the CARB Project Liaison if the project technology will pursue official verification/certification during the term of this agreement and all documentation in support of the verification/certification must be submitted to CARB Project Liaison concurrently with the verification/certification submittal.
- F. In addition to Status Reports (discussed in Section IX Reporting), the Grantee shall provide information requested by the Project Liaison that is needed to assess progress in completing tasks and meeting the objectives of the project.
- G. Any change in budget allocations, re-definition of deliverables, or extension of the project schedule must be requested in writing to the CARB Project Liaison and approved by CARB, in its sole discretion, and may require a grant amendment.

IX. REPORTING

Status Reports

- A. The Grantee will submit Status Reports at monthly intervals. The Status Reports shall be provided in a format agreed upon between the CARB Project Liaison and the Grantee and meet the requirements of the Solicitation.
- B. Every Grant Disbursement Request Form (Form Number MSCD/ISB-90) shall be accompanied by a Status Report that documents the completion of a milestone(s) specified in Exhibit B, Attachment II.
- C. If the project is behind schedule, the Status Reports must contain an explanation of reasons and a detailed explanation of how the Grantee plans to resume the schedule.

Final Report

- D. When the project is complete, the Grantee shall submit a draft Final Report. The draft Final Report must be submitted to CARB in an appropriate format agreed upon between the CARB Project Liaison and the Grantee. Upon approval of the draft Final Report by the Project Liaison, the Grantee shall provide a written copy of the final version, plus an electronic file.
- E. The Grantee must present, at CARB's sole discretion, the results of the project at a minimum two forums, symposiums, or other event to describe the project and the results. CARB will notify the Grantee at least 10 business days prior to event date.

X. TERMINATION AND SUSPENSION OF PAYMENTS

- A. CARB reserves the right to terminate this grant upon thirty days' written notice to the Grantee, if CARB determines that the project has not progressed satisfactorily during the previous three months and the Grantee and CARB have been unable to agree on modifications. In case of early termination, the Grantee will submit a Grant Disbursement Request Form, a Status Report covering activities up to, and including, the termination date and following the requirements in Section IX of these provisions. Upon receipt of the Grant Disbursement Request Form and all Status Reports, a final payment will be made to the Grantee. This payment shall be for all CARB-approved, actual incurred costs that in the opinion of CARB are justified. The total amount paid shall not exceed the total grant amount.
- B. CARB reserves the right to issue a grant suspension order in the event that a dispute should arise. The grant suspension order will be in effect until the dispute has been resolved or the grant has been terminated. If the Grantee

chooses to continue work on the project after receiving a grant suspension order, the Grantee will not be reimbursed for any expenditure incurred during the suspension in the event CARB terminates the grant. If CARB rescinds the suspension order and does not terminate the grant, CARB will reimburse the Grantee for any expenses incurred during the suspension that are reimbursable in accordance with the terms of the grant.

XI. CONTINGENCY PROVISION

In the event this grant is terminated for whatever reason, the CARB Executive Officer or designee reserves the right in his or her sole discretion to award a grant to the next highest scored applicant and if an agreement cannot be reached, to the next applicant(s) until an agreement is reached. If CARB is unable to award a grant under these circumstances, CARB may award a grant to other projects.

XII. PROJECT RECORDS

Grantee Record

- A. As further described below, project records include but are not limited to Grantee, financial, and other records. All project records must be retained for a period of three (3) years after final payment under this Grant. All project records are subject to audit pursuant to the General Provisions Section (Section XIII) of this Grant Agreement. Upon completion of the third year of record retention, the Grantee shall submit all project records to CARB. Hardcopy of electronic records are suitable. Acceptable forms of electronic media include hard drives, compact discs, digital video discs and flash drives. Other forms of electronic media may be allowed based on prior written concurrence from CARB.
- B. The Grantee shall retain a file for the Shore to Store Project containing, but not limited to:
 - 1. Original executed copy of the Grant Agreement and Grant Agreement Amendments (if applicable);
 - 2. Copies of Grant Disbursement Request Forms;
 - 3. Documentation of earned interest generation and expenditure;
 - 4. All Project Status Reports;
 - 5. Invoices from project participants for reimbursable items; and
 - 6. All other information that documents all aspects of the project.

