

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

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

WHEREAS, the Marine Exchange has been nominated by the Area Maritime Security Committee (AMSC), and appointed by the Federal Emergency Management Agency (FEMA) on behalf of the Department of Homeland Security (DHS), to act as the Fiduciary Agent (FA) for FY 2010, per DHS Award No: 2010-PU-T0-K004 (Award), which requires the Marine Exchange to monitor the progress of projects funded by FEMA under the Port Security Grants Program (PSGP) and submit supporting documentation to FEMA for reimbursement, and

WHEREAS, the Sub-Recipient will be planning, developing and executing Projects as defined by its Investment Justifications (IJs): "Dive Command Post", IJ No.13; "Multi-Agency Maritime Facility Phase III", IJ No.14; and "Surveillance Cameras for Waterfront Projects", IJ No. 15; submitted to the FA and approved by FEMA, for sub-grants, which are not to exceed amounts of U.S.\$ 250,000, \$2,000,000 and \$3,000,000, respectively; and

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

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

ACCORDINGLY, the parties agree as follows:

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

"I certify under penalty of perjury that the above invoice is just and correct according to the terms of Award No. 2010-PU-T0-K004 and this Memorandum of Agreement and that payment has already been made."

\_\_\_\_\_  
(Signature of authorized personnel)

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

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

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

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

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

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

4(a). After receiving and reviewing the invoices from the Sub-Recipient, the FA shall submit a request to FEMA for reimbursement in accordance with Award No. 2010-PU-T0-K004. It is expressly understood by the Sub-Recipient that the Sub-Recipient shall be entitled to reimbursement only upon approval of the request by FEMA and subsequent reimbursement of the funds from FEMA to the FA.

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

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

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

contract or other action in law to any party other than the original Sub-Recipient under the specific terms of this MOA.

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

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

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

7(a). Except to the extent arising from the negligence or willful misconduct of the Marine Exchange, City shall at all times indemnify, protect, defend, and hold harmless the Marine Exchange and any and all of its affiliates, shareholders, boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the Marine Exchange, its affiliates, shareholders, boards, officers, agents, and/or employees by reason of any damage to property, injury to persons, or any action that may arise out of the performance under this MOU by the Marine Exchange that is caused by any negligent or wrongful act or omission of City, its affiliates, shareholders, boards, officers, agents, or employees; provided that (1) if the Marine Exchange contributes to a loss, City's indemnification of the Marine Exchange for the Marine Exchange's share of the loss shall be limited to One Hundred Thousand Dollars (\$100,000), and (2) notwithstanding the limitation in (1), each party shall remain responsible for one hundred percent (100%) of any loss attributable to it.

7(b). Except to the extent arising from the negligence or willful misconduct of City, the Marine Exchange shall at all times indemnify, protect, defend, and hold harmless City and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the City, its boards, officers, agents, and/or employees by reason of any damage to property, injury to persons, or any action that may arise out of the performance under this MOU by City that is caused by any negligent or wrongful act or omission of the Marine Exchange, its boards, officers, agents, or employees; provided that (1) if the City contributes to a loss, the Marine Exchange's indemnification of the City for the City's share of the loss shall be limited to One Hundred Thousand Dollars (\$100,000), and (2) notwithstanding the limitation in (1), each party shall remain responsible for one hundred percent (100%) of any loss attributable to it.

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

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

MARINE EXCHANGE OF LOS ANGELES-  
LONG BEACH HARBOR

Dated: 11/9/11

By [Signature]

S. Tikari, Program Manager.  
(Print/type name and title)

Attest [Signature]

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

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

Dated: \_\_\_\_\_

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

Attest: \_\_\_\_\_  
Secretary

APPROVED AS TO FORM AND LEGALITY

Nov 10, 2011  
CARMEN A. TRUTANICH, City Attorney

By [Signature]  
HEATHER M. McCLOSKEY, Deputy

Account #	<u>13240</u>	W.O. #	
Ctr/Div #	<u>412</u>	Job Fac. #	<u>63600</u>
Proj/Prog #	<u>640</u>		
Budget FY: Amount:			
	<u>11-12</u>	<u>0</u>	<u>N/A</u>
	<u>12-13</u>	<u>250,000</u>	
	<u>TOTAL</u>	<u>250,000</u>	
For Acct/Budget Div. Use Only:			
Verified by:	<u>[Signature]</u>		
Verified Funds Available:	<u>[Signature]</u>		
Date Approved:	<u>11/10/2011</u>		

Account #	54510	W.O. #	11111
Ctr/Div #	1179	Job Fac. #	63600
Proj/Prog #	640		
Budget FY: Amount:			
	11-12	\$0	N/A
	12-13	\$1,250,000	
	13-14	\$750,000	
	TOTAL	\$2,000,000	
For Acct/Budget Div. Use Only:			
Verified by:	<i>Janet Fernan</i>		
Verified Funds Available:	<i>Shyn C. Day</i>		
Date Approved:	<i>11/10/2011</i>		

Account #	54286	W.O. #	
Ctr/Div #	412	Job Fac. #	63600
Proj/Prog #	640		
Budget FY: Amount:			
	11-12	\$0	N/A
	12-13	\$2,250,000	
	13-14	\$750,000	
	TOTAL	\$3,000,000	
For Acct/Budget Div. Use Only:			
Verified by:	<i>Janet Fernan</i>		
Verified Funds Available:	<i>Shyn C. Day</i>		
Date Approved:	<i>11/10/2011</i>		