Financial Record

- C. Without limitation of the requirement to maintain project accounts in accordance with generally accepted accounting principles, the Grantee must:
1. Establish an official file for the Shore to Store Project, which shall adequately document all significant actions relative to the project.
 2. Establish separate accounts, which will adequately and accurately depict all amounts received and expended on the Shore to Store Project.
 3. Establish separate accounts, which will adequately and accurately depict all income received which is attributable to the Shore to Store Project, including cash and in-kind match.
 4. Establish an accounting system, which will adequately depict final total costs of the Shore to Store Project, including both direct and indirect costs.
- D. Other Records include all deliverables required in Exhibit B, Attachment II, of this Grant Agreement.

XIII. GENERAL PROVISIONS

- A. **Amendment:** No amendment or variation of the terms of this Grant Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Grant Agreement is binding on any of the parties.
- B. **Assignment:** This grant is not assignable by the Grantee, either in whole or in part, without the consent of CARB in the form of a formal written amendment.
- C. **Compliance with law, regulations, etc.:** The Grantee agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and State laws, rules, guidelines, regulations, and requirements.
- D. **Conflict of interest:** The Grantee certifies that it is in compliance with applicable State and/or federal conflict of interest laws.
- E. **Disputes:** The Grantee shall continue with the responsibilities under this Grant Agreement during any dispute. Grantee staff or management may work in good faith with CARB staff or management to resolve any disagreements or conflicts arising from implementation of this Grant Agreement. However, any disagreements that cannot be resolved at the

management level within 30 days of when the issue is first raised with CARB staff shall be subject to resolution by the CARB Executive Officer, or his designated representative. Nothing contained in this paragraph is intended to limit any rights or remedies that the parties may have under law.

- F. **Environmental justice:** In the performance of this Grant Agreement, the Grantee shall conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income population of the State.
- G. **Fiscal management systems and accounting standards:** The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of State law or this Grant Agreement. Unless otherwise prohibited by State or local law, the Grantee further agrees that it will maintain separate Project accounts in accordance with generally accepted accounting principles.
- H. **Force majeure:** Neither CARB nor the Grantee shall be liable for or deemed to be in default for any delay or failure in performance under this Grant Agreement or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, etc.
- I. **Governing law and venue:** This grant is governed by and shall be interpreted in accordance with the laws of the State of California, CARB and the Grantee hereby agree that any action arising out of this Grant Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Grantee hereby waives any existing sovereign immunity for the purposes of this Grant Agreement.
- J. **Indemnification:** The Grantee agrees to indemnify, defend, and hold harmless the State and the Board and its officers, employees, agents, representatives, and successors-in-interest against any and all liability, loss, and expense, including reasonable attorneys' fees, from any and all claims for injury or damages arising out of the performance by the Grantee, and out of the operation of equipment that is purchased with funds from this Grant Award.
- K. **Grantee's responsibility for work:** The Grantee shall be responsible for work and for persons or entities engaged in work, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Grantee shall be responsible for any and all disputes arising out of its contract for work on the Project, including but not limited to payment disputes with

contractors, subcontractors, and providers of services. The State will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work.

- L. **Independent Contractor:** The Grantee, and its agents and employees, if any, in their performance of this Grant Agreement, shall act in an independent capacity and not as officers, employees, or agents of CARB.

- M. **Nondiscrimination:** During the performance of this Grant Agreement, the Grantee and its third party entities shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. The Grantee and its third party entities shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Grantee and its third party entities shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Grantee and its third party entities shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

The Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Grant Agreement

- N. **No third party rights:** The parties to this Grant Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Grant Agreement, or of any duty, covenant, obligation or undertaking establish herein.

- O. **Prevailing wages and labor compliance:** If applicable, the Grantee agrees to be bound by all the provisions of State Labor Code Section 1771 regarding prevailing wages. If applicable, the Grantee shall monitor all agreements subject to reimbursement from this Grant Agreement to ensure that the prevailing wage provisions of State Labor Code Section 1771 are being met.

- P. **Professionals:** For projects involving installation or construction services, the Grantee agrees that only licensed professionals will be used to perform services under this Grant Agreement where such services are called for and licensed professionals are required for those services under State law.

- Q. **Severability:** If a court of competent jurisdiction holds any provision of this Grant Agreement to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of those provisions, will not be affected.
- R. **Termination:** CARB may terminate this Grant Agreement by written notice at any time prior to completion of projects funded by this Grant Agreement, upon violation by the Grantee of any material provision after such violation has been called to the attention of the Grantee and after failure of the Grantee to bring itself into compliance with the provisions of this Grant Agreement.
- S. **Timeliness:** Time is of the essence in this Grant Agreement. Grantee shall proceed with and complete the Project in an expeditious manner.
- T. **Waiver of Rights:** Any waiver of rights with respect to a default or other matter arising under the Grant Agreement at any time by either party shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State provided for in this Grant Agreement are in addition to any other rights and remedies provided by law.
- U. **Availability of funds:** CARB's obligations under this Grant Agreement are contingent upon the availability of funds. In the event funds are not available, the State shall have no liability to pay any funds whatsoever to the Grantee or to furnish any other considerations under this Grant Agreement.
- V. **Ownership:** All information or data received or generated by the Grantee under this agreement shall become the property of CARB. No information or data received or generated under this agreement shall be released without CARB's approval. Notwithstanding the above, in the event Grantee is required by deposition, interrogatory, subpoena, or request for documents under the Public Records Act to disclose information or data received or generated under this agreement, Grantee shall provide CARB a prompt written notice prior to disclosure.
- W. **Audit:** Grantee agrees that CARB, the Department of General Services, Department of Finance, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Grant and all State funds received. Grantee agrees to maintain such records for possible audit for a minimum of three (3) years after the term of this Grant is completed, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

Further, Grantee agrees to include similar right of the State to audit records and interview staff in any subgrant or subcontract related to performance of this Agreement.

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EXHIBIT B

Work Statement

Budget Summary (Attachment I)
Project Milestones and Disbursement Schedule (Attachment II)
Key Project Personnel (Attachment III)

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EXHIBIT B, Attachment I

Budget Summary

Grantee: City of Los Angeles Harbor Department (Port of Los Angeles)
Grant No.: G17-ZNZE-10

Project: Zero-Emission Freight "Shore to Store" Project

Total Costs & Funding

Costs	Grant	Applicant Match Funding		Total
	Cash	Cash	In-Kind	
1. Demonstration Technology Funds	\$41,122,260	\$14,297,281	\$27,129,331	\$82,548,872
2. Administrative Funds	\$0.00	\$0.00	\$0.00	\$0.00
Total	\$41,122,260	\$14,297,281	\$27,129,331	\$82,548,872

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EXHIBIT B, Attachment II

Project Milestones and Disbursement Schedule

Grantee: City of Los Angeles Harbor Department (Port of Los Angeles)

Grant No.: G17-ZNZE-10

Project: Zero-Emission Freight "Shore to Store" Project

Task	Task Description	Task Deliverables	Project Funding		Match Funding		Total	DUE DATE
			Project	Admin	Cash	In-Kind		
Task 1.0 Administrative and Project Management								
Task 1.1 - Execute Grant Agreement								
1.1.1	Execute Subcontracts – provide copies of subcontracts to CARB	N/A	\$0	\$0	\$0	\$0	\$0	Jun-19
1.1.2	Verified Completed CEQA		\$0	\$0	\$0	\$0	\$0	Feb-19
1.1.3	Signed Grant Agreement		\$0	\$0	\$0	\$0	\$0	Feb-19
Task 1.2 - CEC Funded Projects	Provide copies of executed Agreements to CARB	Executed Agreements	\$0	\$0	\$0	\$25,999,331	\$25,999,331	Feb-19
Task 1.3 - Quarterly Reports	Quarterly Reports	Quarterly reports	\$0	\$0	\$0	\$0	\$0	Ongoing
Task 1.4 - Final Report	Final Report	Final Report	\$100,000	\$0	\$0	\$0	\$100,000	Mar-21
Task 2.0 Design, Construction, and Commissioning of Hydrogen Infrastructure								
2.1	Hydrogen Refueling Station in Ontario	Final photos, commissioning	\$9,250,000	\$0	\$0	\$0	\$9,250,000	May-20

Task	Task Description	Task Deliverables	Project Funding		Match Funding		Total	DUE DATE
			Project	Admin	Cash	In-Kind		
		report including proof of operation						
2.2	Hydrogen Refueling Station in Wilmington	Final photos, commissioning report including proof of operation	\$7,850,000	\$0	\$1,400,000	\$0	\$9,250,000	Jun-20
Task 3.0 Truck Fleet Design, Build, and Support								
3.1	Vehicle Design / Build / Validation Units #1 - #5	Internal tests report, proof of delivery and operation	\$9,500,000	\$0	\$5,810,000	\$0	\$15,310,000	Jul-19
3.2	Design Updates / Build / Validation Units #6 - #10	Internal tests report, proof of delivery and operation	\$8,830,000	\$0	\$4,810,000	\$0	\$13,640,000	Jun-20
3.3	Demonstration Readiness / Vehicle Operation & Support	Final Engineering Documentation, Ongoing Manufacturer Support report	\$2,100,000	\$0	\$200,000	\$0	\$2,300,000	Jan-21
Task 4.0 Yard Tractors and Charging Infrastructure								
4.1	Engineering and Design - Infrastructure	Final design report	\$100,000	\$0	\$0	\$100,000	\$200,000	Jun-19
4.2	Infrastructure Bid Process	Issued RFP, final scores and selection summary	\$0	\$0	\$0	\$0	\$0	Aug-19
4.3	Utility Permitting and Construction	Final Permits, Overall Construction plan	\$250,000	\$0	\$0	\$0	\$250,000	Jun-20

Task	Task Description	Task Deliverables	Project Funding		Match Funding		Total	DUE DATE
			Project	Admin	Cash	In-Kind		
4.4	Site Construction and Commissioning	Final photos, commissioning report	\$2,050,000	\$0	\$0	\$100,000	\$2,150,000	Aug-20
4.5	Yard Truck Delivery	Photos of delivered tractors, written notice of first operation	\$600,000	\$0	\$0	\$0	\$600,000	Aug-20
Task 5.0 Technology Demonstrations								
Task 5.1 - Truck Demonstration								
5.1.1	Operation of Phase 1 Trucks	Test plan prior to beginning of each demonstration, Collected data provided in Status Reports.	\$0	\$0	\$1,531,848	\$0	\$1,531,848	Jan-21
5.1.2	Operation of Phase 2 Trucks		\$0	\$0	\$545,433	\$930,000	\$1,475,433	Jan-21
Task 5.2 - Yard Tractor Demonstrations	Demonstration of 2 Yard Tractors at POH		\$0	\$0	\$0	\$0	\$0	Jan-21
Task 5.3 - Forklift Demonstration	Forklift Demonstration at Toyota Warehouse		\$0	\$0	\$0	\$0	\$0	Jan-21
Task 6.0 Data Collection and Analysis								
6.1	Data Collection	Data collection plan	\$193,794	\$0	\$0	\$0	\$193,794	Jun-19
6.2	Data Analysis, Ongoing	Data included in Quarterly Reports (Task 1.3)	\$131,630	\$0	\$0	\$0	\$131,630	Mar-21
6.3	Advanced Data Analytics	Analytics included in Final Report (Task 1.4)	\$166,836	\$0	\$0	\$0	\$166,836	Mar-21
	TOTAL		\$41,122,260	\$0	\$14,297,281	\$27,129,331	\$82,548,872	

*CARB will not reimburse for Final Report until approval of Final Report

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Exhibit B, B-4

EXHIBIT B, Attachment III

Key Project Personnel

Grantee: City of Los Angeles Harbor Department (Port of Los Angeles)

Grant No.: G17-ZNZE-10

Project: Zero-Emission Freight "Shore to Store" Project

Name	Organization	Position	Duties
Christopher Cannon	Port of Los Angeles	Chief Sustainability Officer	Project Director – Provides overall leadership and executive oversight for the project.
Jacob Goldberg	Port of Los Angeles	Environmental Specialist	Project Manager/Grant Administrator– Manages the project and oversees grant administrative duties and coordination with ARB throughout the project.
Tim DeMoss	Port of Los Angeles	Marine Environmental Supervisor	Technology Demonstration Lead – Oversees and coordinates technology demonstration partners' participation in the project.
Oliver Bishop	Shell	General Manager Hydrogen	Overall responsibility for the success of the hydrogen infrastructure deployment.
Wayne Leighty, MBA, PhD	Shell	Hydrogen Business Development Manager, North America	Accountable for hydrogen business development in North America.

Name	Organization	Position	Duties
Mark Brown	Kenworth Truck Company	Executive Program Manager – Advanced Technologies	Program Management, Budget, Schedule and Reporting Responsibility.
John Luoma	Kenworth Truck Company	Assistant Chief Engineer	Technical Responsibility and Resource Management.
Andrew Lund	Toyota Motor North America	Chief Engineer	Oversee the research and development activities of the fuel cell electric truck project.
Tak Yokoo	Toyota Motor North America	Senior Executive Engineer	Responsible for product development and execution for fuel cell powertrain system development.
Aaron Harris	Air Liquid	Technical Director, Hydrogen Energy	Will serve as the lead technical contact for the Air Liquide stations.
Christina Birdsey	Port of Hueneme	Chief Operations Officer	Oversee the Port's overall project status and implementation.
Giles Pettifor	Port of Hueneme	Environmental Manager	Coordinate with CARB and Port of LA on overall project status and management. He will work with the EV yard tractor vendor on coordinating delivery and timing.
Kenneth Kelly	National Renewable Energy Laboratory	Team Leader, Commercial Vehicle Technologies	Data analysis program management and technical oversight.

Name	Organization	Position	Duties
Jason Lustbader	National Renewable Energy Laboratory	Senior Research Engineer	Project management, technical leadership, and planning.
Matt Miyasato, PhD	South Coast Air Quality Management District	Deputy Executive Officer for Science & Technology Advancement	Technical Advisor – Development and commercialization of clean air technologies. SCAQMD is also providing co-funding in the form of cash match.
Jesse Marquez	Community for a Safe Environment	Executive Director	Community Advisor

EXHIBIT C

2017-2018 GRANT SOLICITATION

Zero- and Near Zero-Emission Freight Facilities Project

Mobile Source Control Division
California Air Resources Board
March 21, 2018



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EXHIBIT D

GRANTEE APPLICATION PACKAGE

Exhibit D, D-1

EXHIBIT B

**SCHEDULE OF PROJECT
MILESTONES AND DISBURSEMENT**

Exhibit B

ZERO-EMISSION FREIGHT “SHORE TO STORE” PROJECT

Project Milestones, Disbursement Schedule, Matching Funds, and Project Team Responsibilities

This Shore to Store Project (Project) will be funded through the California Air Resources Board’s (CARB) Fiscal Year 17/18 Funding Plan for Clean Transportation Incentives (G17-ZNZE-10), as detailed in agreement 19-3639.

This Project will fund the construction and demonstration of ten Kenworth zero-emission Class 8 hydrogen fuel cell electric trucks, integrated with Toyota’s fuel cell drive technology, the construction and operation of two heavy-duty hydrogen fueling stations by Equilon Enterprises LLC (d/b/a Shell Oil Products USA) in the cities of Ontario and Wilmington, and the purchase and construction of required electrical infrastructure to support the operation of two zero emission yard tractors at the Port of Hueneme. The hydrogen fuel cell electric trucks will be operated by the United Parcel Services (UPS), Total Transportation Services, Inc. (TTSI), Southern Counties Express (SCE), and Toyota Logistics Services (TLS) throughout the Los Angeles basin ports, inland locations such as Riverside County, and the Port of Hueneme. Additionally, Toyota Logistics Services will also demonstrate two zero-emission forklifts.

Under this agreement, Subrecipient will purchase two electric yard tractors and install supporting charging infrastructure funded by the CARB grant. The model and manufacturer of Yard Tractor will be selected via a competitive Request for Proposals process. Invoices shall be submitted to the Harbor Department upon completion of each milestone for which Subrecipient is responsible, alongside the indicated deliverables in the attached Milestone and Disbursement Schedule. Additionally, Subrecipient will coordinate with National Renewable Energy Laboratory to ensure all data required under the CARB agreement is collected.

Deliverable Definitions:

- **Final Design Report:** Written report including the final engineering designs of the infrastructure system and reasoning.
- **Commissioning Report:** Written summary of the build and final tests prior to first service.
- **Proof of Operation:** Proof of transaction(s).
- **Data Delivery:** In conjunction with National Renewable Energy Laboratory, in accordance with CARB requirements, project data will be submitted as coordinated by National Renewable Energy Laboratory.

Other Project Team Member Responsibilities:

- **Kenworth** - will design, construct, and deploy for demonstration the ten zero-emission Class 8 hydrogen fuel cell electric trucks. Additionally, Kenworth will

contract with Toyota for the design and build of the truck engine, and with United Parcel Services, Total Transportation Services, Inc., Southern Counties Express, and Toyota Logistics Services to facilitate the demonstration of the trucks.

- **Equilon Enterprises LLC (d/b/a Shell Oil Products USA, Shell)** - design, build and demonstrate the three heavy-duty hydrogen fueling stations, one each in Ontario, Wilmington, and Long Beach, California. The two stations in Ontario and Wilmington, CA will be funded through separate agreement, while the station being built in Long Beach will be funded by the California Energy Commission as a match funding contribution to this project.
- **National Renewable Energy Laboratory** - will provide data collection and analysis of the demonstrations of the trucks, fueling stations, and electric yard tractors.
- **Los Angeles Harbor Department** - will be grant funds administrator to all subrecipients. Additionally, the Harbor Department will provide the ongoing clean technology demonstrations at Everport, funded by the CEC as its match funding contribution.

TASK 5 TECHNOLOGY DEMONSTRATION - PORT OF HUENEME

5.2.1. Infrastructure Engineering	9/31/2019
Milestone: Infrastructure Engineering Completion --	\$200,000
5.2.2. Infrastructure Construction	9/1/2020
Milestone: Structural and Electrical Infrastructure Preparation and Ordering of Switchgear -	\$1,000,000
Milestone: Delivery and Installation of Electrical Switchgear and Related Components -	\$1,000,000
5.2.3. Commission Infrastructure	9/1/2020
5.2.4. Delivery ZE UTRs	9/1/2020
Milestone: Delivery of (2) Electric UTR's and Charging Stations -	\$1,000,000
5.2.5. Testing ZE UTRs	12/31/2020

EXHIBIT C - BUSINESS TAX REGISTRATION CERTIFICATE (BTRC) NUMBER

The City of Los Angeles Office of Finance requires all firms that engage in any business activity within the City of Los Angeles to pay City business taxes. Each firm or individual (other than a municipal employee) is required to obtain the necessary Business Tax Registration Certification (BTRC) and pay business tax. (Los Angeles Municipal Code Section 21.09 et seq.)

All firms and individuals that do business with the City of Los Angeles will be required to provide a BTRC number or an exemption number as proof of compliance with Los Angeles City business tax requirements in order to receive payment for goods or services. Beginning October 14, 1987, payments for goods or services will be withheld unless proof of tax compliance is provided to the City.

The Tax and Permit Division of Los Angeles Office of Finance has the sole authority to determine whether a firm is covered by business tax requirements. Those firms not required to pay will be given an exemption number.

If you do NOT have a BTRC number contact the Tax and Permit Division at the office listed below, or log on to <http://finance.lacity.org/business-tax-information-faq> to download the business tax registration application.

MAIN OFFICE

LA City Hall

201 N. Main Street, Rm. 101 (844) 663-4411

EXHIBIT D - AFFIRMATIVE ACTION PROGRAM PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 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 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, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
 - 1. This provision 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 will, 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, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, 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, religion, ancestry, national origin, 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 Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their 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 contract. Such 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 Board of Public Works, Office of Contract Compliance. No such 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, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such 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 (\$10.00) for each person for each calendar day on which such 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 Office of Contract Compliance 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. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the City. The plan shall be subject to approval by the

Office of Contract Compliance prior to award 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 Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve

months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or 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.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
- P. 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 or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like 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

(1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM (2) LOCAL BUSINESS PREFERENCE PROGRAM

(1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM:

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

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

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

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

(2) LOCAL BUSINESS PREFERENCE PROGRAM:

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

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

The Harbor Department defines a LBE as:

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

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

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

AFFIDAVIT OF COMPANY STATUS

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

Name of Firm

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

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

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

SBE VSBE MBE WBE DVBE OBE

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

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

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

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

LBE Non-LBE

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

Signature: _____

Title: _____

Printed Name: _____

Date Signed: _____

Consultant Description Form

PRIME CONSULTANT:

Contract Title: _____

Business Name: _____ LABAVN ID#: _____

Award Total: \$ _____

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

Local Business Enterprise: YES _____ NO _____ (Check only one)

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

Address: _____

City/State/Zip: _____

County: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email Address: _____

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: _____

Award Total: (% or \$): _____

Services to be provided: _____

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

Local Business Enterprise: YES _____ NO _____ (Check only one)

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

Address: _____

City/State/Zip: _____

County: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email Address: _____

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 ORDINANCE

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.